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## **“A Mysterious, Arcane and Unique Corner of our Constitution”: The Laws Relating to the Duchy of Cornwall**

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### **Abstract:**

Historically, legally and constitutionally the Duchy of Cornwall has been consistently referred to as ‘simply’ a ‘private estate’ allowing it to enjoy a privileged status with significant benefits and concessions. This article argues that this is a somewhat anachronistic position and one that demands further investigation not least because of the opaque nature of the institution and its accountability within a twenty-first century constitutional framework.

**Keywords:** Duchy of Cornwall, private estate, hereditary revenue, Royal charters, constitutionality

### **1 Introduction**

For most people the Duchy of Cornwall, if it means anything at all, means ‘Duchy Originals’, the brainchild of the Prince of Wales, a range of organic products displaying an interesting coat of arms. For others it is one of those quaint, not to say obscure, historical accretions, part of the weft and weave of English history and constitution, charming but no longer important. Indeed one newspaper article described the Duchy of Cornwall as ‘Ruritanian’.<sup>2</sup> The popular view of the Duchy is far from the reality. It is a substantial organisation, the 2009/10 accounts show assets valued at more than £650 million,<sup>3</sup> which, despite exercising significant power, discourages, I suggest, public scrutiny of its activities.

The Duchy of Cornwall is an ancient institution. It was created by a Charter of Edward III, now regarded as an Act of Parliament, dated 17<sup>th</sup> March 1337. It grew out of the Earldom of Cornwall, whose many possessions and rights it inherited, which came into existence shortly after the Norman Conquest and, in turn, was based upon the ancient Cornish Dukedom and Earldom of Cornwall which existed alongside and acknowledged

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<sup>2</sup> *Western Morning News* 29 July 1981.

<sup>3</sup> Duchy of Cornwall Annual Accounts 2010. does this need a source?

the suzerainty of the Anglo Saxon Kingdom of England. It is claimed by some that the last native British Earl of Cornwall was Cadoc (Cadocus),<sup>4</sup> a fact denied vigorously by others,<sup>5</sup> who was replaced by Brient or Brian of Brittany<sup>6</sup> after 1066. It is the first and, therefore, the oldest of the post Conquest English Dukedoms. Remarkably the Duchy has endured despite the many vicissitudes it has suffered including, for example, its abuse by Richard II, the neglect of Elizabeth I and its abolition during the Commonwealth. In the eighteenth, nineteenth and twentieth centuries MPs, starting with Edmund Burke, have suggested that the revenues of the Duchy of Cornwall and the Duchy of Lancaster should, like the other hereditary revenues of the Crown, be surrendered. Their attempts have, so far, been successfully resisted.

Remarkably after more than 650 years the Duchy of Cornwall is still fulfilling one of the functions for which it was established, that of maintaining the eldest living son of the monarch being heir to the throne. The Charter provides that the Duke of Cornwall is entitled to the income from the Duchy but not the capital. This amounted to over £16 million for the year 2009/10.<sup>7</sup> No payments are made from the Civil List to the Prince of Wales.

The Duchy of Cornwall occupies 'a unique place'<sup>8</sup> within the English constitution. It is 'wholly unlike anything else exhibited in the history of this country.'<sup>9</sup> It has been called 'peculiar'<sup>10</sup> and 'a publicly accountable private estate a paradoxical situation not untypical of the British constitution.'<sup>11</sup> The great sixteenth century jurist Lord Coke called the Duchy a 'mystery.'<sup>12</sup> The law governing the land holdings of the Duchy has been described by the Law Commissioners as 'arcane and complex.'<sup>13</sup> Today both Royal

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<sup>4</sup> Payton P., *Cornwall – A History* (2004: Cornwall Editions Limited) p.76.

<sup>5</sup> Dr Oliver Padel in a lecture entitled 'When did Cornwall become an English County,' Royal Institute of Cornwall 13 November 2010.

<sup>6</sup> Tait J., 'The First Earl of Cornwall' (1929) 44, no.173 *The English Historical Review*.

<sup>7</sup> Duchy of Cornwall Annual Accounts 2010.

<sup>8</sup> Haslam G., *An Administrative Study of the Duchy of Cornwall 1500 to 1650* (1975: PhD Louisiana State University).

<sup>9</sup> Sir George Harrison, *Memoir respecting the Hereditary Revenues of the Crown and the Revenues of the Duchies of Cornwall and Lancaster* (1838: London)

<sup>10</sup> *Rowe v Renton* (1828) 8 B&C 737

<sup>11</sup> Haslam G., 'Modernisation,' in Gill C., (ed) *The Duchy of Cornwall 1500 to 1650* (1975: David & Charles) p.48.

<sup>12</sup> *The Princes Case* (1606) 8 Rep 1.

<sup>13</sup> Law Commission Report – Land Registration for the Twenty First Century 2001

Duchies are described by themselves and Government as 'private estates'. The Duchy of Cornwall goes further and says it is a 'well managed private estate.'<sup>14</sup>

## **2 Research Aims**

I became intrigued by this 'mysterious', 'arcane' and 'unique' corner of our constitution. As a lawyer, but mostly as something of a legal geek, I sought out texts examining the legal and constitutional position of the Duchy of Cornwall. I discovered no such work existed and I decided I would write one. The initial tentative title for a proposed book, now converted into a thesis, was 'The Law of Cornwall.' It then became 'The Law of the Duchy of Cornwall'; it has now become 'The Law Relating to the Duchy of Cornwall.' The changes may seem slight but they reflect the development of my thinking as the research has developed. The task I set myself has turned out to be a great deal more complex than I first imagined.

I aim to set out the law relating to the Duchy of Cornwall identifying, in particular, those areas in which constitutional ambiguity, indeed, constitutional tension, exists. As part of the research I will compare and contrast the Duchy of Cornwall with Palatine Counties, in particular the Palatine County of Chester, the Duke of Cornwall is also Earl of Chester, and the Duchy of Lancaster.<sup>15</sup> I intend to critically examine the claims made by the Duchy of Cornwall. These include the assertions that the Duchy is a 'private estate'<sup>16</sup> and its sole purpose was, and is, to provide maintenance for male heirs to the throne being the eldest living son of a reigning monarch.

Finally I will suggest that the Duchy of Cornwall is not, as it should be, publicly accountable apart from a cursory examination by Parliament of its financial accounts once a year.<sup>17</sup> I shall advance reasons why, in my view, the Duchy and Government does not welcome public attention. I will highlight the differences between the public claims the Duchy makes for itself and the claims it has made privately in

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<sup>14</sup> The Duchy of Cornwall Website [www.duchyofcornwall.org/faqs/htm](http://www.duchyofcornwall.org/faqs/htm)

<sup>15</sup> There does not appear to be any agreed definition of Palatine Powers. G.T. Lapsley writing in 1900 on the County of Durham suggests it implied right of life and limb. The Duchy of Lancaster describes them as simply 'devolved royal powers.' Lapsley, G. T., *The County Palatine of Durham: A Study in Constitutional History* (1900: Longmans Green & Co..

<sup>16</sup> Duchy of Cornwall Annual Accounts 2010. See also Duchy of Cornwall [www.duchyofcornwall.org](http://www.duchyofcornwall.org).

<sup>17</sup> Section 2 Duchies of Lancaster and Cornwall (Accounts) Act 1838.

correspondence with Government and others. I shall suggest that the Duchy denies any particular constitutional relationship with Cornwall while claiming various constitutional rights when it is economically advantageous to do so. I hope expressly to demonstrate that during the nineteenth century, specifically when Prince Albert was effectively in charge of the Duchy, a deliberate decision was made to 'reposition' the Duchy of Cornwall as a 'commercial organisation.' Furthermore it became and remains policy to avoid litigation to resolve the constitutional ambiguities of the Duchy for fear 'the Duchy of Cornwall might find that though they succeeded their success in the Courts did not conclude the matter'<sup>18</sup> and to avoid 'raising these awkward and difficult questions.'<sup>19</sup>

### **3 Methodology: Sourcing the Sources**

My thesis is concerned with the legal and constitutional position of the Duchy of Cornwall. Historical perspective is necessary but the thesis is not a work of history. There are a great number of books and other works, including various unpublished Ph.D. theses and academic articles, on the history of Cornwall most, if not all, I have read. I have pursued any relevant references which I found. I have considered more general material particularly relating to the period of the reign of Edward III in order that I may have some understanding of the context of the creation of the Duchy.

I have studied various Acts of Parliaments and Parliamentary records particularly those which concern the Duchy of Cornwall and, amongst others, those which legislate matters relating to the Civil List which have a particular relevance when discussions arise with regard to the Duchy of Cornwall being a 'private estate.' I have also carried out as comprehensive a review as possible to identify those cases in which the status of the Duchy has been considered by the courts. In addition I have read the very few legal texts which have been written on the Duchy some of which are only available by visiting the British Library. The most fruitful source of information has been the National Archives which have produced a wealth of documents demonstrating that a real constitutional tension existed between the Duchy and the Crown particularly in the nineteenth and early twentieth centuries. It is a source which would appear to me to have been largely ignored by others.

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<sup>18</sup> TNA LO 3/467, Duchy of Cornwall – Land Tax and Valuation, 1913.

<sup>19</sup> *Ibid.*

I have used the Freedom of Information Act 2000 to obtain various papers from amongst others the Office of Parliamentary Counsel the Ministry of Justice and as a result have been provided with material on, for example, the procedures for consulting the Duchy of Cornwall on Bills which affect their interests, by various Government and other Public Bodies. I have not always been successful. For example, a request to open one particular file which is closed has been declined. I am presently appealing to the Information Commissioner's Office. Three Government Departments have asked for extensions to my requests while they seek further advice.

The most disappointing aspect of my research is the fact that I have not been able to gain access to the archive of the Duchy of Cornwall. As the Duchy explained in correspondence received it was concerned about the costs involved and that certain material may be commercially sensitive. It also referred to recent cases in which material had been stolen from other archives. My experience is not unique. In 1921 an official at the Office of Woods wrote to the, then, Public Records Office:

The alternative is to get this from the Duchy (of Cornwall). The attitude of that Department as evidenced by past proceedings is not likely to be helpful to me and therefore we must pursue the matter as best we can....This office is heavily handicapped in dealing with the Duchy. Thus little information or letters, and the Duchy has in the past shown itself as disinclined to afford this office any facilities.<sup>20</sup>

Royston Green, writing 65 years later, said, 'The Duchy does not encourage knowledge of itself. Scholars have penetrated little into the extraordinary difficult maze.'<sup>21</sup> I cannot help but point out that the present position of the Duchy of Cornwall contrasts with the position in 1837 when in a General Report to the King in Council the Duchy of Cornwall was listed as an Office of State and its records as Public Records.<sup>22</sup> The records for the Duchy of Lancaster are mostly available in the National Archives.

Finally I have researched the significant amount of often excellent material on the Stannary system. I have also, using similar procedures as outlined above, spent much time studying various works on Palatine Counties.

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<sup>20</sup> TNA CRES 34/49 Origin of Duchy of Cornwall rights to escheat in Dorchester, 1921.

<sup>21</sup> Green, R., *What is the Duchy of Cornwall?* (Redruth c1985) section 9.

<sup>22</sup> General Report of the King in Council from the Honourable Board of Commissioners on the Public Records (1837) Board of Commissioners on Public Records.

#### 4 'A Private Estate'

I shall now examine, briefly, the claim that the Duchy of Cornwall is a "private estate." First I must provide some background.

##### ***A mode of descent unknown to common law***<sup>23</sup>

To understand the mystery, peculiarity and indeed the unique characteristic of the Duchy of Cornwall it is necessary to come to terms with the 'mode of descent unknown to common law' which was created by the Charter of 17<sup>th</sup> March 1337 (the Charter). The first Duke was Edward of Woodstock better known today as the Black Prince. The Charter provided, amongst other things, that the eldest son of the monarch 'being heir apparent succeeds to the title Duke of Cornwall immediately he is born by right of inheritance.'<sup>24</sup> Sir John Dodridge in 1714 explained 'That the said son and Heir Apparent without further Solemnity of Creation should presently upon his birth being Heir apparent to the King, or from the time he is Heir apparent to the Kingdom be also Duke of Cornwall.'<sup>25</sup>

There are in fact three other charters apart from the Charter of 17<sup>th</sup> March 1337 which govern the Duchy of Cornwall, they are dated 18<sup>th</sup> March 1337, 3<sup>rd</sup> January 1338 and 9<sup>th</sup> July 1343. However, only the Charter is regarded as an Act of Parliament since Lord Coke decided in the *Princes Case* in 1606<sup>26</sup> the Monarch could not by prerogative power create such a mode of descent and thus must have had Parliamentary authority. Professor John Hatcher opined that Edward III had 'contrived to create...an unchanging, indeed virtually unchangeable institution, the tenure of which should never be disputed.'<sup>27</sup>

It was certainly the case that the Charter intended the first born son of the monarch to be ennobled as a Duke. However, despite the Charter, the son of Edward, the Black Prince, Richard, who became heir to the throne on his father's death, was made Duke of Cornwall by Edward III even though he was the grandson of the monarch and never

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<sup>23</sup> *The Princes Case* 1606 8 Rep 1.

<sup>24</sup> Halsbury's Laws of England vol.12(1) paras. 318-353.

<sup>25</sup> Sir John Dodridge *An Historical Account of the Ancient and Modern State of the Principality of Wales, Dutchy of Cornwall and Earldom of Chester* (1714: Roberts) p.79.

<sup>26</sup> General Report of the King in Council.

<sup>27</sup> Hatcher J., *Rural Economy and Society in the Duchy of Cornwall 1300-1500* (1970: Cambridge University Press) p.5.

came into seisin, that is enjoyed the right to the income from the lands or administered the Duchy. In addition Henry, later Henry VIII, was made Duke of Cornwall after the death of his brother Arthur by Henry VII although he did not enjoy the seisin either. Charles, later Charles I, was also made Duke of Cornwall by his father James I after the death of his elder brother Henry. It is now beyond doubt that the title Duke of Cornwall passes to the eldest *living* son of the monarch being heir apparent rather than the first born son.<sup>28</sup> When there is no male heir apparent the title falls back into the Crown but is never extinguished or merged in the Crown. I must emphasise the Duchy does not escheat to the Crown. To quote A L Rowse; 'There may not be a Duke there is always a Duchy.'<sup>29</sup> When there is no Duke the Duchy is managed by the Crown and the Monarch 'acts as though Duke.'<sup>30</sup> During the minority of the Duke the Sovereign acts as attorney for the Duke.

An example will illustrate this odd form of inheritance. Edward, later Edward VIII, was Duke of Cornwall until he became King in 1936. Upon his abdication George VI became King. Since his daughter, and heir presumptive, Elizabeth is female she did not become Duke of Cornwall on her father's accession. Thus from 1936 until the death of George VI in 1952, there was no Duke of Cornwall. When Elizabeth became Monarch her son Charles immediately became Duke of Cornwall. He did not become Prince of Wales and Earl of Chester until he was invested with those titles. Each Prince of Wales is a new creation, the Dukedom of Cornwall is not. Since Charles was a minor when his mother became Queen he did not enjoy his full rights as Duke of Cornwall until he was 21 in 1969. Thus from 1936 until 1969 either there was no Duke of Cornwall or the Duke was a minor and for those 33 years the Duchy was administered directly by the Crown or administered on behalf of the Duke. If Charles had died before the birth of his sons then Prince Andrew would have become Duke of Cornwall being the eldest living son of the monarch and heir apparent. If Charles were to die before succeeding his mother then Prince William, even though heir apparent, would not become Duke of Cornwall since he is not the son of a monarch.

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<sup>28</sup> *Lomax v Holmden* (1749) 1 Vesey Senior 290; 27 ER 1038.

<sup>29</sup> Rowse, A.L., *West Country Stories* (1945: Macmillan) pp.3-12.

<sup>30</sup> Coates M., *The Duchy of Cornwall: Its History and Administration 1640 to 1660* (1927: transactions of the Royal Historical Society) pp135-169.



During the over 650 years since the Duchy was created there has been no Duke for approximately half that time and for a significant period of time when there has been a Duke he has been a minor. For only eight years between 1376 and 1714 was there a Duke of full age. Thus for some two thirds of the time the Duchy has been administered, one way or another, it has been by the Crown. The Duchy of Lancaster, which grew out of the Earldom of Lancaster, was created a Duchy by Charter in 1351. By the same Charter Lancaster was raised to a County Palatine. In 1399 when Henry Bolingbroke usurped the throne and became Henry IV he provided again by Charter that the Duchy shall always be held separately from the throne. The mode of descent set out in the 1399 Charter has not been adhered to but that is a discussion for another time. The Duchy of Lancaster is always in the Crown, the monarch, whatever their gender, is always Duke of Lancaster. The difference between the Duchy of Cornwall and Lancaster is important.

The Duchy of Cornwall is sometimes in the Crown and sometimes in the hands of the Duke. Is the Duchy part of the Crown or is it not part of the Crown? Is the Duchy part of the Crown only during those periods when there is no Duke of Cornwall or the Duke is a minor and while there is a Duke of full age is it a 'private estate' as that term is generally understood? The answer to such questions determines whether the Duchy is entitled to enjoy the privileges of the Crown. For example does Crown Immunity apply to the Duchy? Why should the Crown, as the supposed 'source and fountain of justice,' be immune to the highest form of law known to England is an interesting question of itself? However, the Duchy does not pay Capital Gains Tax because, it is said, it enjoys Crown Immunity and the particular taxing statute does not extend to the Crown. It can be understood that during the periods the Duchy is 'administered' by the Crown the immunity would apply but should it still apply from the period when Prince Charles reached his majority? Exactly this sort of question was raised in 1913 and again in 1921 by the Board of the Inland Revenue with the Law Officers of the Crown.<sup>31</sup> One issue specifically raised by the Board with the Law Officers was that the monarch, under the Bill of Rights 1688, has no 'power to dispense with laws or the execution of laws'<sup>32</sup> as they applied to private individuals. Further they said no authority 'directly laying down the

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<sup>31</sup> TNA LO 3/467 Duchy of Cornwall – Land Tax and Valuation 1913: IR 40/16549 Duchy of Cornwall – Law Officers Opinion 1921.

<sup>32</sup> *Ibid.*

proposition that the Duke of Cornwall qua his rights over Duchy lands is not bound by statute unless expressly named....has been found.’ It was also stated, interestingly, that

...the Crown Private Estates Acts do not appear to apply to the lands of the Duchy of Cornwall those lands being expressly exempted or excluded under general provisions which prevent those Acts from applying which are possessed by the Sovereign through inheritance from his predecessors.<sup>33</sup>

The Law Officers’ opinion was ‘...the same principles which render the provisions of an Act of Parliament inapplicable to the Crown unless the Crown is expressly named, apply also to the Prince of Wales in his capacity as Duke of Cornwall. This result arises from the “peculiar” title of the Prince of Wales to the Duchy of Cornwall.’<sup>34</sup> It was an opinion described by the Select Committee into the Civil List in 1972 as ‘opaque.’<sup>35</sup> That ‘opaque’ opinion is still the basis upon which the Duchy enjoys its privileged tax position. By way of contrast, in 1865 the Duchy sought to argue it should not pay fees claimed by the Queen’s Remembrancer. These amounted to £12.8.4p, equivalent to about £600 today, which

‘although payable in proceedings between ordinary citizens would not be so payable in proceedings by the Attorney General of the Crown or as it is contended by the Attorney General of the Duchy of Cornwall. The Duchy Lands form a part of (Crown Lands), as a member of the Royal Establishment. The Crown has at all times an interest in them there is the same expediency and use of the Prerogative to protect them when the Prince has them as when the Kings”.

The Queen’s Remembrancer<sup>36</sup> took a different view and the Law Officers were consulted. They stated ‘We are of the opinion that the view taken by the Queen’s Remembrancer is well founded and that these fees must be paid.’<sup>37</sup> There is one case which I have been able to discover in which the question of the Duchy’s Crown Immunity has been considered, a county court case *Hobbs v Weeks* (1950),<sup>38</sup> and that suggests it only has application when the Duchy is in the Crown. The Law Officers at different times have given different opinions. Litigation which may have provided a definitive answer

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<sup>33</sup> Ibid.

<sup>34</sup> Ibid.

<sup>35</sup> Select Committee on the Civil List, *Report from the Select Committee on the Civil List, 1971-72* House of Commons.

<sup>36</sup> An ancient judicial post, the oldest judicial appointment in continuous existence, first created in 1154, continued to sit in the Court of Exchequer until the Court was abolished in 1882. Now held by the Senior Master of the Queens Bench Division.

<sup>37</sup> TNA TS 25/829 Whether fees payable to Queen’s Remembrancer 1865.

<sup>38</sup> *Hobbs v Weeks* (1950) 100 LJ 178 County Court.

has been avoided. An additional problem arises with regard to questions about the rights granted by the various charters to the Duchy, particularly when those rights are at variance with those claimed by the Crown. Disputes have arisen between the Crown and the Duchy with regard to the ownership of the Scilly Isles,<sup>39</sup> the ownership of the foreshore of Cornwall,<sup>40</sup> the seaward extent of the rights of the Duchy of Cornwall<sup>41</sup> and the right to Royal Mines.<sup>42</sup> In every case litigation has been avoided because of the uncertainty such litigation would create and because it would be unseemly for the son, the Duke of Cornwall, to be challenging his parent, the Monarch, in Court and because it would raise questions of such complexity it is best avoided.<sup>43</sup> It would also create the odd spectacle of the Duchy asserting it was part of the Crown and claiming the privileges associated with that while suing the Crown because the Crown disputed that the Duchy enjoyed those privileges

***“The Civil List and the Hereditary Revenues of the Crown”***

This was written before the announcement of the Chancellor of the Exchequer on the 20<sup>th</sup> October 2010 that the Civil List would be replaced by a ‘Sovereign Support Grant’ which would be paid from the Crown Estates. It appears we are advancing back to the seventeenth century.

At one time the term Civil List meant the household and personal expenses of the Sovereign as well as the ordinary civil expenditure (as opposed to the military expenditure) of the State. Only after the accession of William IV was the term confined to a charge for the proper expenses of the Sovereign and the Royal Household. Although the Civil List is the best known it only represents about one sixth of total government expenditure on the monarchy. The Crown also receives Grants-in-Aid and Parliamentary Annuities. In addition various costs are met directly by Government Departments. The total, excluding the cost of security and various other miscellaneous expenditures for 2009, amounted to £41.5 million.<sup>44</sup> The hereditary revenues of the Sovereign had once

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<sup>39</sup> TNA C 197/18 – Commission for management of the Duchy of Cornwall 1827-1889.

<sup>40</sup> Tidal Estuaries, Foreshore and Under-Sea Minerals within and around the Coast of the County of Cornwall 1854-1856. Arbitration by Sir John Patteson.

<sup>41</sup> TNA CRES 58/741 – Seaward Limits between Crown and Duchy of Cornwall 1865-1870.

<sup>42</sup> TNA T 1/14831 Duchy of Cornwall title to gold and silver mines 1883.

<sup>43</sup> Duchy of Cornwall, Report to Her Majesty the Queen from council of HRH The Prince of Wales 1862 (1863:George Edward Eyre and William Spottiswoode).

<sup>44</sup> Royal Public Finances, The Official Website of the British Monarchy <http://www.royal.gov.uk/>

sufficed to meet all the public and private expenditure of the Sovereign in normal circumstances. Prior to 1688 the whole of the expenses of the state were defrayed from the King's land revenues. When Parliament assumed responsibility for the provision of funds for the upkeep of the Royal household as well as the expenses of Government the surrender of the revenue for the lifetime of the Sovereign was regarded as a corollary.

In 1697 the first Civil List Act was passed. This Act listed amongst the hereditary revenues of the Crown, the revenue of the Duchy of Cornwall, which were paid to the Exchequer and thus formed part of the public revenue. On the accession of Queen Anne, when there was no Duke of Cornwall, the revenues of the Duchy of Cornwall were paid to the Privy Purse supplementing the Civil List. On the accession of George III the hereditary revenues of the Crown in England, *with the exception of the revenues of the Duchies of Lancaster and Cornwall and of the Principality of Scotland* were surrendered to Parliament in exchange for a fixed annual sum granted to the King.<sup>45</sup> By the Civil Lists Acts passed after the accessions of George IV, William IV and Queen Victoria the hereditary revenues were surrendered for the reign of each Sovereign except the revenues of the Duchies of Lancaster and Cornwall and the Principality of Scotland. Queen Victoria did concede that the accounts of the Duchies be disclosed to Parliament. The Government of Lord Melbourne required the Crown, to no effect, to cease regarding the Duchies as private property and to begin registering them as a part of its public provision.<sup>46</sup> The principle has continued of the monarch surrendering the hereditary revenues of the Crown in return for a Civil List except the Revenues from the Royal Duchies and the Principality of Scotland.

The revenues of the Duchies of Cornwall and Lancaster have frequently been the subject of discussion in Parliament. To give but one example of many Lord Brougham, former Lord Chancellor, in 1837 in a speech in Parliament ridiculed the idea that the Duchies were

anything like private property... [he said they were] public funds, vested in the Sovereign only as such enjoyed as Sovereign and in right of the Crown alone,

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<sup>45</sup> TNA T 38/837 Civil List Notes, The Welby Papers, 1897.

<sup>46</sup> Kuhn, W., 'Queen Victoria's Civil List: What did she do with it,' (1993) 36(3) *The Historical Review* p.652

held as public property for the benefit of the State and as parcel of the natural possessions.<sup>47</sup>

However, all attempts to alienate them from the Crown or to interfere with their management have been successfully resisted. William IV said they were 'The only remaining pittance of an independent possession [which had been] enjoyed by his ancestors during many centuries as their private and independent estate.'<sup>48</sup> Sir George Harrison QC, a distinguished lawyer very familiar with the Duchies of Lancaster and Cornwall wrote in 1837 that the King was 'duty bound to maintain the Duchies and transmit them unimpaired to his successors.' He also said with regard to the Duchy of Cornwall the Sovereign holds as 'a sacred trust vested in the Sovereign personally to preserve and maintain the Duchy in all its pristine integrity,' furthermore, he stated the principle *Delegatus Potestas non potest delegari* applies to the Sovereign invested with the character of a trustee; 'The Sovereign trustee could in fact if not in theory could do wrong if he bargained away the Duchy of Cornwall.'<sup>49</sup> An extraordinary proposition in constitutional law. It was claimed in Parliament in 5<sup>th</sup> November 1830 by the then Lord Chancellor Henry Goulburn '...the Hereditary Revenues of the Crown did not comprise the Duchy of Cornwall because they never became property of the Crown except when there was no Heir Apparent...'<sup>50</sup> The Solicitor General Sir John Romilly insisted in Parliament on 25<sup>th</sup> March 1850 that the Duchy of Cornwall was 'absolutely private property belonging to an individual in his private and not in any public role.' In summary it is argued by the Duchies and Government that the Duchies are by law the private and personal property of the individual who happens to wear the Crown, or is the male heir to the throne, being the eldest living son of the monarch and therefore are no more to be interfered with by Parliament than the private property of any other individual.

### ***The Crown's Private Estates***

The concept of the Monarch having a private estate was, after the failure of the Courts to come to terms with the idea, only possible with the passing of legislation starting with the Crown Private Estates Act 1800. This allowed the Monarch to own property as a private

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<sup>47</sup> Percival G., 'The Civil List and the Hereditary Revenues of the Crown,' (1901) *Fortnightly Review* March p.7.

<sup>48</sup> *Ibid.*

<sup>49</sup> Sir George Harrison *Memoir respecting the Hereditary Revenues of the Crown and the Revenues of the Duchies of Cornwall and Lancaster* (1837)

<sup>50</sup> Hansard 5<sup>th</sup> November 1830 vol. 1 c213

person and expressly provided the private estates would be 'subject and liable to all such taxes rates duties assessments as the same would be liable to if the same had been the property of any subject of the realm.' The 1800 Act was followed by the Crown Lands Act 1823, the Crown Private Estates Act 1862 and the Crown Private Estates Act 1873. As already pointed out the Board of the Inland Revenue took the view, not challenged by Counsel, that the Duchy of Cornwall did not fall within the definition of 'private property' as defined by the above Acts.<sup>51</sup>

## **Summary**

The Royal Duchies, and specifically, the Duchy of Cornwall, were regarded as part of the hereditary revenues of the Crown and were initially surrendered together with other hereditary revenues. This changed with the accession to the throne of Queen Anne. Although part of the hereditary revenues of the Crown they were also private estates. It is clear the meaning of the term 'private estate' when referring to property of the Crown does not correspond with the common understanding of that expression either now or in the past. The Duchy of Cornwall describes itself, without qualification, as a private estate. It is hard to think of any other private estate, as that term would normally be understood, which has so many unique features. The Duchy and not the Crown appoints the Sheriff for Cornwall and some would suggest has the right to appoint the Coroner for Cornwall. Within Cornwall it enjoys *bona vacantia* and escheat since the Duchy holds the whole of Cornwall in fee simple absolute in possession from the Crown.<sup>52</sup> Because of the 'peculiar' terms under which it was established *bona vacantia* and escheat can never apply to it. The Duchy like the Crown benefits from Crown Immunity and has the *right* to be consulted on Bills which affect its interests and to indicate its consent to those Bills. Recent examples are the Energy Bill and the Planning Bill in 2007/08 and the Coroners and Justice Bill and the Marine and Coastal Access Bill 2008/09. It must provide accounts to Parliament once a year, some of its officers have statutory obligations and it requires Treasury approval before it can undertake certain financial transactions.

The Duchy of Cornwall does not come within the definition of 'private property of the Crown' as defined in the various Crown Private Estate Acts listed above. The hereditary estates of the Crown include the Duchy of Cornwall but unlike the other such revenues it

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<sup>51</sup> TNA LO 3/467, Duchy of Cornwall, Land Tax and Valuation 1913.

<sup>52</sup> *The Solicitor to the Duchy of Cornwall v Canning* (1880) 5 PD 114.

is not surrendered because it is a 'private estate.' It is part of the hereditary revenues but distinct from them because it is a 'private estate.' However, it is a 'private estate' unlike any other. It is not the Crown's private property as is Sandringham, for example. The use of the term 'private estate' to describe the Duchy of Cornwall without explanation or qualification is I would argue misleading and obscures the special nature of the Duchy and the doubts which surround its status. In 1972 a Committee of MPs said the claim of the Duchy of Cornwall to be a 'private estate' was 'misconceived.'<sup>53</sup> The Crown has argued vigorously to ensure the Duchies of Lancaster and Cornwall remain distinct as one of the few remaining vestiges of its hereditary estates over which it retains some control which, while subject to limited Parliamentary oversight, comes with considerable advantages and some obligations. At the same time claiming it is different from the other hereditary revenues and should not be surrendered. In correspondence the Ministry of Justice described the Duchy of Cornwall as 'simply a private landed royal estate and Crown body.'<sup>54</sup> Well I hope I have shown it is not so simple and that 'a private landed royal estate' is a more comprehensive, accurate and appropriate description than 'private estate.'

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<sup>53</sup> *Report from the Select Committee on the Civil List, 1971-72.*

<sup>54</sup> Letter from Ministry of Justice 4<sup>th</sup> June 2010 to author in reply to request for information.