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The Seigniory of Sark and the Duchy Of Cornwall: Similarities and Differences Including Observations on the Isles of Scilly

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THE SEIGNIORY OF SARK AND THE DUCHY OF CORNWALL: SIMILARITIES AND DIFFERENCES INCLUDING OBSERVATIONS ON THE ISLES OF SCILLY

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Introduction

I wrote a paper a while ago entitled: 'Cornwall – A Category of its own'[2] in which I made reference to the constitutional position of the Isle of Sark and suggested there were parallels between the Duchy of Cornwall and the Seigniory of Sark. I have now had time to pursue my researches further. My investigations are not complete since the topic has proved to be more complex than anticipated. Obtaining information about, what may be termed, the 'Customary or Sovereign Rights' of the Seigneur of Sark has been challenging. It would appear no one has asked the sort of questions I have posed.[3] Establishing the 'customary laws' of Normandy as they applied to Jersey in 1565 has not been easy particularly for someone not conversant in 'Norman French'.

In addition to the information available on the Government of Sark website I have considered the Justice Committee of the House of Commons Eighth Report 'Crown Dependencies',[4] and a Report by Belinda Crowe.[5] The late Seigneur of Sark, Michael Beaumont, O.B.E., (now sadly passed away[6]) kindly referred me to a book entitled *The Fief of Sark*[7] which has been useful. The Deputy Seigneur of Sark, Dr Richard Axton, has been particularly helpful and I am grateful to him for his assistance. The Crown Dependencies Team of the Ministry of Justice have also patiently aided my research.

The creation of the Seigniory of Sark and the Duchy of Cornwall are similar as, indeed, are many of the rights enjoyed by the Seigneur of Sark and the Duke of Cornwall. Sark, with a population of some 600 souls, is part of the Bailiwick of Guernsey and the smallest of the

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[2] Kirkhope, J, 'Cornwall – A Category of its own' (2015) Available via Academia Edu.
[3] I have made enquiries of the Privy Council who stated they had no information. I emailed various officials in Sark who were unable to help but did refer me to a particular book. The authorities in Guernsey said they would check their records. At the time of writing the Ministry of Justice are still conducting investigations.
[4] House of Commons Justice Committee *Crown Dependencies* 30 March 2010 HC 56-1
[5] Crowe, Belinda *Administrative and Executive Support Arrangements for the Government of Sark* (2012) www.gov.sark.gg/downloads/Reports/Belinda_Crowe_Report.pdf
[6] 'Michael Beaumont' Register *The Times* 11 July 2016.
[7] Ewen, A.H., and de Carteret, Alan R., *The Fief of Sark* (1969).

Crown Dependencies.[8] It has a large degree of autonomy, its own Parliament, called 'Chief Pleas', and a unique legal system. Sark is an 'independent' jurisdiction. It is not part of the United Kingdom.

Cornwall, which once (and arguably still has) had a Parliament, 'The Convocation of the Tinners of Cornwall', and a distinctive Stannary judicial system with a population some half a million is 'merely' a 'County of England'. There are differences between the Seigniory of Sark and the Duchy of Cornwall which are considered below, however, the similarities are striking and understanding why their constitutional position is so different is difficult to comprehend. Before proceeding it must be noted that over the recent years Sark has experienced some challenging times. The relationship between many Islanders and Sir David and Sir Frederick Barclay, who own substantial assets on the Island, has been 'difficult'. The various disputes have resulted in a number of Court Cases.[9] In addition, Sark has undergone, as the House Commons Report explained, 'a tortuous reform process' which eventually resulted in Reform (Sark) Law 2008.[10]

The Duchy of Cornwall and its Relationship to Cornwall

This paper is concerned, specifically, with the connection of the Duchy of Cornwall to Cornwall. The Duchy acknowledges that it has a 'special relationship with Cornwall',[11] it also points out that only 13 per cent of the land it owns is in Cornwall and that represents two per cent of the geographical area of Cornwall. It also implies that it has acquired some rather 'quaint' rights which have no particular significance. It is true that the Duchy of Cornwall owns land in 23 counties but in none of those counties does it has the same rights that it enjoys in Cornwall many of which will be explored shortly. The Duchy of Cornwall like the Duchy of Lancaster is an 'honour'. An 'honour' being a great lordship comprising dozens or even hundreds of manors frequently over several shires. Usually a more concentrated cluster existed somewhere. Here would lie the caput[12] of the honour which gave its name to the honour.

A consideration of the Duchy of Lancaster and its relationship with the County Palatine of Lancaster will aid understanding. The Duchy of Lancaster like the Duchy of Cornwall is an honour having estates scattered over many counties. It includes the County Palatine of

[8] The others are the Isle of Man, Jersey, Guernsey and Alderney.
[9] *R (Barclay and others) v The Lord Chancellor and Secretary of State for Justice and others* (2009) UKSC 9.
[10] There are amendments under the Reform (Sark) (Amendment) Law 2016 has received Royal Assent which are expected to come into force late in 2016.
[11] www.duchyofcornwall.org/faqs.htm.
[12] Head.

Lancaster over which it has rights similar to those enjoyed by the Duchy of Cornwall in Cornwall including, for example, the right to the foreshore, bona vacantia and so on. However, the County Palatine of Lancaster and the Duchy of Lancaster are distinct entities. Similarly, the Duchy of Cornwall is an honour with particular rights and obligation with regard to Cornwall and those are likewise distinct.

2 The Duchy of Cornwall and Seigniory of Sark – A Comparison

i)The Creation of the Dukedom of Cornwall and the Seigniory of Sark

Duchy of Cornwall

The Dukedom of Cornwall was created by a Charter dated 17 March 1337. This Charter is now regarded as an Act of Parliament. The Charter established the Duke of Cornwall was always the eldest living son of the sovereign being heir to the throne. Further Charters dated 18 March 1337, 3 January 1338 and 9 July 1343 followed. The Charter of 17 March 1337 stated the Duchy was created so that: 'Our dominion, may be more securely and honourably defended against the attempts of our enemies and adversaries…' It went on to state the rights of the Duke of Cornwall included:

> …Our prizage and customs of wines in the said county (Cornwall)[13] and also all the profits of our ports...together with wreck of sea as well of whales and sturgeon...and all the profits and emoluments to Us belonging of our County Courts holden in our County of Cornwall…as also our Stannary

On 18 March 1337 a Charter provided:

> (the Duke of Cornwall) …do for ever have the return of writs of Us and Our heirs, and summons of the Exchequer of Us and Our heirs…. As well as pleas of the crown...in all his said land and tenements in the said county of Cornwall…so that no sheriff or other bailiff or minister of Us or Our heirs enter those lands or tenements, or fees to execute the said writs or summons...

Seignory of Sark

The present status of the Island of Sark follows from Helier de Carteret, the Seigneur of St. Ouen in Jersey which was the premier fief in Jersey, applying in 1563 to Queen Elizabeth I for permission to recolonise Sark to prevent permanent French occupation. Helier de Carteret was a leading figure in the military hierarchy of Jersey and enjoyed an influential position in the English Court. The Sovereign agreed and the Seigniory of Sark was created by Letters Patent dated 6 August 1565 which provided that Helier de Carteret should arrange that Sark be free of the Queen's enemies by ensuring it would be continually occupied by 40 men. He

[13] The Charters actually refer to *'com Cornub'* which has been translated as 'County of Cornwall'. This is not accurate; *com* is an abbreviation of *comitatus* 'a group of warriors or nobles accompanying a king'. The term does not imply Cornwall, in 1337, was regarded as a County of England.

considered the Letters Patent conferred on him the responsibility for the defence of Sark. This view is reflected in the Letters Patent which states they were granted because:

> …the same Island, by reason of its being waste and deserted, hath, therefore, during the same time been and still is, in time of war, a convenient place, access and cover to conceal and confederate Our enemies…

In summary, according to the 1565 Charter, a significant function of the Seigneur was: 'To defend and preserve the island free of the Queen's enemies and to provide for its "safety" and tranquillity'. The Charter went on to specify the Seigneur (Lord) (Dame if female) of Sark had the following rights:

> …all its rights members, liberties and appurtenances…..fees, rents, reversions, services, advowsons….and also…..mines, quarries, ports shores, rocks, wrecks of the sea, farms, fee farms, wards, marriages, escheats, relief…courts leet, assizes…wine and beer….jurisdictions, liberties, immunities, exemptions….and all the Queen's heredits whatsoever.

Originally Helier de Carteret was granted a 'fee-farm',[14] an adjunct to the fief[15] of St Ouen, however, in 1572 Sark was elevated into a Fief Haubert[16] which remains it present status. The Seigneur is obliged to pay an annual rente of 'one twentieth of a knight's fee' now said to be, approximately £1.79.

The Letters Patent of 1565 were supplemented by Letters Patent dated 15 August 1583 which finalised the: 'Powers and Privileges of the Sark Court' and granted Sark the right to make its own laws. There was a further Letter Patent dated 12 August 1611 which established rules for the inheritance of property within Sark. Clearly there is over 200 years between the Charters creating the Duchy of Cornwall and Seigniory of Sark but the similarity of language is interesting in particular the reasons for the creation of the Duchy and Seigniory and the rights granted.

Pre-Existing Rights

Not all the rights enjoyed by the Duke of Cornwall and the Seigneur of Sark are set out in the Charters under which the Dukedom and Seigniory were established. Although it is without dispute the Duchy claimed it inherited the rights and privileges of the previous Earldom of Cornwall upon which it was based. This assertion is disputed by the Crown.

[14] Fee Farm – A fixed sum, usually paid annually for the right to collect all revenues from land, in effect rent.
[15] Heritable lands held under feudal tenure; the lands of a tenant in chief
[16] Fief Haubert -Originally an 11th Century French term. A Haubert was a coat of mail and indicated that the fief was held in exchange for Knight Service. In other words, with an obligation to defend the Island from the Queen's enemies.

The Dukedom stated:

> It is scarcely possible to conceive, that in thus augmenting the Earldom into a Duchy, and conferring that Duchy upon so distinguished a personage as the heir apparent to the throne, the intention could have been to have invested its possessor with less extensive rights and privileges than had been annexed to the lower dignity and enjoyed by the Earls, who were persons of inferior rank.[17]

The full extent of the rights and privileges inherited by the Duchy remains subject to dispute. It is usually accepted that Sark's feudal laws and customs are those operating at the time of the Letters Patent of 1565 i.e. the customary laws of Normandy as applied to the Channel Isles; specifically, in Jersey and somewhat changed in Guernsey. For example, the Seigneur's right to colombier[18] is not recorded in the Grant. This is typical of the complexity of the subject which would benefit from further detailed research.

Legal Status

The Duke of Cornwall is a private citizen[19] and a subject of the Crown.[20] Similarly, the Seigneur of Sark is a subject of the Crown and a private citizen. Indeed, William Frederick Collings, a Seigneur of Sark in the late nineteenth Century,[21] was brought before the Seneschal, the Island's Chief Judge, appointed by the Seigneur, on charges of assault and battery, abusive language, breaking windows and firing pistols on the public highway.[22] The Seigneur performs the functions of civic head of Sark representing the Island externally and to visitors to the Island. There are many who claim the Duke of Cornwall has similar obligations with regard to Cornwall which he chooses to ignore.

Military Obligations

It has already been pointed out a motive for the creation of both the Duchy of Cornwall and the Seignory of Sark was in the case of the former to: '…more securely and honourably defend against the attempts of our enemies and adversaries...'; and in the latter: '…preserve the island free of the Queen's enemies...' Thus, in summary, the Seigneur of Sark had and, in theory, still has the obligation to ensure there are 40 tenants ready defend Sark from the Queen's enemies. It is less well known that 'military obligations' fell on the Lord Warden of the Stannaries, an official appointed by the Duke of Cornwall and a member of the Prince's

[17] Tidal Estuaries, Foreshore and Under-Sea Minerals within and around the Coast of the County of Cornwall 1854-1856 – Arbitration Sir John Patteson (1854-1856) p.36.
[18] The right to keep a Dovecote.
[19] See Halsbury's Laws Chapter 12.
[20] *Attorney General to H.R.H. Prince of Wales, Duke of Cornwall v The Mayor and Commonalty of the Borough of Plymouth* (1754) (Wight 134).
[21] William Frederick Collings (1882-1927).
[22] Ewen and de Carteret, *The Fief of Sark* p.106.

Council, who mustered men of the Stannaries in times of danger.[23] In 1889 the Duke of Cornwall asked for a Royal Warrant to be issued to the Earl of Ducie, being the newly appointed Lord Warden of the Stannaries, following the death of Lord Portman, to allow him to 'array the Royal Cornwall and Devon Miners Regiment of Militia'.

ii) The Duke of Cornwall owns Cornwall – The Seigneur of Sark owns Sark

The issue of the ownership of Cornwall is examined in some detail in the paper 'Cornwall – A Category of its Own'[24] and those who are interested are referred to that document. Suffice to say the Duke of Cornwall owns Cornwall as has been established in various court cases.[25] That ownership dates from the Charter of 17 March 1337. There is a debate about whether the land is owned 'Freehold' which is the position taken by the Land Registry or is owned 'allodially'[26] which other commentators assert. Suffice to say that owners of interests in property in Cornwall derive their interest from the Duke of Cornwall.

Similarly, the Seigneur of Sark was granted the 'Fief', or lease, of Sark in perpetuity. Under the Letters Patent the land comprising the Island of Sark was divided into 40 land holdings or tenements. Land owners in Sark own their properties under a lease from the Seigneur either for a term of years, a lifetime or in perpetuity.

Appointment of Officials

The Seigneur had the power, now circumscribed,[27] to appoint the Seneschal who, at one time, was both the Chief Judge for the Island and the Presiding Officer for the Chief Pleas. The Seneschal no longer holds this latter role except in one particular circumstance. Like Magistrates the Seneschal does not have to be legally qualified. His or her's court is the sole Court of Justice on the Island and the Seneschal sits alone. There is power to appoint Deputy Seneschals and Lieutenant Seneschals. The latter are required to be legally qualified. Clearly, after the Seigneur, the Seneschal is the most important individual on the Island.

[23] See, for example, file at Cornwall Record Office X355/48 – 1821 – 'Precept from Lord Warden of the Stannaries to Richard Hawke, Chief Constable, to issue warrants to petty constables of all parishes in his hundred, to return list of miners between 18 and45 liable to serve Miners Regiment of Militia.'

[24] Kirkhope, 'Cornwall – A Category of its own'.

[25] *Chasyn v Lord Stourton* (1553) (1 Dyer 94a) (73 E.R. 205) and *The Solicitor to the Duchy of Cornwall v Canning* (1880) (5 P.D. 114 Probate).

[26] Allodial Land – The outright ownership of land that does not impose upon its owner the performance of feudal duties. Not subject to the rights of any lord or superior; the opposite of feudal.

[27] Reform (Sark) (Amendment) Law 2016 not yet in force. The Seigneur appoints and sits on a three-person committee which, with the approval of the Lieutenant Governor, appoints Seneschal and Deputy Seneschal and agrees their remuneration. The Seigneur also receives their resignations.

The Duke of Cornwall appoints members of the Prince's Council. He also appoints the High Sheriff of Cornwall. The role of High Sheriff is now largely ceremonial but was once pivotal in the civil and criminal administration of Cornwall. The Lord Warden of the Stannaries is also appointed by the Duke. The Lord Warden had responsibility for the Stannaries (tin mining) a fundamentally important industry in Cornwall. With that role came the obligation to collect the tax on tin mining called 'coinage' and to operate the Stannary Court System. The Sovereign in Cornwall is represented by the Lord Lieutenant and in Sark by the Lieutenant Governor.

The 'Parliaments' of the Duchy of Cornwall and Seigniory of Sark

The 'Parliament' of Cornwall was called 'The Convocation of the Tinners of Cornwall'. It was (and arguably still is) a body concerned with the interest of a particular industry - that of Tin Mining.[28] But it must be understood this was an industry that involved a significant proportion of the population of Cornwall. It met irregularly, unlike the Sark Parliament. Its first meeting was in 1588, its last in 1752. Its procedures, by modern standards, were hardly democratic. It was summoned by the Duke of Cornwall whereupon the Lord Warden of the Stannaries would issue precepts to the four 'coinage towns', Truro, Lostwithiel, Helston and Launceston to hold elections for six persons to serve in the Convocation. There was a property qualification which, of course, was in line with elections to the Westminster Parliament until the nineteenth Century.

The Lord Warden would make a speech, a Speaker was elected and the Lord Warden was then excluded. Latterly 24 assistants were appointed who formed a lower house to assist in the preparation of legislation. Legislation could be initiated by the Convocation. They could also ratify proposals made by the Lord Warden of the Stannaries. The Convocation had wide powers including the right of veto of enactments of the Sovereign in Privy Council, the Duke of Cornwall in the Duchy Council as well as Acts of the Westminster Parliament. To quote Professor Robert Pennington: 'No other institution has ever had such wide powers in the history of this country'.[29]

The procedures of the Chief Pleas of Sark, again by modern standards, were not democratic. Only the Tenants of the original 40 Island Tenements had seats. Therefore, it represented the interests of property owners which was in line with the practice in the United Kingdom generally at that time.

[28] Cruickshanks, E., 'The Convocation of the Stannaries of Cornwall', (1986) *Parliament, Estates and Representation* vol. 6 no 1 p.59.
[29] *Laws of the Stannaries* – Trevithick Society (1974) Introduction.

The Seigneur was, and continues to be, a member of Chief Pleas. He or she had the right to speak and vote. In 1922 it was agreed that 12 Deputies could be chosen by popular vote. It is now a fully democratic assembly with 28 members elected by universal mandate. The Seigneur continues to have a seat and the right to speak but no right to vote. He cannot be a member of a committee of the Chief Pleas. The Duke of Cornwall had no right to sit in the Convocation of the Tinners of Cornwall but he did have the right, until 1999,[30] to sit in the House of Lords to speak and vote.

Thus, Chief Pleas has evolved over time to meet changing needs. The Convocation of the Tinners of Cornwall has never been given a similar opportunity. The Chief Pleas has full competence in Civil Matters. Despite the fact Sark is part of the Bailiwick of Guernsey the 'Parliament' of Guernsey – The States of Guernsey – can only, except in matters of criminal law, legislate for Sark with the approval of Sark. Consequently, Sark has a veto on legislation which affects its interests. Laws passed by the Chief Pleas, called 'Project do Loi' are submitted to the Privy Council for Royal Assent.

Duke of Cornwall's Consent/Crown Immunity

This is a complex topic but, broadly, for the purposes of this paper, a Bill which affects the personal interests of the Duke of Cornwall can only be presented to Parliament with the Consent of the Duke of Cornwall. Furthermore, the Duke and Duchy of Cornwall are only bound by an Act of Parliament if the Act specifically says on its face or by necessary implication.

The Seigneur could until 2008 veto any Ordinance passed by the Chief Pleas.[31] The right of veto (delay) to enactments of Ordinances of the Chief Pleas is to be removed.[32] There is no indication that the consent of the Seigneur is required before a draft *project de loi*, which affects his or her interest, is required before it can be presented to the Chief Pleas. Similarly, it would appear the Seigneur is bound by *project de loi* even if it lacks specific reference to the Seigneur.

iii) The Legal Systems of the Duchy of Cornwall and the Seigniory of Sark

The Duchy of Cornwall was responsible for the Tin Mining industry in Cornwall, called the Stannaries. The foundation of the rights and privileges of the Stannaries were based on various Charters the most significant of which are 'Charter of Liberties to the Tinners of

[30] House of Lords Act 1999.
[31] Reform (Sark) Law 1951 Part 8(1)(2.)
[32] Reform (Sark)(Amendment) Law 2016 received Royal Assent but not yet commenced.

Cornwall' (1305) and the 'Grant or Patent of Pardon and Immunities to the Tinners, Bounders and Possessor of Works of Tin in Cornwall' (1508). The Stannary Courts, part of the Stannary system, adjudicated on matters pertaining to Stannary Law which: '...is still formally part of the law of England. It is moreover one of the oldest parts of the law, for its origins predate the Norman Conquest, possibly even the Anglo Saxons...'[33] Stannary Law developed from: '…Cornish, Anglo-Saxon and Norman Law…'.[34]

In theory the jurisdiction of the Stannary Courts, which extended over the whole of Cornwall, was limited to disputes which arose with regard to tin mining. 'Privileged Tinners' could only be sued in Stannary Courts and only 'Privileged Tinners' could appear before it. The Stannary Courts had a criminal jurisdiction and indeed its own (notorious) prisons. In practice: '….it appeerth…that Earles, Lords, Abbotts, other Clergiemen, some Judges, Women etc did sue in the Stannaryes as Stannatores.'[35]

The Court Rolls indicate cases of offences of theft, riotous assembly, forcible entry on land and so on. Description of other cases heard include: 'Trespassing with swine and geese on a neighbour's cornfield, cutting another's timber, infractions of the size of beer, baking unwholesome bread.'[36] In fact, the jurisdiction of the Stannary Courts extended to a significant percentage of the population of Cornwall and the cases with which it concerned itself covered a very wide range. It included not only people directly involved in tin mining but those in the industries serving the mines.[37]

The principles underlying Stannary Law were often derived from Roman or Civil Law. It is the only structure of law within England and Wales which includes the principle of usufruct[38] for example. It is a system '…guided by special laws, by customs and by prescription, time out of mind.'[39] There was no appeal from the Stannary Courts to the 'ordinary courts' of England.[40] Appeals eventually were to the Duchy Council and ultimately to the Privy Council. The last

[33] Pennington, R., *A History of the Mining Law for Cornwall and Devon* (193) p.9.
[34] Ibid p.13.
[35] Harrison, Sir George, *Substance of a Report on the Laws and Jurisdiction of the Stannaries in Cornwall* (1835) p.133.
[36] Lewis, R. R., *The Stannaries: A Study of the Medieval Tin Miners of Cornwall and Devon* (1908) pp.119-120.
[37] The Charter of Pardon of 1508 refers to the heirs of the Stannators which would imply a large portion of the present population of Cornwall would benefit from the Charter.
[38] The legal right to use the property of another and is found in Civil Law jurisdictions, for example France and Spain.
[39] Lord Coke, Resolution of Judges 1608.
[40] *Trewynard v Killigrew* (1562) (4 and 7 Elizabeth I) and *Trewynnard v Roscarrack* (1564) (4 Coke's Institutes 229)

Stannary Court was abolished in 1896.[41] But Stannary Law is still part of the Law of England and is capable of providing rights and privileges in appropriate cases.[42]

Unlike the Charters which established the Duchy of Cornwall the Sark Letters Patent of 1565 made no mention of judicial powers. By an Order in Council dated 24 April 1583 the Guernsey Court was instructed to establish a Sark Court.[43] The Sark Court has jurisdiction in civil matters and some limited criminal jurisdiction. It has a prison capable of holding two prisoners. The whole population of the Island is subject to the Court. As is apparent from the titles of the various of the Island Officials, which include a Greffier, Prevot and Procureur, many of the principles on which Sark Law are based on customary Norman French Law. These originally derived from the Laws of Jersey but are now based on Guernsey Law. Appeals from the Sark Courts are to Guernsey's Royal Court and ultimately to the Privy Council.

An example of the continuance of the Norman French customary laws of the Channel Islands, including Sark, is the ancient Norman custom of the *Clameur de Haro*. Using this legal device, a person can obtain immediate cessation of any action he/she considers to be an infringement of his/her rights. At the scene, he/she must, in front of witnesses, recite the Lord's Prayer in French and cry out: 'Haro, Haro, Haro! À mon aide mon Prince, on me fait tort!'('Haro, Haro, Haro! To my aid, my Prince! I am being wronged!'). The Clameur should then be registered with the Greffe Office within 24 hours. All actions against the person must then cease until the matter is heard by the Court. The last *Clameu*r recorded on Sark was raised in June 1970 to prevent the construction of a garden wall. Stannary Law and Sark Law apply to the peoples within a defined geographic area. They both include tenets outside English Common Law. Appeals from the Courts were not to the ordinary courts of England but to the Privy Council. The Stannary Courts also had a wider jurisdiction for example in criminal matters.

Right of Mines and Quarries

The Seigneur of Sark by the 1565 Letters Patent was given the right to all mineral deposits within the Island which would appear to include silver mines which are normally regarded as a Mines Royal. In 1835 a group of miners were brought to Sark from Cornwall to work in the mines that had been established. However, the venture was not a success. The Duke of Cornwall's ownership of the Stannaries and his right to collect a tax on the tin mined has already been explored. There is dispute about the ownership of Mines Royal within Cornwall.

[41] Stannary Court (Abolition) Act 1896.
[42] See for example *R v East Powder Magistrates' Court Ex. P. Lampshire* (1979) 2 All ER 329.
[43] Ewen and de Carteret, *The Fief of Sark* p.53.

Other Rights

The Duke of Cornwall and the Seigneur have in common a number of other rights:

- The Right of Wreck
- The Right of Bona Vacantia and Escheat
- The Right of Treasure Trove
- The Right to the Foreshore (In the case of the Duke of Cornwall this only extends to that foreshore not privately owned).
- While the Duke of Cornwall enjoys the right to Royal Fish[44] it is not clear if a similar right is enjoyed by the Seigneur although the Deputy Seigneur has memory of an incident in which a part of a whale was brought to the late Seigneur Dame Sybil Hathaway.[45]
- The Duke of Cornwall has the right to the fundus (river bed) of various rivers. Not relevant in the case of the Isle of Sark. It is not clear how far out to sea the Seigneur rights extend.

Territorial Waters

The Duchy of Cornwall claimed the seaward limits of the Duchy extended to 12 miles from the coast of Cornwall. The dispute was submitted to arbitration and in this case the arguments of the Duchy were not accepted.[46] While the Seigneur of Sark enjoys:

> all the Queen's heredits whatsoever with every of their appurtenances, situate within the seas or sea coasts contiguous or appertaining to the island or within its shore, limits or precincts, and whatever are held, known or accepted or parts of the island of Sark.

Which implies the Seigneur enjoys rights extending to the internationally recognised 12-mile territorial limit.

Right to income

The Duke of Cornwall is entitled to the income arising from the Duchy of Cornwall but not the capital. Until 2008, when Sark tenants sold their tenements they were required to obtain permission of the Seigneur (congé[47]) and to pay treizième[48] to him. These rights have been abolished[49] and have been replaced by a land transfer tax of four per cent payable to the Chief Pleas. The Seigneur now receives an annual stipend in consideration of his continued performance of his civic duties.

[44] Whales, porpoise, grampuses and sturgeon.
[45] E Mail from Dr Richard Axton to writer 15 July 2016.
[46] TNA CRES 58/741 – Seaward Limits between Crown and Duchy of Cornwall (1865 – 1870)
[47] *congé* – formal permission.
[48] *treizième* – a thirteenth.
[49] Real Property (Transfer Tax, Charging and Related Provisions) (Sark) Law 2007.

Westminster Parliament

The people of Cornwall elect MPs to sit in the Westminster Parliament. The people of Sark do not and have never done so.

The Devolution of the Dukedom of Cornwall and Seigniory of Sark

The Duke of Cornwall is the eldest living son of the sovereign being heir to the Throne. The Dukedom is never extinguished for want of an heir. For about half the time since its creation there has been no Duke. There may not be a Duke but there is always a Duchy. Surprisingly with the approval of the Sovereign the Fiefdom of Sark can be sold and mortgaged by the Seigneur. It was sold in 1720, 1730 and 1853. If it is sold a treizième is payable to the sovereign. The Duke of Cornwall is always male. There have been at least three Seigneurs of Sark who were female.[50].

Peculiar Rights of the Duke of Cornwall and Seigneur of Sark

The Seigneur was entitled to the 'dues of wheat', 'poulage' (which is a tax of two chickens), the right of colombier (the right to keep a dovecote) and was, until 2008, the only person allowed to keep an unspayed bitch on the Island. After challenges in 1797 the then Seigneur asserted his right to the milling monopoly. A payment to the Sovereign of 'one twentieth of a knights pay' (reckoned to be £1.79), has to be paid by the Seigneur as his feudal rent.

The Duke of Cornwall is entitled to 'one grey cloak' from the manor of Cabillia, 100 shillings and a pound of pepper from the Mayor of Launceston, a brace of greyhounds from the manor of St Elerky, a brace of greyhounds from the manor of Penrose, a pair of gilt spurs from the parish of St Tudy and a salmon spear from the manor of Clymselond.[51]

The Isles of Scilly and the Duchy of Cornwall

The Duchy of Cornwall claims the Isles of Scilly have been part of the Duchy since the fourteenth Century. It is an assertion which is open to challenge.[52] Be that as it may the Duchy granted leases to the Dukes of Leeds until 1831. The Duke's appointed a Council of 12 men who were not particularly scrupulous about the limits of their power.[53] Women were ducked at the quay head and men and women were ordered to be publicly whipped.

[50] Susanne Le Pelley (1730-1733), Dame Marie Collings (1852-1853) and Dame Sybil Hathaway (1927-1974).
[51] Gill, C (Ed.) *The Duchy of Cornwall* (1987) p.90.
[52] For more on this see Kirkhope, J., *This Miniature Nation – A Commentary on various matters of historical and legal interest in relation to the Isles of Scilly*. (2014) Available via Amazon.
[53] TNA HLG 8/75 – Scilly Isles Constitution and Government.

The leases conferred on the lessee: 'the conclusive jurisdiction in all plaints and causes, except heresies, treasons, matters of life and limb and Admiralty Questions.' After the Dukes of Leeds surrendered their lease it was taken over by Mr Augustus Smith.

There was in the nineteenth century discussion about whether the Isles of Scilly were part of England and whether Acts of the Parliament passed at Westminster extended to the Islands. For example, there is a file dating from 1899 entitled 'Application of Acts of Acts of Parliament to the Islands of Scilly'[54] in which it is stated: 'It appears it is still an open question as to how far Public General Statutes can be said, in the absence of special provisions to apply to the Isles of Scilly'. Later in the same file a minute appears as follows:

> How it has come to pass that English Law is to a certain extent applicable to Scilly, but does not apply in other matters is not clear; but apparently the only way of dealing with the case is by assuming that statutes only apply to these Islands where separately mentioned or in so far and they have been made to apply by usage.

It is interesting to note the taxation position of the Islands was described in 1905 as 'No income tax, Land Tax, House Tax or Excise Duties have ever been collected in the Islands'.[55] It was not until the Finance Act 1953 that the people on the Island were subject to a tax regime.[56]

Conclusion

The Seigniory of Sark is small both geographically and in terms of its population. It is largely autonomous and it is the smallest member of the Commonwealth. The Duchy of Cornwall asserts it is a private estate. It is an assertion which it has pursued in Court with some vigour.[57] Yet in the nineteenth century the Duchy claimed the Charters represented a 'great constitutional settlement'.[58] In 1880 the Court decided:

> The Prince is on the same footing in respect of the Duchy of Cornwall as the Crown is in respect of the rest of the kingdom. The Charters of the Duchy have always been treated by the Courts of Judicature and the Legislature as having vested in the Dukes of Cornwall the whole interest and dominion of the Crown in and over the whole county of Cornwall.[59]

In a dispute which arose in the 1850s with regard to the ownership of the Foreshore of Cornwall the Duchy claimed:

> '…the Duke was quasi sovereign within the Duchy […] the Crown appears to have denuded itself of every remnant of Seignory and territorial dominion which it could otherwise have enjoyed within the County or Duchy of Cornwall…It is submitted that

[54] TNA HG 1/6/16 – Application of Acts of Parliament to the Islands (1899).
[55] CUST 45/246 – Memorandum on Taxation in Scilly Isles and correspondence on specific cases (1905).
[56] TNA IR 40/12106 – Scilly Isles: Imposition of Income Tax; Finance Act 1953 (1952-54).
[57] *The Attorney General for the Prince of Wales v the Information Commissioner and Mr Michael Bruton* (2016) UKUT 0154 (AAC).
[58] TNA T/14831 – *Duchy of Cornwall title to gold and silver mines* (1883).
[59] *The Solicitor to the Duchy of Cornwall v Canning* (1880) 5 P.D. 114 Probate.

> the three Duchy Charters are sufficient in themselves to vest in the Dukes of Cornwall not only the government of Cornwall but the entire territorial dominion in and over the county which had previously been invested in the Crown and with all royal prerogatives which would naturally accompany….by virtue of the three recited Charters, the Duke did become entitled to the whole county of Cornwall.[60]

The Duke of Cornwall felt able to grant a lease over the Isles of Scilly, whose status with regard to England and Wales was by no means clear, which allowed his tenant, amongst other things, to conduct corporal punishment. The Duke granted powers which were beyond the powers the Duchy possessed in respect of the rest of its holdings. At what point it surrendered those powers is not obvious

It is not clear at what point the Dukes of Cornwall relinquished their claim to the whole dominion of Cornwall, or ceased to be quasi sovereign and were no longer the government of Cornwall. The Duchy of Cornwall has been content, it would appear, to claim its 'constitutional' rights when that secures some economic benefit but when it comes with obligations it has been keen to deny any responsibilities. Given the similarities with the Seigniory of Sark and the claims made by the Duchy of Cornwall it is difficult to understand why the Duchy of Cornwall is a 'mere' County of England while the small Seigniory of Sark is semi-autonomous and self-governing jurisdiction.

[60] Tidal Estuaries, Foreshore and Under-Sea Mineral within and around the Coast of the County of Cornwall 1854-1856 – Arbitration by Sir John Patteson Duchy Preliminary Statement p.14.