

unlikely that Geoffrey was a monk as suggested in the *Dictionary of National Biography*; a monk would not live at large outside his monastery.

The first of the seven charters suggests what Geoffrey's position was. The island of Oseney was in the parish of St. George, which belonged to the canons of St. George's; consequently, the abbey could only be founded with their consent, and there could be no more suitable witnesses to the foundation charter than the canons. As this secular college came to an end in 1149, we know the names of only two who held prebends; there is a deed by Robert de Chesney, bishop of Lincoln, which says that before his consecration he was one of the canons of St. George's; and there is a bull by Pope Eugenius III addressed to Walter the archdeacon as provost of the college. Of those who attest the foundation charter of Oseney, four were not improbably canons of St. George's—Walter, Geoffrey of Monmouth, Roger de Amary, and Edward of Tew. The earliest life of Geoffrey states that after he obtained an archdeaconry in the diocese of Llandaff, he acted as instructor to the sons of many Welsh chieftains. It is not likely that he obtained his archdeaconry until after 1140, when his uncle obtained the bishopric. Before that date, Geoffrey may have given instruction in Oxford. The fact that Robert Pullen moved to Oxford in 1133 to give his lectures there proves that it was already a place of education.

H. E. SALTER.

The Early History of Commissions of Sewers

THE principal works which have hitherto been available for the study of the organization of land drainage and sea defence¹ in England in the middle ages are the *Calendar of Patent Rolls*, Dugdale's *History of Imbanking*, and a collection of documents relating to Romney Marsh and other marshes in the neighbourhood. It is hardly necessary to say that commissions of sewers were entered on the dorse of the Patent Rolls and duly appear abstracted in the *Calendar*. The *History of Imbanking*, which appeared in two editions (1662 and 1772), is best described as a full calendar, arranged under districts, of all the documents relating to commissions of sewers and allied subjects which Dugdale could find in the public records or private collections; it was, however, no part of Dugdale's scheme to base upon the very extensive material which he had collected a study of the genesis and growth of the administrative machinery for dealing with 'imbanking'. The third work was first published by

¹ Land drainage and sea defence are grouped in the ordinary form of commission.

Berthelet in 1543 under the title of *The Grantes, Ordinances and Laws of Romney Marshe*, and has been reprinted under various titles at least five times since :¹ this is a somewhat haphazard compilation, and was doubtless printed in the first place from a collection of placita, assessments, and related documents made for the use of a landowner, probably a religious house, interested in Romney Marsh and other marshes on the borders of Kent and Sussex.²

It has been suggested by Mr. C. T. Flower, to whom we owe a new collection of documents supplementing those previously available,³ that after the Black Death there was an increased interest in land drainage, and that this was directly due to the pestilence, first, because the visitation of the plague may have been associated in contemporary thought with stagnant sewers and ditches, and secondly, because the inability of local landowners to provide labour or material would lead to the neglect of public works.⁴ From the Romney Marsh documents and from Dugdale no reader is likely to gain the impression that the Black Death was a turning-point in the attitude of the government or people at large towards land drainage and sea defence. But these, after all, are casual collections and may mislead; the *Calendar of Patent Rolls*, however, provides a means of ascertaining without undue trouble—apart from that arising from a defective index—the relative activity of the government before and after 1349, which in its turn is an indication of the degree of interest taken by the landowners and inhabitants of the districts subject to inundation. The Patent Rolls are a much more certain source of information on this point than the existing series of Ancient Indictments, to the incompleteness of which Mr. Flower draws attention,⁵ or than Agarde's Indexes, which he has used as a guide to the material relevant to his purpose.

In the years immediately following the Black Death there is a markedly increased activity in issuing commissions of sewers as compared with years covering and preceding that event: from 3, 4, and 5 in the years 1347, 1348, and 1349 respectively they rise to 9 in 1350 and 13 in each of the years 1351 and 1352.

¹ *The Charter of Romney Marsh*, 1597, 1647, 1686 (all these are furnished with English translations); 'The Laws, Statutes, and Customs of Rumney Marsh', in *The Laws of Sewers*, 1732; *The Laws and Customs of Rumney Marsh*, 1840 (the two last are in translation only).

² Such a collection will be found in the Cottonian MSS. Cleop. C. vii and Galba E. iv, and also in Stowe MS. 850. Dugdale gives abstracts (from manuscripts) of all the documents printed by Berthelet.

³ *Public Works in Mediaeval Law*, vol. i, p. xxviii.

⁴ This view is accepted by Dr. Clapham, *ante*, xxxiii. 106.

⁵ *Public Works in Mediaeval Law*, vol. i, p. xv.

Nay, further, the total for the ten years 1340 to 1349 is 46 : for the ten years 1350 to 1359 the total is 83. But it so happens that the decade 1340 to 1349 showed an almost equally marked contrast with the decade which preceded it, when 69 commissions were issued. To select the year 1349 as the end of a period is, however, rather like fitting facts to theory, and the position is perhaps more fairly presented by taking each decade from the beginning of Edward III's reign. The result is as follows :

1327-1336 : 73 commissions ;
 1337-1346 : 57 commissions ;
 1347-1356 : 78 commissions ;
 1357-1366 : 79 commissions.

There seems no need to take the figures farther : it may be suggested that by this grouping any temporary fluctuations directly due to the Black Death are smoothed away, but the point for remark is the comparative inactivity of the government in the second decade of the reign and the uniformity in the first, third, and fourth decades.¹ No one would expect that there

¹ The number of commissions issued year by year from 1327 to 1366 is given below. It is not always easy to distinguish a commission of sewers, since the form was still in process of development and was also adapted to meet special circumstances. An instance is specially mentioned on p. 389 n. 3. In these circumstances it is possible that there might be a difference of opinion as to whether a commission was a commission of sewers or no : in the majority of cases also an opinion has had to be formed on the evidence of the abstract in the *Calendar*. The figures would, however, be affected very slightly by the omission or addition of the few border-line cases, and the conclusions to be drawn therefrom would not be altered. Since commissions of sewers are but infrequently indexed as such in the *Calendar of Patent Rolls of Edward III*, full references to volume and page are in each case given. Duplicates and unfinished entries have been omitted.

Year.	No. of Commissions.	References in Cal. of Patent Rolls, Edw. III.
1327	7	i. 82, 154, 155, 208, 213, 216, 220.
1328	11	i. 274, 277, 278 (2), 290, 283, 291, 296 (3), 348.
1329	9	i. 426, 428 (2), 431 (2), 433, 435, 475, 476.
1330	2	ii. 58, 61.
1331	13	ii. 63, 126, 129, 131, 140, 144, 198, 202 (3), 204, 236 (2).
1332	5	ii. 288, 290, 299, 348, 387.
1333	4	ii. 391, 447, 450, 498.
1334	3	ii. 569 ; iii. 68 (2).
1335	7	iii. 71 (2), 142, 144, 146, 147, 243.
1336	12	iii. 283, 284, 285, 286, 290, 291, 297 (2), 363, 364, 366, 374.
1337	5	iii. 376, 442 (3), 453.
1338	13	iii. 581 ; iv. 74, 76, 78 (2), 131, 134 (2), 144 (2), 179, 180, 182.
1339	5	iv. 282, 354, 358, 362 (2).
1340	6	iv. 488, 490 (2), 493 (3).
1341	3	v. 204, 213, 360.
1342	8	v. 449, 450, 453, 454, 455, 538, 542, 558.
1343	4	vi. 69, 74, 82, 93.
1344	1	vi. 384.
1345	6	vi. 494, 504, 506, 582, 592 ; vii. 36.
1346	6	vii. 101, 111, 118, 175, 176, 178.
1347	3	vii. 300 (2), 308.
1348	4	viii. 70, 78, 170, 177.

should not be fluctuations year by year : no one would suggest, on the other hand, that the pestilence did not hamper public business, with the probable result that arrears accumulated to be dealt with in the next few years. By grouping series of years, fluctuations, whether due to pestilence or some other cause, are hidden and the facts are shown in truer perspective.

That there were labour difficulties after the Black Death is evidenced—if evidence were required—by the terms of certain of the commissions : in 1353 commissioners were authorized to hire labourers for works in the marshes between Greenwich and Plumstead, because such labourers could not be found in those parts ;¹ again, in 1355 commissioners were authorized to take workmen for certain works in Essex and to arrest and imprison all whom they found contrariant.² But the result of an examination of the Patent Rolls seems to show rather ‘ how little break there was with the past occasioned by the pestilence ’,³ than that there was a change either in the public attitude towards sanitation or in the attention given to land drainage. In any case it would be hazardous to advance the suggestion that there was any connexion in the medieval mind between water-logged marshes and bubonic plague,⁴ unless some contemporary authority could be cited. It is only right to remark that Mr. Flower puts forward his suggestion quite tentatively, and admits the slenderness of his evidence.

A further suggestion, made by Dr. Clapham, that the statute of 1427 (6 Hen. VI, c. 5) provided a ‘ central machinery of compulsion ’, and that such machinery was necessary because townships endeavoured to evade their liability to repair,⁵ is difficult

<i>Year.</i>	<i>No. of Commissions.</i>	<i>References in Cal. of Patent Rolls, Edw. III.</i>
1349	5	viii. 310 (4), 453.
1350	9	viii. 514 (4), 586 ; ix. 25, 26, 27 (2).
1351	13	ix. 30, 82, 155 (2), 163 (3), 164, 201 (3), 206, 207.
1352	13	ix. 273, 276 (2), 278 (2), 279 (3), 387 (4), 391.
1353	10	ix. 446, 453 (4), 460 (2), 510 (2), 520.
1354	6	x. 55, 57 (2), 119, 121, 128.
1355	8	x. 235, 236 (3), 237, 292, 329, 331.
1356	7	x. 384, 385, 395, 401 (2), 448, 450.
1357	4	x. 557, 609, 611, 654.
1358	5	xi. 69 (3), 70 (2).
1359	8	xi. 219, 222 (5), 277, 324.
1360	9	xi. 277, 417 (6), 418, 484.
1361	4	xi. 585 ; xii. 69, 151 (2).
1362	11	xii. 205, 210, 212 (7), 289 (2).
1363	12	xii. 212, 357 (5), 359, 362, 363 (2), 372, 454.
1364	8	xii. 357, 534 (2), 537, 544 (3) ; xiii. 69.
1365	9	xiii. 69, 136, 139, 140, 142, 146 (2), 201, 206.
1366	9	xiii. 283, 284 (4), 285 (2), 286, 357.

¹ *Cal. of Patent Rolls*, Edw. III, ix. 460.

² *Ibid.* x. 233.

³ Dr. Jessopp, *ante*, ix. 569.

⁴ There is, so far as I am aware, no such connexion in fact.

⁵ This I take to be the meaning of the last two sentences of Dr. Clapham's review, *ante*, xxxiii. 107.

to understand. The reason for that statute is obscure, but it is clear that the reason was not that which Dr. Clapham puts forward. Callis, who had, it is true, far less material at his command than is now available on which to base an opinion, yet whose authority is nevertheless still worthy of respect, was certainly at a loss to explain the necessity for passing the statute, but he had no doubt that it marked no change of policy or machinery. He says :

Yet I make no question but the said Commissions expressed in the Register and FitzHerbert Natura Brevium were in their forms long before Henry the 6 time ; and that the Statute of Henry 6 addes some more power and strength thereto then was before, having backt them with the power of the Parliament ; and it is something additional in the matter as it was in power, as by both the Commissions compared together is apparent.¹

It is as well to recall that commissioners of sewers had their origin in the thirteenth century. In 1257 a commission of oyer and terminer was issued to Henry de Bathe. He was to hear and determine certain disputes which had arisen between the twenty-four *iuratores* of Romney Marsh and the holders of lands and tenements there concerning the repair of walls and water-courses. He was also to make provision for the security and defence of the marsh against the overflowing and peril of the sea and other waters.² Although not in form, this is in essence a commission of sewers. In the following year a commission was issued to Henry de Bathe which may be regarded as beginning the regular series of commissions of sewers.³ But these commissions do not mark the beginning of organized land drainage or sea defence. When Henry de Bathe went to Romney Marsh he found a vigorous local organization elected specially to deal with the defence and drainage of the marsh, the twenty-four *iuratores* in fact, in whose favour the so-called ' charter ' of 1252 had been issued,⁴ and who had then existed ' a tempore quo non extat memoria '.⁵ And although there may not be evidence of so

¹ *Reading upon the Statute of Sewers* (1647), p. 4.

² *Charter of Romney Marsh* (1597), pp. 5 ff. ; Dugdale, *History of Imbanking* (1772), p. 18 ; *Cal. of Patent Rolls*, Hen. III, 1247-58, p. 592.

³ *Ibid.* p. 660 : this commission is for the parts of Holland, Lincolnshire. It is of interest to note that although in its later form the commission of sewers embodied a commission of oyer and terminer, and although the commission issued to Henry de Bathe in 1257 was one of oyer and terminer, the early form of the commission of sewers appears not to have included a clause ' ad audiendum et terminandum '. The earliest commission including such a clause which I have noticed is one to Thomas Lodelowe, Robert Bolknep, and Thomas Culpeper in 1361: *Charter of Romney Marsh*, pp. 53 ff., where it is wrongly dated ; Dugdale, *op. cit.* p. 30 ; *Cal. of Patent Rolls*, Edw. III, xi. 585, where it is calendared as a commission of oyer and terminer.

⁴ *Charter of Romney Marsh*, p. 1 ; Cleop. C. vii, fo. 36 a ; Galba E. iv, fo. 148 a ; Stowe MS. 850, fo. 25 a ; Dugdale, *op. cit.* p. 18.

⁵ It is clear from their proceedings at a ' Last ' in 1287 that they had a regular and organized procedure : Cleop. C. vii, fo. 36 a.

ancient or highly organized local bodies elsewhere specially charged with the care of sea defence and land drainage, and although we read of marshes where 'nulla fuit prius certa lex marisci statuta nec usitata',¹ it is clear that such local bodies were not unknown, and that where they did not exist the justices acting under a commission of sewers not infrequently set them up. There were, for example, in 1316 at Stepney 'walreves' appointed by the manor court whose office had clearly been constituted some considerable time earlier.² In the Isle of Ely there were in 1378 'custodes fossatorum' or 'prepositi fossatorum',³ apparently old established. When, in 1288 and 1289, John de Lovetot and Henry de Apuldrefeld held a series of inquisitions in Kent, they took steps to set up in each district a local organization modelled upon that of Romney Marsh—in Oxney⁴ and other marshes in the Romney district,⁵ in the Hundreds of Eastry and Cornilo,⁶ in Thanet,⁷ and in 'other maritime places where before no marsh law had been constituted or in use'.⁸ Although in one instance it would seem that no steps were taken by the 'community' of the marsh to elect the *iuratores* required by John de Lovetot, nevertheless from the proceedings before Waresius de Valeynes in 1309, when the 'ordinance' of his predecessor was enforced, it is clear that some organization had been at work, for there is already a bailiff who is also a *iurator*.⁹ In another instance an assessment of the lands liable to contribute and the account of the collectors are evidence that the ordinance was not neglected.¹⁰ An example of a rather different kind, but also illustrating the system of local organization and control, is that of a marsh of only 48 acres near Rye, where in 1401 a *ballivus* and *expensator* and two *scavatores* were elected for the purpose of certain works which required to be carried out at a cost of £12.¹¹

¹ *Charter of Romney Marsh*, p. 48; Galba E. iv, fo. 149 b, 152 a. Even in such cases there appears to have been established customs in existence which provided some sort of administration for the marsh.

² *Placitorum Abbreviatio*, pp. 352, 353.

³ These officers are termed *prepositi* in subsequent proceedings in 1381: Chancery Miscellanea 7/5, no. 23.

⁴ *Charter of Romney Marsh*, pp. 48 seq.; Galba E. iv, fo. 149 b.

⁵ Galba E. iv, fo. 152 a.

⁶ Cleop. C. vii, fo. 41 a; Galba E. iv, fo. 151 a; *History of Imbanking*, p. 38.

⁷ Galba E. iv, fo. 150 a.

⁸ *Ibid.* fo. 149 b.

⁹ Stowe MS. 850, fo. 37 a 'Et quia in marisco predicto (i.e. de Lyde) non fuerunt prius aliqui iuratores electi secundum ordinacionem predictam domini Iohannis de Louetot. . . ' What was the precise point at issue is obscure, but possibly the method of the appointment of the *iuratores* had been varied. The justice's name is given as 'William de Walleyne' in the manuscript and *Charter of Romney Marsh*, p. 53.

¹⁰ Eastry and Cornilo: Cleop. C. vii. ff. 42 a seq.; Galba E. iv, fo. 151 b.

¹¹ Chanc. Misc. 7/5, no. 18.

The statute of 1427 made no innovations in local organization or, indeed, in any other respect. The form of commission which the statute embodies and all the clauses of the commission can be traced back well into the preceding century: the clause directly empowering commissioners to appoint local officers had been used at least as early as 1377,¹ and, as we have seen, the power had been exercised in the thirteenth century. Now, the only way in which a 'central machinery of compulsion' could be put into operation was by the appointment of local officers, who could be as well appointed before the statute as afterwards, supervised by commissioners, who were very freely appointed for more than a century and a half before 1427. It is necessary to look for the purpose of the statute elsewhere than in the direction suggested by Dr. Clapham. Dugdale's explanation is, at first sight, probable. After speaking of the 'laws and ordinances' of Henry de Bathe, he says:

Which said laws, with all others relating to this marsh, as also the customs thereof, were grown at length so famous, that the said king Henry the sixth, in the sixth year of his reign, by the advice and assent of the lords spiritual and temporal, and at the special instance of the commons of this realm, then assembled in his parliament . . . amongst other things gave unto the said commissioners special power and direction by that act, 'to make and ordain necessary and convenable statutes and ordinances, for the salvation and conservation of the sea banks and marshes and the parts adjoining, according to the laws and customs of (this) Romney Marsh'.²

He suggests, in fact, that one at least of the principal objects of the act was to apply the laws and customs of Romney Marsh to the whole country.

It had been the practice at a very early date for the commissioners to adopt the custom of Romney Marsh as a standard for marshes in Kent and Sussex,³ and Dugdale has noted a number of commissions from 1379 onward, not only for the south-eastern counties, but also for Lincolnshire and Yorkshire, which contain a direction to the commissioners to act in accordance with the custom of Romney Marsh.⁴ During the same period, however,

¹ In a commission for the Isle of Ely: Chanc. Misc. 7/5, no. 23.

² *History of Imbanking*, p. 34.

³ A bailiff and twelve *iuratores* were appointed in 1289 for the hundreds of Eastry and Cornilo on the model of Romney Marsh: Cleop. C. vii, fo. 41 b. In 1309 it was arranged that common action should be taken by the local authorities of Lydd and Oxney marshes and Romney Marsh, and that the bailiff of the latter marsh should supervise the bailiffs and *iuratores* of the former: *Laws of Romney Marsh*, p. 53; Stowe MS. 850, ff. 37, 38. In the proceedings before commissioners of sewers in Sussex in 1403, the jury present that compensation should be paid and officers elected *secundum legem et consuetudinem de Romene*: Chanc. Misc. 7/5, no. 14. For a similar case in 1401, see Chanc. Misc. 7/5, no. 18.

⁴ *History of Imbanking*, pp. 45, 46, 61, 62, 91, 92, 94, 99, 100, 122, 133, 161. Cf. *Cal. of Patent Rolls*, Ric. II, 1377-81, p. 416; 1381-5, p. 135; 1391-6, p. 429.

frequent commissions contained a direction that the proceedings were to be in accordance with the custom of the locality.¹ The effect of the statute, whatever its intention, was, as Dugdale says,² to make 'the laws and constitutions' of Romney Marsh 'the rule and standard, whereunto all the other marshes and fens in this nation were to conform'—although in practice precise conformity might not be possible.³ The manner in which the statute operated is to be seen from the proceedings before the commissioners of sewers for the Isle of Ely in 1438, where the decisions of the commissioners are preceded by a statement that the 'statuta' of Romney Marsh have been consulted.⁴

But neither the wording of the petition of the commons⁵ nor the terms of the statute (apart from the form of commission which is common to both) give any indication that the intention was to lay down the custom of Romney Marsh as a model to the rest of the country, and it is noteworthy that in the next parliament the commons are found stating that the statute did not give the commissioners power or authority to perform and execute the matters contained in their commissions,⁶ whereupon an amending statute was passed⁷ to remedy this defect. The episode is very puzzling, and where so much is obscure any explanation must be tentative. Is it possible that the validity of the acts performed under a commission of sewers issued on the authority of the chancellor had been questioned, and that to resolve doubts the authority of parliament for the issue of such commissions had been obtained; that the legality of the acts of commissioners was again questioned, and that the amending statute was devised to set further doubts at rest? If this indeed was the reason for the statutes of 1427 and 1429, it would be natural to embody in the schedule to the commons' petition a form of commission selected because it was as full as the chancery had hitherto issued: some of the clauses in use were, however, alternative, and the importance given to the laws and customs of Romney Marsh may even have been fortuitous, and may have depended upon the choice of a clerk who compiled the precedent book from which the form was obtained,⁸ although the tendency

¹ *History of Imbanking*, pp. 45, 60, 61, 100, 134, 161, 162.

² *Ibid.* p. 16.

³ A commission for Sussex of 1442 appears to have omitted reference to the laws and customs of Romney Marsh: *ibid.* p. 100. See also p. 393 n. 2.

⁴ 'Ac visis intellectis statutis in hiis casibus editis de Romneymersch': *Chanc. Misc.* 7/5, no. 19.

⁵ *Rot. Parl.* iv. 333.

⁶ *Ibid.* p. 348.

⁷ 8 Henry VI, c. 3.

⁸ Very much as in the case of the form given in the Register which appears to be a copy of a commission issued in 1324 for the parts of Holland, Lincolnshire: *Registrum Brevium* (1531), fo. 127 a; B.M., Add. MS. 35296, fo. 256. The particular form may equally have been introduced into the commons' petition because an interested member happened to have had access to a commission in the terms adopted.

of the chancery to apply the custom of Romney Marsh to other parts of the kingdom may be clearly discerned from early in the reign of Richard II.¹ It may be remarked that the evidence of the Patent Rolls is not at variance with a suggestion that the reason for the statutes may be sought in a legal question touching the validity of commissions of sewers, for there was a noticeable falling off in the number of commissions issued for a few years before the statute of 6 Hen. VI, and an equally noticeable increase thereafter.² In any case it must be admitted that all the evidence available seems to show that the statute embodied no new policy, and that the machinery employed was of very respectable antiquity.

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The Sanctuary Register of Beverley

THE register of fugitives to the great sanctuary of Beverley is preserved in the Harleian MS. 4292 in the British Museum, and was printed in 1837 by the Surtees Society as part of a volume entitled *Sanctuarium Dunelmense et Sanctuarium Beverlacense*. Readers of the printed edition cannot fail to remark the chronological disorder of the entries, a disorder which faithfully repro-

¹ It is to be noted further that the statutory form of commission embodies a clause empowering the commissioners to employ labourers. This clause also dates from early in the reign of Richard II (*History of Imbanking*, pp. 45, 61, 122, 161), but the practice, as we have seen, has its origin much earlier.

² It is not desired to lay undue stress upon this evidence, but the figures are interesting :

Year.	No. of Commissions.	References in Cal. of Patent Rolls.
1417	4	Hen. V, ii. 137.
1418	4	<i>Ibid.</i> pp. 137 (2), 203 (2).
1419	2	<i>Ibid.</i> pp. 203, 269.
1420	—	—
1421	1	<i>Ibid.</i> p. 388.
1422	5	<i>Ibid.</i> pp. 388, 389 (2), 424 ; Hen. VI, i. 36.
1423	3	<i>Ibid.</i> pp. 36, 172 (2).
1424	2	<i>Ibid.</i> pp. 218, 276.
1425	1	<i>Ibid.</i> p. 276.
1426	1	<i>Ibid.</i> p. 327.
1427	2	<i>Ibid.</i> pp. 424, 468.
1428	5	<i>Ibid.</i> pp. 468 (2), 496, 499, 500.
1429	1	<i>Ibid.</i> p. 552.
1430	3	Hen. VI, ii. 73 (2), 128.
1431	1	<i>Ibid.</i> p. 199.
1432	7	<i>Ibid.</i> pp. 199 (4), 273 (3).
1433	4	<i>Ibid.</i> pp. 280 (3), 348.
1434	3	<i>Ibid.</i> pp. 348, 469 (2).
1435	3	<i>Ibid.</i> pp. 469, 524, 525.
1436	1	<i>Ibid.</i> p. 524.

Duplicated commissions and two to continue commissions issued in the previous reign have been omitted. In 1433 (*Cal. of Patent Rolls*, Hen. VI, ii. 278) a commission for Nottinghamshire was issued very similar to a commission of sewers, but not in statutory form.