

Time to Abolish the Duchy of Lancaster

Graham S McBain^{1,2}

¹ Peterhouse, Cambridge, UK

² Harvard Law School, UK

Correspondence: Graham S McBain, 21 Millmead Terrace, Guildford, Surrey, GU2 4AT, UK. E-mail: gsmcbain@aol.com

Received: February 26, 2013 Accepted: August 23, 2013 Online Published: August 27, 2013

doi:10.5539/res.v5n4p172

URL: <http://dx.doi.org/10.5539/res.v5n4p172>

Abstract

The duchy of Lancaster is one of two duchies left in England – the other being the duchy of Cornwall. Lancaster was likely an honour prior to 1066; it became a county palatine in 1267 and a duchy in 1351. As such, it has been held by the sovereign separate to the Crown – a legal estate which passes from one sovereign to another as a form of inheritance. The purpose of this article is to consider the legal status of the duchy in modern times. Also, the various Crown prerogatives which have been franchised to it as well as other privileges it has acquired over the centuries.

This article concludes that the duchy should be abolished and its property transferred to the Crown Estate, since it no longer has any true legal purpose. This would not only be to the benefit of the sovereign, it would ensure easier administration, greater financial clarity and the abolition of obsolete laws, courts and sinecures.

Keywords: Duchy of Lancaster, Crown prerogatives, franchise, charters, legal status, other privileges, the case for abolition.

Primarily, the duchy of Lancaster is a legal concept. Like the county palatines which still exist in the case of Durham and Chester, the county palatine of Lancaster - which later became part of the duchy of Lancaster - was accorded various Crown prerogatives (*jura regalia*) such that it acted as a semi-kingdom in many respects. There was good political reason for this. After the Norman Conquest in 1066, it was essential for the early medieval kings to gain control over an England that was by no means unified. The means employed was to grant great powers to particular feudal lords in order to pacify areas of the realm which were susceptible to revolt. In the case of Lancaster it was likely an honor even prior to 1066.¹ It became a county palatine in 1267 and a duchy in 1351. The duchy of Lancaster was not absorbed into the Crown when the Duke of Lancaster became Henry IV (1399-1413) in 1399. Instead, it remained separate to the Crown, often being referred to as an ‘*appanage*’ of the same. This was confirmed in 1485 when an Act of Parliament provided that the duchy would pass to Henry VII (1485-1509) and his heirs for ever.

In summary, the county palatine of Lancaster is part of the duchy - the latter being more extensive than the former. And the duchy is separate from the Crown, a legal estate passing from the sovereign to his (or her) heir as a form of inheritance. So much for history. The purpose of this article is to consider whether there is any need for the duchy in the modern world. One where the general public - and most lawyers - are not over familiar with the legal niceties of duchies and county palatines. A previous article has argued for the abolition of the county palatines of Chester, Durham and Lancaster on the basis that this status is now one in name only - given that all *jura regalia* once accorded to them have either reverted to the Crown or are effectively obsolete.² This article - after a review of the various charters and pieces of legislation governing the duchy of Lancaster - concludes that the duchy should also be abolished, having no true legal purpose. Further, that its assets should be transferred to the Crown Estate. This would not only be to the benefit of the sovereign, it would ensure easier administration, greater financial clarity and the abolition of obsolete laws, courts and sinecures.

¹ DM Walker, *The Oxford Companion to Law* (Clarendon, Oxford, 1980)(honor or honour) ‘In medieval law, the group of estates, normally scattered about England, from which the greater tenants-in-chief of the Crown derived their prestige and status, and on which inferior lordships were dependent...An honour was governed by a court consisting of all the barons who held land of it, and its jurisdiction and procedure resembled that of the king’s court, and sometimes important issues of property were litigated and determined in honorial courts.’ Being lord of an honour was of higher status than being lord of a manor.

² GS McBain, *Abolishing Some More Obsolete Crown Prerogatives*, *Liverpool Law Review*, vol 32, issue 1 (2011), pp 65-92 (also online).

There have been a number of legal texts written in respect of the duchy. Many relate to pleadings in its courts³ as well as chancery orders and practice.⁴ These are obsolete since the relevant courts no longer operate. Other texts concern office holders⁵ and records⁶ relating to the duchy as well as general histories.⁷ Of particular use are: Sir William Hardy, *The Charters of the Duchy of Lancaster* (1845),⁸ Edward Baines, *The History of the County Palatine and Duchy of Lancaster* (1868)⁹ and Robert Somerville, *History of the Duchy of Lancaster* (1953).¹⁰ The duchy also has a website.¹¹

1. Duchy of Lancaster – Background History¹²

Halsbury notes that:

The Duchy of Lancaster comprises an honour or complex of estates and jurisdiction which originally formed the patrimony of the earls and dukes of Lancaster. It includes the county palatine of Lancaster which was conferred by Henry III [1216-72] in 1267 upon his [second] son Edmund, Earl of Lancaster,¹³ and was by Edward III [1327-77] by a charter of 1351 invested with the full *jura regalia*, or prerogative rights of a county palatine.

After various subsequent charters and devolutions of title the duchy, of which the county palatine formed parcel, became vested in Henry VII [1485-1509], who, by charter having the authority of an Act of Parliament, resettled it upon himself and his heirs as separate from the Crown of England with the same officers and the same seals, and in as large and ample a manner as Henry IV [1399-1413], Henry V [1413-22] and Henry VI [1422-61 & 70-1] had it.¹⁴ (*wording divided for ease of reference*)

Although the duchy includes a county palatine¹⁵ the former is more extensive since it includes territory outside

³ (a) J Parker, *Calendar of the Lancaster Assize Rolls in the Public Record Office, London* (Record Society publications, vols 47 & 49, (1904-5)(contains a record of cases from 1241-85 of the justices of the king's court itinerant or in eyre); (b) W Farrer, *Courts Rolls of the Honour of Clitheroe in the County of Lancaster (1897-1913)*(records of hallmotes of various manors in Lancaster); (c) H Fishwick, *Pleadings and Depositions in the Duchy Court of Lancaster 1489-1558*, Lancaster and Cheshire Record Society, vols 32, 35 & 40 (1896-9); (d) R Somerville, *Ordinances for the Duchy of Lancaster* (Camden Miscellany, Camden 4th series 14, vol 26, 1975, pp 1-29 (it contains Ordinances made in respect of the duchy in c. 1482); (e) J Ritson, *A Digest of the Proceedings of the Court Leet of the Manor and Liberty of the Savoy, Parcel of the Duchy of Lancaster* (1789). Courts of assize, courts leet and the duchy court are all obsolete, although the latter has not yet been formally abolished.

⁴ (a) CGO Bridgman, *Orders and Rules of the Court of Chancery of the County Palatine of Lancaster* (2nd ed,1887); (b) GM Marsden, *General Orders and Rules of the Court of Chancery of the County Palatine of Lancaster* (1876); (c) *Consolidated General Orders of the Court of Chancery of the County Palatine of Lancaster* (1861); (d) J Bennett, *Jurisdiction and Practice of the Chancery of the County Palatine of Lancaster* (2nd ed, 1933), (e) JW Winstanley, *Chancery of the County Palatine of Lancaster* (1855); (f) WD Evans, *Practice of the Court of Common Pleas for the County Palatine of Lancaster* (1814); (g) J Walton, *The Practice and Procedure of the Court of Common Pleas at Lancaster* (1870); (h) *Rules of the Court of Common Pleas of the County Palatine of Lancaster* (1835); (i) W Wareing, *Practice of the Court of Common Pleas at Lancaster in Personal Actions and Ejectment* (1836); (j) JJ Aston, *Jurisdiction and Practice of the County Palatine Lancaster* (2nd ed, 1853, sup 1855). The chancery and common pleas courts of the county palatine no longer exist.

⁵ R Somerville, *Office Holders to the Duchy and County Palatine of Lancaster from 1603* (Phillimore, London, 1st ed, 1972).

⁶ R Somerville, *The Duchy of Lancaster Records*. Transactions of the Royal Historical Society, 4th series, vol 29 (1947), pp 1-17; *Duchy and County Palatine of Lancaster*, Transactions of the Historical Society of Lancashire and Cheshire, vol 103 (1951), pp 59-67 (online); *Lancashire and Cheshire Records in the Public Record Office*, Lancashire and Cheshire Record Society, vols 7 & 8 (1882-3); *List of Records of the Duchy of Lancaster in the Public Record Office* (Stationary Office, 1901).

⁷ (a) H Castor, *The King, the Crown and the Duchy of Lancaster. Public Authority and Private Power 1399-1461* (OUP, 2000); (b) M Gregson, *Portfolio of Fragments relative to the History and Antiquities of the County Palatine and Duchy of Lancaster* (GF Harris' Widow and Bros, 1817); (c) *An Account of the Beginning and Erection of the Duchy and County Palatine of Lancaster and of the Additions made thereunto* (Derby, printed by Sam Drewry, 1735). See also JF Baldwin, *The Household Administration of Henry Lacy and Thomas of Lancaster*, English Historical Review (1927), vol 62, pp 180-96.

⁸ W Hardy, *The Charters of the Duchy of Lancaster* (London, 1st ed, 1845). This was printed by order of the Chancellor and the Council of the Duchy.

⁹ E Baines, WR Whatton, B Herford & J Croston, *The History of the County Palatine and Duchy of Lancaster* (London, Heywood, 3rd ed, 4 vols, 1868).

¹⁰ R Somerville, *History of the Duchy of Lancaster*. (2 vols. Published by the Chancellor and Council of the Duchy, 1953). He notes, vol 1, p xiii, that the *Duchy of Lancaster Case* (1561) 1 Plowd 212 (75 ER 325) and extracts from Coke [in 1644] and Blackstone [in 1765] 'formed practically the only authoritative account of the duchy available until the nineteenth century.'

¹¹ See www.duchyoflancaster.co.uk

¹² For a useful general history see Baines, n 9, App I which contains an Address to George III (1760-1820) of 20 January 1772 made by Lord Hyde (afterwards Earl of Clarendon) on The Succession to the Duchy of Lancaster.

¹³ This is Edmund Crouchback (1245-96) second son of Henry III. See Oxford Dictionary of National Biography (ODNB). He was likely so called because he carried a cross (crouch) on his back, this being borne by votaries of pilgrimages. See Baines, n 9, pp 48, 81.

¹⁴ Halsbury, *Laws of England* (4th ed), vol 12(1), para 300.

¹⁵ *Fisher v Batten* (1683) 1 Ventr 155 (86 ER 105). Baines, n 9, p 87 'The county palatine of Lancaster is parcel of the duchy of Lancaster...'

the palatinate such as a district surrounded by the City of Westminster where the Court of the Duchy Chamber is located.¹⁶ As to the relevant historical detail in respect of the formation of the duchy, the following may be noted:

- *Honor of Lancaster*. The honor of Lancaster is very ancient. Probably, pre-conquest;¹⁷
- *County Palatine of Lancaster*. The county palatine was created by Henry III in 1267, his son Edmund Crouchback also being made the first Earl of Lancaster.¹⁸ The county palatine was invested with full *jura regalia* in 1351;¹⁹
- *Duchy of Lancaster*. As Blackstone (writing in 1765) notes,²⁰ the duchy of Lancaster was created in favour of Henry Grosmont (1310-61), Earl of Lancaster.²¹ By a charter of 6th March 1351,²² Grosmont was created Duke of Lancaster²³ as a reward for military services rendered by him to Edward III (1327-77) in France.²⁴ On his dying in 1361 without male heirs his estate passed to John of Gaunt (1340-99)²⁵ the fourth son of Edward III. In 1359, he had married Blanche, the younger daughter of the first duke. She was co-heiress - with her sister Maud - of the duke's estate and then sole heir on her sister's death in 1362 without issue;²⁶
- John of Gaunt was created the second Duke of Lancaster in right of his wife by a charter confirmed in Parliament on 13th November, 1362 which title was then to be held by him and his heirs male.²⁷ During his life, John of Gaunt considerably augmented the duchy land.²⁸

On the death of John of Gaunt in 1398, his only son - Henry Plantagenet (surnamed Bolingbroke from the place of his birth)²⁹ - became Duke of Lancaster. He supplanted Richard II (1377-99) in September 1399 to become king of England as Henry IV (1399-1413). In a charter called the Lancaster charter (also, the Great Charter of the duchy)³⁰ of 14 October 1399 - which charter is treated as an Act of Parliament³¹ - it was provided that the

¹⁶ Halsbury, n 14, vol 12(1), para 302, 'Though the county palatine is incorporated within the Duchy of Lancaster by charter, the duchy as an honour is distinct from the county palatine and includes much territory lying outside the county palatine, such as a district surrounded by the city of Westminster in which the Court of Duchy Chamber is located.'

¹⁷ See n 1. Also, Baines, n 9, App 1.

¹⁸ ODNB, n 13, the 'grant was...that of 30 June 1267, whereby he [Edmund Crouchback] received the honour, county, town and castle of Lancaster, and all royal demesne land in Lancaster, effectively becoming Earl of Lancaster...although he only used the title earl of Lancaster from December 1276.' See also Somerville, n 10, vol 1, pp 3 & 8-9; W Fleetwood, *Ducatus Lancastriae* (for which, see Baines, n 9, p 81) and WE Rhodes, *Edmund, Earl of Lancaster* (1895) English Historical Review, vol 38, pp 210-37. This land was effectively forfeited land, see also W Hamilton, *My Queen and I* (Quartet Books, London, 1975), p 80 (land forfeited by Simon de Montfort and the Earl of Ferrers after the defeat of the barons in 1265).

¹⁹ On the creation of Henry Grosmont as Duke of Lancaster, see Somerville, n 10, vol 1, pp 40-1 'To add some substance to the dignity Lancashire was transformed into a county palatine on the model of Chester...palatine powers were royal powers in devolution, an arrangement which served well in regions where effective government from the centre was impossible or difficult to attain.' This grant was only given by Edward III [1327-77] to Henry Grosmont, for life. However, it was then granted by Edward III to John of Gaunt for life in 1377 (see Somerville, n 10, vol 1, p 56) and then (in 1390, *ibid*, p 64) to John of Gaunt and his heirs. See also Baines, n 9, p 82 and Somerville, n 6 (second article), p 59.

²⁰ W Blackstone, *Commentaries on the Laws of England* (Oxford, Clarendon Press, 1st ed, 1765-9, University of Chicago Press rep 1979), vol 1, p 113.

²¹ ODNB, n 13, records 'in 1351, Edward [III] affirmed his personal bond by raising Lancaster [i.e. Henry Grosmont, Earl of Lancaster] to the rank of duke and granted his county of Lancaster the status of a palatinate for the term of his life...the grant of palatinate powers was without parallel in recent history, establishing the county on the same privileged basis as the ancient palatinates of Chester and Durham.'

²² E Coke, *Institutes of the Laws of England* (W Clarke & Sons, London, last ed, 1824), vol 4, p 204. See also Hardy, n 8, p 9; Baines, n 9, pp 54, 145-7 and Somerville, n 10, vol 1, pp 40-1.

²³ See ODNB, n 13 (Henry Grosmont, 1st Duke of Lancaster). See also Baines, n 9, p 51. For the extent of the duchy at the time of the death of the first Duke, see Baines, n 9, pp 147-52.

²⁴ The charter of 6th March 1351 stated that 'Henry Earl of Lancaster, who, yielding to no labour and charges, hath ever shown himself ready to serve us, and many times in our need intrepidly exposing himself for us to the dangers of war, hath nobly triumphed over our enemies.' See Hardy, n 8, p 9 and Baines, n 9, p 145.

²⁵ See ODNB, n 13 (John of Gaunt). His name 'Gaunt' came from reference to Ghent where he was born.

²⁶ See Baines, n 9, p 56. Blanche died in 1369.

²⁷ Hardy, n 8, p 17 'have and hold the same name and honour of the Duke of Lancaster to him and his heirs male of his body lawfully begotten for ever.' Baines, n 9, pp 56-7, '[John of Gaunt] was in Parliament declared Duke of Lancaster, in right of his wife Blanche, and the king girt him with a sword, and set on his head a cap of fur, and a circlet of gold with pearls therein, and created him Duke of Lancaster, with all the liberties and regalities of an earl palatine...' See also Somerville, n 10, vol 1, p 50 and Castor, n 7, p 22.

²⁸ Baines, n 9, p 57.

²⁹ At the time Henry Bolingbroke was Earl of Derby and Duke of Hereford. See ODNB, n 13 (Henry IV) and Somerville, n 10, vol 1, p 67.

³⁰ There is also another charter of that same date dealing with the Hereford estates of John of Gaunt, since Henry IV only had a life share in his wife (Mary Bohun's) inheritance, see Hardy, n 8, p 91 and Somerville, n 10, vol 1, p 140. An Act of 1414 prevented this estate from being merged with the Crown, see Somerville, n 10, vol 1, p 177.

³¹ See '*Carta Regis Henrici quarti de separatione Ducatus Lancastriae a corona Auctoritate Parliamenti*' (Charter of Henry 4 of Separation of the Lands and Possessions of the Duchy of Lancaster from the Crown). Also, Hardy, n 8, p 102 ('A Declaration of the King's Intention'). Blackstone, n 20, vol 1, p 114 'He [Henry IV] procured an act of parliament, in the first year of his reign, to keep [the duchy] distinct and separate from the crown...' See also Coke, n 22, vol 4, p 205 and Somerville, n 10, vol 1, pp 67 & 140.

duchy and other estates of the heritage of Lancaster would not be changed by the assumption of the regal dignity.³² Thus, the charter stated that Henry IV:

do grant, declare, decree and ordain, for us and our heirs, that as well our duchy of Lancaster, as all and singular the other counties, honors, castles, manors, fees, advowsons, possessions, annuities, and lordships whatever, to us howsoever and wheresoever descended before our adoption of the royal dignity, by hereditary right, in demesne, in service, or in reversion, or otherwise howsoever, shall for ever remain to us and our said heirs in the charters aforesaid specified in form aforesaid; *and that they so and in such wise, and by such officers and ministers, in all things be managed, governed, and treated as they would have remained, been managed, governed, and treated, if we had never assumed the ensign of royal dignity.*

And, moreover, that such and the like liberties, *jura regalia*, customs, and franchises, in the said duchy, counties, honors, castles, manors, fees, and other possessions and lordships aforesaid, in all, and throughout all, be had, exercised, continued, done, and used for ever, and they by such officers and ministers be governed and executed, as and which were wont to be had and used in the same duchy, counties, honors, castles, manors, fees, and other possessions and lordships, and by whom they were wont to be ruled and governed, as well in the time of our said lord and father, as in the times of other our progenitors and ancestors, by virtue of the charters aforesaid.³³ (*italics supplied and wording divided for ease of reference*).

Subsequent events affecting the legal status of the duchy of Lancaster up to 1485 are as follows:

- In the Parliament Roll of 6th October 1399, it is recorded that Henry IV conferred the duchy of Lancaster on his eldest son, Henry - later Henry V (1413-22)³⁴ and an exemplification of 22 December 1406³⁵ - which is treated as an Act - established the right of succession to the duchy to the said Henry and provided that the ancient rights of the duchy should be maintained inviolate;³⁶
- An Act of 4 November 1461 declared that Henry VI (1422-61 and 1470- 1) was attainted for high treason, having been supplanted on the throne by Edward IV (1461-83).³⁷ The Act further provided for the duchy to be incorporated and united in possession with the Crown as well as its being granted to Edward IV and his heirs, being kings of England, perpetually.³⁸ Also, the county palatine was annexed to the duchy.³⁹

³² ODNB, n 13 (Henry IV), 'From the beginning of his reign he continued to treat his Lancastrian and Bohun lands as personal property, to be kept administratively separate from those of the Crown, and used their revenues primarily to fund substantial and very expensive retaining fees.'

³³ Hardy, n 8, p 138. *A-G of the Duchy of Lancaster v Duke of Devonshire* (1884) 14 QBD 195 at 205 per Mathew J 'By a charter... of 1 Hen 4 [i.e. of 1399] which confirmed former charters, it was directed that the duchy should be held by the king and his heirs separate from the Crown, and to remain and descend as before his accession to the Crown.' See also Castor, n 7, p 27.

³⁴ *Ibid*, pp 141-2, 'Henry, his eldest son, do have and bear the name of Duke of Lancaster... [and] that the same liberties and franchises be and remain with his said eldest son, and his heirs Dukes of Lancaster, wholly and entirely dissevered from the Crown of England, according to the effect and purport of the grants aforesaid.'

³⁵ 8 Hen 4 (1406-7) ('The Inheritance of the Crown'). See Hardy, n 8, p 144 *et seq.* and Baines, n 9, p 68.

³⁶ Hardy, n 8, p 148 'Nevertheless by this statute or ordinance, so far as regards the duchy of Lancaster, and its rights, possessions, honors, and customs, with all their appurtenances, and the succession and manner of succeeding in the aforesaid duchy, whether in chief or in its members, we do nothing intend to change or innovate, but that in all the premises and in all other modes and forms in which before this statute the same duchy was wont to be ruled, administered, and governed, we will resolve, decree, and declare, that the ancient rights, statutes, and customs of the same duchy shall be held, executed, and purely observed for ever, notwithstanding this our statute, or any other soever passed in this Parliament.' See also Hardy, n 8, p 145.

³⁷ Blackstone, n 20, vol 1, p 114 'Henry VI being attainted in 1 Edw IV [1461], this duchy was declared in parliament to have become forfeited to the crown' citing *Fisher v Batten* (1683) 1 Ventr 155 (86 ER 105). Coke, n 22, vol 4, p 205 'By this act all entails of the duchy, or of any land annexed thereunto are cut off, and by this made fee simple to E 4 [1461-83] and his heirs kings of England. In an act of parliament without question this limitation of a fee simple is good.' (spelling modernized). See also Baines, n 9, p 70. *Duchy of Lancaster Case* (1561) 1 Plowd 212 (75 ER 325) at 219 'King Edward 4 knowing his title to the Crown to be undoubted, intended to extirpate the house of Lancaster, and to unite to the Crown their inheritance, in which he had no title but in right of the Crown, viz for treason committed against it, and to vest the duchy, and all the possessions thereof, in the body politic of the king.' (opinion of judges). See also Somerville, n 10, vol 1, pp 230-2. At p 230 'the hereditary descent in Lancaster was broken and diverted to new heirs.'

³⁸ Hardy, n 8, pp 282-3 'And that it be ordained and established, that the same manors, castles, lordships [etc] be the said duchy of Lancaster corporate, and be called the duchy of Lancaster, And that our said sovereign lord king Edward the fourth have, seise, take, hold, enjoy and inherit, all the same manors, castles, and other premises, with their appurtenances, by the same name of duchy, from all other his inheritance separate... to him and to his heirs kings of England perpetually.' (spelling modernized). See also Baines, n 9, pp 70, 185.

³⁹ Hardy, n 8, p 283 'And that the county of Lancaster be a county palatine. And that our liege and sovereign lord king Edward the fourth, and his heirs, have, as parcel of the said duchy, the same county of Lancaster a county palatine, and a seal, chancellor, judges and officers there for the same.' *Duchy of Lancaster Case* (1561) 1 Plowd 212 (75 ER 325) at 220 'the said statute of king Edward 4 ordains three things, first, it establishes the county palatine of Lancaster; secondly, it vests it in the body politic of the king of this realm and his heirs; thirdly it divides it from the order of the other possessions of the Crown.' (opinion of judges). *Fisher v Batten* (1683) 1 Ventr 155 (86 ER 105) at p 157 per Hale CJ 'The county palatine of Lancaster is by Act of Parliament [i.e. the Act of 1461, see n 37].'

The effect of this was that the duchy was held by the sovereign in his body politic, as opposed to his body natural;⁴⁰

In 1485, a charter which is treated as an Act of Parliament⁴¹ provided that Henry VII (1485-1509) would hold and enjoy to him and his heirs for every more the county palatine of Lancaster and all honors *etc.*⁴² This charter broke the entail of Edward IV, and entailed both Crown and the duchy on Henry VII and his heirs for ever. Thus, the sovereign held, once more, the duchy in his *body natural* (it seems) as opposed to his *body politic*.⁴³ Although the position historical position is complicated, the conclusion is clear:

- The county palatine of Lancaster was created in 1267.⁴⁴ It was granted various *jura regalia* in 1351 and it became a parcel of the duchy in 1461;
- Both the county palatine and the duchy pass from sovereign to sovereign as a separate and distinct inheritance from the Crown itself. This is the effect of the specific provisions preventing them being merged in the case of Henry IV (in 1399), Edward IV (in 1461) and Henry VII (in 1485).⁴⁵

The land comprising the duchy has been subject to many fluctuations over time. Further, it was often sold off (and re-acquired) - as well as being encumbered with dis-advantageous fee farm rents and mortgages - by impecunious sovereigns.⁴⁶ Only in the reign of George III (1760-1820) was a more efficient management of the duchy instituted. The title of the Crown to the foreshore abutting on the land of the county palatine of Lancaster rests either on its *prima facie* right or on grants made to the Dukes of Lancaster before possession of the duchy became part of the possessions of the Crown.⁴⁷

*In conclusion, the duchy of Lancaster embraces a county palatine and both are held by the sovereign without being annexed to the Crown. They comprise a 'separate and distinct inheritance'.*⁴⁸

2. Legal Status of The Duchy

(a) Non-Merger of the Duchy with the Crown

Why was the title of Duke of Lancaster expressly retained by Henry IV (1399-1413) and not allowed to merge with the Crown - the latter being the superior title? Coke (published in 1641) supplies a plausible explanation:

King H 4 [i.e. Henry IV, 1399-1413] by his charter by authority of parliament, *anno primo* of his reign [i.e. 1399] doth sever the possessions of the duchy, *etc.* from the crown: and that which John of Gaunt held for life, is established for ever, and specially by the statutes of 1 E 4 [1461]⁴⁹ and 1 Hen 7 [1485]⁵⁰ hereafter mentioned: and this separation Hen 4 made, for that he knew he had the duchy of Lancaster (*par multis regnis*) sure and indefeasible title:

and he could not be both *rex* and *dux*, but specially that his title to the Crown was not so assured, for that after the decease of Ric 2 [ie. Richard II, 1377-99] the right of the Crown was in the heir of Lionel

⁴⁰ *Duchy of Lancaster Case* (1561) 1 Plowd 212 (75 ER 325) at 219 'So that the said inheritance of the dutchy is [placed] and settled only in the body politic of the king.'

⁴¹ 1 Hen 7 (1485). See also Coke, n 22, vol 4, p 205.

⁴² Blackstone, n 20, vol 1, p 114-5, 'And in 1 Hen VII [1485] another act was made to vest the inheritance thereof in Henry VII and his heirs; and in this state, say sir Edward Coke and Lambard, *viz.* in the natural heirs or posterity of Henry VII, did the right of the duchy remain to their days; a separate and distinct inheritance from that of the crown of England.' Coke, n 22, vol 4, p 205 'By which act also all former entails are cut off, and in this state doth the duchy stand at this day... Within the county palatine of Lancaster the duke having *jura regalia*, his jurisdiction and privileges therein were very great.' (spelling modernized). See also Lambard, *Archeion* (Harvard UP, 1957), p 233; Baines, n 9, p 71 and Somerville, n 10, vol 1, p 261.

⁴³ See, however, the discussion of this in 2(b).

⁴⁴ Many accounts of the duchy say that it was created a county palatine in 1351. This is incorrect. It was a county palatine in 1267. However, it was only accorded (formally) with extensive *jura regalia* in 1351. Cf. Coke, n 22, vol 4, pp 204-5.

⁴⁵ Halsbury, n 14, vol 12(1), para 300, n 4 'By these charters the duchy and county palatine were reunited in possession with the Crown, and the *jura regalia* were only prevented from merging by their special provisions.'

⁴⁶ See generally, Baines, n 9, pp 68-71, 171. Also, pp 378-9 (Hyde's address to George III in 1772, see n 12).

⁴⁷ Halsbury, n 14, vol 12(1), para 246. The duchy became part of the possessions of the Crown in 1399. See also Somerville, n 10, vol 2.

⁴⁸ Blackstone, n 20, vol 1, p 115, fn 'If this notion of Lambard and Coke [i.e. that the duchy was a separate and distinct inheritance from the crown] be well founded, it might have become a very curious question at the time of the revolution in 1688, in whom the right of the duchy remained after king James's [i.e. James II, 1685-9] abdication. The attainer indeed of the pretended prince of Wales [i.e. James Francis Edward Stewart, the Old Pretender [1688-1766]] (by statute 13W III c 3) has now put the matter out of doubt. And yet, to give that attainer it's full force in this respect, the object of it must have been supposed legitimate, else he had no interest to forfeit.' See also Baines, n 9, pp 66-7.

⁴⁹ See n 37.

⁵⁰ See n 41.

duke of Clarence, second son of Edw 3 [ie. Edward III, 1327-77] John of Gaunt father of Hen 4 [1399-1413] being the fourth son: and therefore he intended not, that by the law of the Crown the duchy should go with the Crown, and that he should be seised thereof in right of the Crown, as the king afterwards was of the possessions of the duchy of York, earldom of March and others.⁵¹ (*spelling modernized and wording divided for ease of reference*)

In short, Henry IV kept the duchy separate from the Crown since he was more certain of his legitimate right to the former than the latter and that - if he later lost his Crown - he still had the duchy of Lancaster to fall back on.

(b) Status of the Duchy in 1561

Despite the duchy (which includes the county palatine) being separate from the Crown can it really be said that the sovereign, today, holds it in a natural capacity (*persona privata*) as opposed to in a political (*persona publica*)? ⁵² Halsbury states:

In virtue of this charter [i.e. the charter of Henry VII of 1485, see 1] the duchy has been held to be vested in the monarch in her natural capacity, and not in her political capacity in right of the Crown, though this appears to have been doubted.⁵³

The authority cited for the sovereign holding the duchy in a natural capacity is the *Duchy of Lancaster Case* (1561) which dealt with the legal position *vis-à-vis* Henry VII (1485-1509). ⁵⁴ Here, it was stated that the judges:

all agreed, that king Henry 7 [1485-1509], had the dutchy in his body natural, as king Henry 5 [1413-22] had it, disjoined from the Crown and not as king Edw 4 [1461-83] had it. And this was by force of the Act made in the time of the said king Henry 7 [i.e. the Act of 1485, see n 41].⁵⁵

Thus, the duchy was held, so the judges concluded, by the sovereign as a personal possession and not as a political (i.e. State) one.⁵⁶ It should be noted, however, this was doubted in the same case. ⁵⁷ The sovereign holding the duchy as a personal possession was also doubted in *Alcock v Cooke* (1829).⁵⁸ Here, Best CJ stated:

Does the king descend from his high estate, to hold lands in any part of the kingdom upon different terms from those on which he holds all his estates ? It would be inconsistent with the dignity of the king that he should do so; and therefore it has been decided that, although he hold lands as Duke of Lancaster, he holds them as king also; and that all the prerogatives and privileges of the king belong to him with reference to those lands, the same as they do with reference to lands which belong to him immediately in right of his Crown. ⁵⁹

⁵¹ Coke, n 22, vol 4, p 205. Blackstone, n 20, vol 1, p 114 'But he was too prudent to suffer this [the duchy] to be united to the crown, lest if he lost one, he should lose the other also.' Lambard, n 42, p 233 '[Henry IV] knowing himself to be more rightfully duke of Lancaster, than king of England, determined to save his right in the duchy, whatsoever should befall him in possession of the kingdom. And therefore he separated his duchy from the Crown, and settled it so, in the natural body of himself, and his heirs, as if he had been no king or body politic at all...' (*spelling modernized*). *Duchy of Lancaster Case* (1561) 1 Plowd 212 (75 ER 325) at p 215 'a politic scheme of king Henry 4 who well knew that he had the duchy of Lancaster upon a good and indefeasible title.' (opinion of judges). See also Account, n 7, p 7 and Somerville, n 10, vol 1, p 139.

⁵² See Castor, n 7, p 17 with reference to the sovereign's two bodies as *persona privata* and *persona publica*. See generally EH Kantorowicz, *The King's Two Bodies: A Study in Medieval Political Theology* (Princeton, 1957). See also W Holdsworth, *A History of English Law* (Sweet & Maxwell, reprint 2003), vol 4, p 202 *et seq.*

⁵³ Halsbury, n 14, vol 12(1), para 300.

⁵⁴ 1 Plowd 212 (75 ER 325). See also Somerville, n 10, vol 1, pp 145-51. At p 145 'The effect as it appeared to the lawyers and was expressed by Plowden was, that the prerogatives that the law attributes to the person of the king hold place equally for the duchy land as for other land he has in capacity of his body natural.' Also, p 150 'The succession to the duchy ...was independent of the succession to the throne.'

⁵⁵ See also Castor, n 7, p 3. 'Because it belonged to the king as duke of Lancaster and not to the crown, the duchy had therefore been held by the Lancastrian kings in their body natural, rather than their body politic.'

⁵⁶ 1 Plowd 212 (75 ER 325) at p 213 'For the king has in him two bodies, *viz*, a body natural, and a body politic. His body natural...is a body mortal...But his body politic is a body that cannot be seen or handled, consisting of policy and government, and constituted for the direction of the people, and the management of the public weal.' Also, p 214 'if land descends to the king from his common ancestor, he shall have it by reason of his body natural, for his body is privy to the descent, but the body politic is not privy to this descent' and 'the duchy of Lancaster came to the said Henry 4 [1399-1413] by descent on the part of his mother.'

⁵⁷ At p 221.

⁵⁸ 5 Bing 320 (140 ER 1092).

⁵⁹ At pp 351-2. At p 354 'there is no distinction between the privileges of the king as Duke of Lancaster, and the prerogatives of the king as king of England.' See also Coke, n 22, vol 4, p 209 (interpreting the *Duchy of Lancaster* case of 1561, he regarded any lease made by Edward VI (1547-53) as king in right of the duchy of Lancaster not being affected by his nonage since he was within age as king 'either

(c) Status of the Duchy Today

What of the legal position of the duchy today? One would assert that, while it may have been the legal position that Henry VII [1485-1509] held the duchy as a personal possession, today the sovereign holds the duchy in a political capacity only.⁶⁰ In short, the Queen cannot do with the duchy as she likes. It is not a personal possession such as her private residences of Sandringham and Balmoral are, for example. The Queen cannot sell - or transfer - the duchy to anyone else since the Act of 1485 (see **1**) expressly provides that it devolves on the sovereign's 'heirs'⁶¹ (although she can grant the actual title of Duke of Lancaster on to someone else - separate from the duchy.⁶² However, this has always been the case, regardless of whether the sovereign held the duchy in a natural, or a political, capacity).

One would also assert that the Queen, today, actually has no real influence over the duchy, such as a true landowner would have when possessing an estate in a personal capacity.⁶³ Thus, unlike a true landowner, the Queen is not responsible for all property in the duchy such as rivers, bridges, roads, buildings *etc.* The State has taken over this role in the duchy just as it has elsewhere and the general law applies. Further, apart from a few employees of the duchy, no one else living in the duchy works for her as the duke, and they owe her no personal obligations. Indeed, one would suggest, today, that the position of the duchy of Lancaster - *vis-a-vis* the Queen is, in fact - no different to the Crown Estate which is not owned by the Crown personally.⁶⁴ Thus, the Queen's status is a political (formal) one - as opposed to the duchy being her personal possession to do with as she likes.

(d) Revenues of the Duchy

As Halsbury notes, the sovereign receives, *via* the privy purse,⁶⁵ the revenues of the duchy.⁶⁶ This is longstanding. Although, during the English Civil War (1642-60) the revenues of the duchy went to the State,⁶⁷ apart from this period, the revenues from the duchy have gone to the sovereign. Baines (writing in 1888) stated:

In each successive reign, from the period when Henry of Bolingbroke ascended the throne of this kingdom [i.e. 1399] to the present time, with the exception of the *interregnum* of the Commonwealth, the sovereigns of England have enjoyed the title of duke and the revenues of the duchy of Lancaster, both of which are now in possession of our gracious sovereign, and will descend as an inalienable

within the county of Lancaster or without parcel of the duchy (*the royal and polick capacity of the king not being altered*). See also Selden Society Reports, *Reports from the Lost Notebooks of Sir James Dyer*, vol 109, pp 30-1 ('name of duke was drowned in the name of king.').

⁶⁰ The Act of Settlement 1700 passes to the reigning sovereign (descending from Princess Sophia referred to in the Act) all 'honours, styles, titles, regalities, prerogatives, powers, jurisdiction and authorities belonging or appertaining to the Crown and regal government'. This would include the title of Duke of Lancaster, the *jura regalia* (prerogatives) given to the county palatine and the jurisdiction of the duchy. However, the Act does not, in itself, decide today whether the sovereign holds the duchy in a personal or official capacity. See Halsbury, n 14, vol 12 (1), para 300, n 10.

⁶¹ Hardy, n 8, p 346 'to him [i.e. Henry VII] and his heirs for ever more.' (spelling corrected). Baines has described the duchy as an 'inalienable inheritance' see n 68.

⁶² 1 Plowd 212 (75 ER 325) at 217 'they don't make the king to be duke of Lancaster...for his name and dignity of king merges and drowns the inferior name and dignity of duke within his own realm.' See also p 222. Somerville, n 10, vol 1, p 144 'The dignity of duke, but not the duchy, could still be granted by the sovereign. Queen Elizabeth [Elizabeth I, 1558-1603] is reported to have offered the title to James VI of Scotland [later James I, 1603-25]; there was a suggestion in 1727 or the next year that it might have been a title for Prince William [William, Duke of Cumberland, son of George II, 1721-65], and it was once thought that the Prince Consort Albert [husband of Queen Victoria, 1819-61] might be created duke of Lancaster.' See also Somerville, n 10, vol 2, p 2. Halsbury, n 14, vol 12 (1), para 39 'The monarch...has title in right of the duchy of Lancaster by inheritance...The title in the duchy of Lancaster...merges[s] in that of the monarch.'

⁶³ Somerville, n 10, vol 1, p 261 'the attachment of the duchy to the crown is the established fact.' See also G Harrison, *Memoir respecting the Hereditary Revenues of the Crown and the Revenues of the Duchies of Cornwall and Lancaster; and Remonstrance and Petition addressed to the Chancellor and Council of the Duchy of Lancaster* (1838), p 139, n 3.

⁶⁴ See generally, Halsbury, n 14, vol 12(1), para 278 'The Crown Estate comprises lands and other rights including minerals and certain incorporeal hereditaments which the monarch enjoys in her political capacity in right of the Crown and which are now under the management of the Crown Estate Commissioners.. See also *ibid*, para 66. Cf. Crown Proceedings Act 1947 s 38(3) provides that references to the Queen in her private capacity are construed as including a reference to the Queen in right of the duchy of Lancaster. See also Halsbury, n 14, vol 12(1), para 103.

⁶⁵ Halsbury, n 14, vol 12(1), para 68 n 6 'The privy purse is mainly financed through the net income of the duchy of Lancaster.'

⁶⁶ *Ibid*, para 300. In fn 10 it states 'This seems to be by reason of Henry VII's charter [i.e. charter of 1485, see n 41], for under Edward IV's charter [i.e. of 1461], the Crown had the duchy in right of the Crown.' See also the Duchy of Lancaster website, n 111, who state that the duchy is 'held in trust for the sovereign, and is used to provide income for the use of the British monarch.' The surplus in 2010 was £ 13.3m.

⁶⁷ Baines, n 9, pp 76-7.

inheritance to the successors of the present monarch.⁶⁸

That the Queen receives such revenues today is not determinative of the issue of whether she holds the duchy in a natural or a political capacity.⁶⁹ For example, although the Crown jewels are used by the sovereign in a natural capacity, it has long been accepted that they are held on behalf of the nation.⁷⁰ Also, from an early date, revenues from the duchy were being used to finance the Crown in the wider sense (i.e. royal government) as opposed to going into the pocket of the sovereign in person.⁷¹ Further, the sovereign receives funds from the Crown Estate, as part of her Civil List, and no one is suggesting that the sovereign holds the Crown Estate in a natural capacity.

(e) **Sovereign holds the Duchy in a Political Capacity**

Castor stated that, by 1461:

Edward IV [1461-83], unlike his predecessors, held the duchy not as a private possession but in right of the crown. To the new king, therefore, the Lancastrian estates formed merely one part of his royal inheritance, and Lancastrian lordship one aspect of his royal authority. The duchy was no longer a personal power base held by the king in his 'body natural'; its incorporation into the 'body politic' of the crown was complete.⁷²

One would agree and assert that, in actually - and despite the case of the *Duchy of Lancaster* (1561) - sovereigns since Edward IV in 1461 have held the duchy in a political capacity. Indeed, more and more so, as the role of the sovereign has diminished while that of the State has increased. Thus, whatever the legal fiction may have been in 1561, today, the sovereign cannot treat the duchy of Lancaster as a personal possession. And if she sought to do so - just as if Prince Charles attempted to do so in respect of the duchy of Cornwall - this would provoke a political crisis.

In conclusion, the sovereign holds the duchy of Lancaster (including the county palatine) in a political - that is, in an official capacity - only.

3. **County Palatine of Lancaster and Jura Regalia**

Halsbury notes that:

The royal prerogatives extend, in general, to the lands of the duchy of Lancaster as they do to the land held in right of the Crown.⁷³

In respect of the benefits of Lancaster being a county palatine, Coke (writing in 1641) stated of the latter that:

The power and authority of those that had counties palatine was king-like, for they might pardon treasons, murders, felonies, and outlawries thereupon.⁷⁴ They might also make justices of eire, justices of assise, of goal delivery, and of the peace.⁷⁵ And all original, and judicial writs, and all manner of indictments of treason and felony, and the process thereupon were made in the name of the persons having such county palatine. And in every writ and indictment within any county palatine, it was supposed to be *contra pacem* of him that had then the county palatine.

⁶⁸ Ibid, p 77.

⁶⁹ The Queen is said not to be entitled to the capital of the portfolio, nor capital profits. The sovereign also pays tax on the revenue. See Annual Report of the Duchy of Lancaster 2011.

⁷⁰ Halsbury, n 14, vol 12(1), para 374 'The monarch may not grant away the jewels of the Crown, which are heirlooms and as such do not pass to the executor.' The same applies in respect of the royal collections. Ibid, para 375 'None of the royal collections or heirlooms are regarded by the monarch as being at her personal disposal.'

⁷¹ Castor, n 7, pp 34, 37. Also p 38 'By 1422, Henry V [1413-22] had succeeded in integrating traditions of Lancastrian service into a united body politic, and in maximizing the potential of the duchy as a financial resource in national government.' Cf. Henry VI [1422-61 & 1470-1], p 50.

⁷² Castor, n 7, p 312 referring to Kantorowicz, n 52, pp 9-10,403-4. Castor also notes, p 6 that 'by the fifteenth century the concept of the 'crown' in its broadest sense represented not the king alone, but the unity formed by the ruler and the ruled, the king and the realm.'

⁷³ Somerville, n 10, vol 1, p 41 'the palatine powers were royal powers in devolution, an arrangement which served well in regions where effective government from the centre was impossible or difficult to attain.' Certain palatine powers were re-vested in the Crown pursuant to the Jurisdiction in Liberties Act 1535, ss 1-3 (27 Hen 8 c 24, rep)

⁷⁴ Outlawry was abolished in 1938. The Criminal Law Act 1967, s 1 abolished felonies.

⁷⁵ Justices of eyre, assise and goal delivery have been abolished. Justices of the Peace are now regulated by statute.

But these and some others are taken away from them that have such county palatines, and annexed to the Crown, and all writs to be made in the king's name, but the *teste* is in the name of him that hath the county palatine; and they shall have forfeitures of lands and goods for high treason, which forfeiture accrues by common law.⁷⁶ But for treasons or forfeits given after the erection of the county palatine by any act of parliament, they shall not have them. (*spelling modernized and wording divided for ease of reference*).⁷⁷

This palatinate of Lancaster was more endowed than the other palatinates, despite being younger than they were.⁷⁸ What exactly were the *jura regalia* which the county of Lancaster had, however? This may be determined with reference to the various charters granted in respect of the duchy (listed in *Annex A*). Somerville summarized them as follows:

The grant of palatine powers to the duke of Lancaster expressly invoked the Chester model...He was to have his chancery in the county, issuing writs under the special seal of that chancery; and his own justices for pleas of the Crown and all other pleas touching the common law, with execution to be made by his writs and his ministers in the county. But the king did not grant away all royal authority in the county, for he reserved the right of direct taxation in the form of tenths and fifteenths and other subsidies, as well as ecclesiastical tenths and grants. Moreover, he retained the power to pardon life and limb and to correct errors in the duke's courts of the county.⁷⁹ It was also provided that the duke should send to Parliament two knights of the shire and two burgesses from every borough in the county, and assign collectors of tenths, fifteenths and subsidies⁸⁰...Of the palatine rights referred to in general terms the most distinctive, not expressly mentioned in the grant but implied in the provisions for a chancery, was that the king's writ did not run in the palatinate...It followed that men of the palatinate could not be summoned to appear or answer any matter outside it; but this was not so in causes of treason and error...Other rights in ...Chester ... which attached also to the county palatine of Lancaster were the powers of making corporations and erecting fairs and markets, of staying procedure and granting exemption from juries or assizes.⁸¹

The *jura regalia* for the county palatine of Lancaster were granted in 1351 to Henry Grosmont, first Earl of Lancaster, for life. They were then given to his successor, John of Gaunt and extended to his heirs.⁸² After the death of John of Gaunt they were, by charter, extended to also cover the augmenting geographical ambits of the duchy. The nature of these *jura regalia* are now considered:

(a) County Palatine Courts

One of the most important benefits of being a county palatine was that Lancaster was able to operate its own court system as well as have certain privileges concerning the service of writs, summons *etc.*⁸³ Thus, the palatinate had a:

- Court of Chancery (also called the Lancaster Palatine Court);⁸⁴
- Court of Exchequer;⁸⁵

⁷⁶ Forfeitures for treason and felonies were abolished by the Forfeiture Act 1870.

⁷⁷ Coke, n 22, vol 4, p 204. See also Blackstone, n 20, vol 1, p 113 and Baines, n 9, ch 6.

⁷⁸ *Ibid*, p 210 'This county palatine was the youngest brother, and yet best beloved of all other, for it had more honours, manors and lands, annexed unto it, than any of the rest, by the house of Lancaster, and by H 8 [Henry VIII, 1509-47] and queen Mary [1553-8], albeit they were descended also of the house of York, viz from Eliz. the eldest daughter of E 4 [i.e. Elizabeth of York, 1466-1503]' (*spelling modernised*).

⁷⁹ See also Castor, n 7, p 22, n 3 & p 24.

⁸⁰ Both these are obsolete. Tenths, fifteenths and subsidies were medieval forms of Crown taxation. They were superseded by Parliamentary taxation. See also Somerville, n 6 (second article), p 60.

⁸¹ Somerville, n 10, vol 1, pp 42-3. See also, p 312. All these *jura regalia*, including the power to make corporations and erect fairs and markets, are now obsolete. For exercise of the right to grant markets outside the county palatine in the 18th century, see Somerville, n 10, vol 2, p 111.

⁸² Hardy, n 8, pp 65-70 (charter of 16th February, 1390). Also, p 71 *et seq* (charter of 29 June, 1396).

⁸³ See generally, Baines, n 9, p 90 *et seq*.

⁸⁴ *Ibid*, p 90. 'The [court] exercises a concurrent jurisdiction with the Chancery Division of the High Court in all matters of equity within the county palatine...' It was based in Preston. There was an appeal from this court to the Duchy Court, see Baines, n 9, p 68. See also p 154. See also Halsbury, n 14, para 854 'the Court of Chancery of the County Palatine of Lancaster...exercised the same powers and jurisdiction as the High Court of Justice in its Chancery Division.'

⁸⁵ Baines, n 9, p 90. Also, p 60 'In...(1390) he [John of Gaunt] obtained a further confirmation of the privileges of his duchy of Lancaster, in the appointment of a chancery court there, with the power to issue writs under his own seal, likewise an exchequer, with barons and other necessary officers, with power to make justices itinerant for the pleas of the forest *etc.*'

- Court of Common Pleas which dealt with civil suits;⁸⁶

Thus, a charter of 1351 provided for the Duke of Lancaster to have a court of chancery and for his writs to be sealed under his seal.⁸⁷ Also, to have attachment of all pleas of the Crown and other pleas. These privileges were confirmed to John of Gaunt when he inherited⁸⁸ and, by letters patent of 10 November 1378, the latter was expressly given the right to have an exchequer in Lancashire with barons and other ministers as necessary.⁸⁹ In respect of these courts - apart from the court of chancery - the Judicature Act 1873, s 16 transferred their jurisdiction to the High Court.⁹⁰ The court of chancery was merged with the High Court pursuant to the Courts Act 1971.⁹¹ Thus, no county palatine courts operate today.

(b) Various Legal Privileges

A charter of 1349 provided for the Earl of Lancaster to have the return of all writs and summons of the exchequer.⁹² This was confirmed to John of Gaunt when he inherited.⁹³ The effect of the grant of palatine privileges, however, was that - in the county palatine of Lancaster - the king's ordinary writs for redress of grievances or the punishment of offences between man and man were not available within the county palatine.⁹⁴ However, after 1535, all writs ran in the name of the sovereign, although reference was made to the chancellor of the duchy.⁹⁵ As to other privileges:

- It was also one of the privileges of a county palatine that none of its inhabitants could be summoned out of their own county except in the case of treason, or error by any writ or process;⁹⁶
- The Crown had the prerogative to the chattels of felons and fugitives - as well as fines and amercements, forfeitures etc. This prerogative it could franchise to others - usually in return for the payment of money. Thus, a charter of 1349 provided that the Earl of Lancaster had the right to all the chattels of his men and tenants who were felons and fugitives;⁹⁷
- A charter of 1349 provided that the Earl of Lancaster had the right to all fines and amercements for trespasses and other offences.⁹⁸ Also, all pleas of withernam.⁹⁹

⁸⁶ Ibid, pp 54 & 91-2. There was also a court of criminal jurisdiction. However, it did not differ from the Queen's ordinary court and it disappeared as a result of the Judicature Act 1873. Ibid, p 54 and Somerville, n 6 (second article), p 65.

⁸⁷ Hardy, n 8, p 10 'for the whole of his life he may have within the same county [of Lancaster] his chancery, and his writs to be sealed under his seal to be deputed for the office of the chancellor, his justices to hold as well pleas of the crown as all other pleas whatsoever touching the common law, and the cognizance thereof, and all manner of execution to be made by his writs and his ministers there.'

⁸⁸ Ibid, p 12 'the return of all writs...and all pleas of withernam'. See also pp 13, 15, 22 & 33 (court of chancery).

⁸⁹ Ibid, p 63. See also Somerville, n 10, vol 1, pp 58-9. At p 59 'At the same time the duke was given power to appoint his own justices for pleas of the forest, a regality which had also been assumed from the general wording of the original grant and one which Duke Henry had exercised... Into the exchequer at Lancaster came the profits of justice; the barons levied fines imposed by the justices, and estreats from the chancery rolls were sent to the exchequer wherever it was affected...[also] although the records are lost, there is no doubt that this exchequer took cognizance of pleas of debt between subjects and the barons gave judgment as judicial officers.'

⁹⁰ Baines, n 9, p 92. See also Somerville, n 6 (second article), p 65. See also Somerville, n 10, vol 2, p 428.

⁹¹ Halsbury, n 14, vol 10, paras 853, 854 & 606, n 10.

⁹² Hardy, n 8, pp 6-7 'return of all writs of us and our heirs, and summons of the exchequer of us and our heirs, and the attachment as well of pleas of the crown as of other pleas whatsoever in all his lands and fees, so that no sheriff or other bailiff or minister of us or our heirs may enter those lands or fees to execute the same writs and summons, or to make attachment of pleas of the crown, or other pleas aforesaid, or to do any other office there, unless in default of the same Earl and his bailiffs and ministers in his lands and fees aforesaid.'

⁹³ Ibid, p 12 'the return of all writs...and all pleas of withernam'. See also pp 13, 15, 22, 33 (court of chancery) and 63 (charter of Richard II of 1378). See also Hardy, n 8, p 22 and Somerville, n 6 (second article), p 60 'the return of writs...the right to execute the king's process by his [i.e. the Duke's] own officers.'

⁹⁴ Somerville, n 6 (second article), p 60 'The technical result of the grant of palatine powers was the exclusion of the king's writ in the territory.' Also, p 61 'the palatine powers meant that the administration of justice in Lancashire was in the duke's hands. Therefore, there was created or adapted a whole system which was a replica in miniature of the royal courts at Westminster.'

⁹⁵ 27 Hen VIII (1535) c 24, s3 (rep). Baines (writing in 1888), n 9, p 82 'Hence it is that all ordinary writs out of the king's court at Westminster, for service in this county, are addressed to the chancellor of the duchy, commanding him to direct the sheriff to execute them, and that all processes to that office, out of the chancery of the county palatine, are not tested before the king or his justices at Westminster, as in other counties.' See also AT Carter, *A History of the English Courts* (7th ed, 1944), p 116 and Blackstone, n 20, vol 3, p 79.

⁹⁶ Coke, n 22, vol 4, p 411. See also Baines, n 9, p 87.

⁹⁷ Hardy, n 8, p 7 'he [the Earl] may have the chattels of his men and tenants, being felons and fugitives, so that if any one of his men or tenants ought to lose life or limb for his offence, or shall flee and be unwilling to stand his trial, or commit any other offence for the which he ought to lose his chattels, whatsoever justice shall be had of him, whether in the court of us or our heirs or any other court, such chattels shall belong to the same Earl; and that it shall be lawful for him or his ministers without hindrance of us or our heirs, or of our sheriffs, or other bailiffs or ministers whomsoever, to put themselves in seisin of the chattels aforesaid, and to retain them to the use of the Earl.'

⁹⁸ Ibid, pp 7-8 'he may have for the whole of his life all fines for trespasses and other offences whatsoever, and also all the fines for licence to agree, and all amercements, ransoms and forfeited issues, and forfeitures, year, day, and waste and estrepement, and all things which can pertain to us and our heirs of the like year, day, and waste, and murders, in respect of all the men and tenants of his lands and fees whatsoever

These privileges were extended to John of Gaunt and his heirs. All these privileges are long obsolete.

(c) Freedom from Tolls

Another prerogative which the Crown often franchised was freedom from some, or all, tolls - these comprising a medieval form of local taxation. Thus, a charter of 1349 provided that the Earl of Lancaster was quit of all:

paviage, passage, payage, lastage, stallage, tallage, carriage, pesage, picage and groundage.¹⁰⁰

This was confirmed in a later charter to apply to John of Gaunt when he inherited.¹⁰¹ As to the meaning of these tolls:

- pavage (pavagium) - toll for paving highways and streets;¹⁰²
- passage (passagium) - toll for ferrying over water;¹⁰³
- payage (pedage) - toll for passing through a place;¹⁰⁴ -
- lastage (lestage) - toll imposed on traders at fairs, to carry goods;¹⁰⁵
- stallage - toll for erecting, or having, a stall in a fair or market;¹⁰⁶
- tallage - toll levied on (usually Crown) land;¹⁰⁷
- carriage - toll for transporting goods through a place;¹⁰⁸

in any soever of the courts of us and our heirs where such men and tenants shall happen to make fine or be amerced, or forfeit issues, or such year, day and waste, or forfeitures, and murders happen to be adjudged, as well before us and our heirs, and in the chancery of us and our heirs, and before the treasurer and barons of the exchequer of us and our heirs, and before the justices of the bench of us and our heirs and before the steward and marshals or the clerk of the market of the household of us and our heirs for the time being, and in all other courts of us and our heirs, and before the justices in heir, to hold common pleas and pleas of the forest, and before all other justices and ministers of us and our heirs whomsoever, as well in presence of us and our heirs as in absence of us and our heirs; which fines, ameracements, ransoms, issues, year, day, waste, or estrepement, forfeitures and murders, would pertain to us or our heirs if they had not been granted to the aforesaid Earl.'

⁹⁹Withernam, which derives from the Anglo-Saxon words 'wither' and 'nam', signified a right to seize chattels in lieu of those unjustly taken or detained (i.e. reprisal). Oxford English Dictionary (OED)(withernam), 'In an action of replevin, the reprisal of other goods in lieu of those taken by a first distress and eloiigned; also the writ (called *capias in withernam*) commanding the sheriff to take the reprisal.' See Blackstone, n 20, vol 3, pp 148-9.

¹⁰⁰ Hardy, n 8, p 6, 'that he [the Earl] may have all and singular the liberties and acquittances contained in the said charter in all the lands and fees which he now possesses, and may enjoy them for the whole of his life; that is to say, that he and all his men be quit of paviage, passage, payage, lastage, stallage, tallage, carriage, pesage, picage, and groundage, throughout all our realm and dominion.'

¹⁰¹ Hardy, n 8, p 22.

¹⁰² Also spelt paviage. OED n 99 (pavage) 'A tax or toll towards the paving of highways and streets.' See also C Welch, *History of the Worshipful Company of Paviers* (published by the same, 1909).

¹⁰³ OED, n 99 (passage). 'A charge or custom levied upon passengers, a toll' *Webb's Case* (1612) 8 Coke's Reports 46b (77 ER 541) ('*passagium*, that is properly a ferry for the passage of men and cattle over water, for which the owner has a toll.'). See also G Norton, *Commentaries on the History, Constitution & Chartered Franchises of the City of London* (London, Longmans, 1869), p 287. S Seyer, *The Charters and Letters Patent granted by the Kings and Queens of England to the Town and City of Bristol* (JM Gutch, Bristol, 1812), pp 1-2 'Passage signifies money paid for crossing a river or (as it is sometimes used) for crossing the sea. It is over water, as way is over land; see 4 Edw 3 cap 8 [1331].' Ewage (acquage) was also used to describe a toll for passage across water. OED (ewage) '*ewagium*, the same with acquage which is a toll paid for water passage.' See also UA Forbes & HJW Coulson, *The Law Relating to Waters, Sea, Tidal and Inland* (Sweet & Maxwell, 2nd ed, 1902), pp 501-15.

¹⁰⁴ OED, n 99 (payage) 'Payage is an obsolete version of peage, toll.' Peage or pedage a 'toll paid for passing through a place or country.' HT Riley, *Munimenta Gildhallae Londoniensis* (Rolls Series, 1859-62), Liber Custumarum, pt 2, p 819 'a toll due by custom for having a way through the royal forests...sometimes called 'chrminage' or 'chimmage.' Cf. OED, n 99 (chiminage)(a toll for passing through a place or country).

¹⁰⁵ OED, n 99 (lastage) 'A toll payable by traders attending fairs and markets.' JG Pease & H Chitty, *Treatise on the Law of Markets and Fairs* (London, Knight & Co, 1899) p 56 'Lastage or Lestage: a toll paid for liberty for persons to carry their goods up and down to markets and fairs.' The 'last' (from the Anglo-Saxon, *last*, a burden) was a measure by which several kinds of solid goods were sold. See Norton, n 103, p 287. It is also spelt 'lestage.' However, lastage (lestage) was also a port toll (duty). OED, n 98 (lastage) a 'payment for liberty to load a ship; a port duty.' See also Riley, n 104 (Munimenta, Liber Custumarum, pt 2), pp 737, 811-2. F Hargrave (ed), M Hale, *A Treatise relative to the Maritime Law of England in Three Parts* (London, 1787, rep Gale EBO Print eds), p 75 'lestage, that were port duties of goods unladen.' See also Seyer, n 103, p 6 (lastage is what we now call portage).

¹⁰⁶ Halsbury, n 14, vol 29(2) para 1036, 'Stallage is the appropriate term for payment for the liberty of placing a stall on the soil or for standing room for cattle or goods within the market or fair.' OED, n 99, 'A tax or toll levied for the liberty of erecting a stall in a fair or market.' F Gunning, *A Practical Treatise on the Law of Tolls* (Saunders & Benning, London, 1833), p 85 'Stallage is a duty for the liberty of having stalls in a fair or market, or for removing them from one place to another.' See also Pease, n 105, ch 4.

¹⁰⁷ OED, n 99 (tallage) 'An arbitrary tax levied by Norman and early Angevin kings upon the towns and the demesne lands of the Crown; hence, a tax levied upon feudal dependents by their superiors, also, by extension; a municipal rate, a toll or customs duty; a grant, levy, imposition, aid.'

¹⁰⁸ OED, n 99, (carriage, 3) 'An impost on the transport of goods through a country or territory; a customs duty, toll, or carrier's licence.'

- tronage (pesage); - toll for the weighing of goods on a public scale;¹⁰⁹
- piccage (pickage) - toll for breaking the ground to erect a stall;¹¹⁰
- groundage (grondage) - toll levied on vessels lying on shore or entering a port;¹¹¹

It should be noted that *'passage'* – although first used in the case of water such as in the case of ferry tolls - became a generic term to also refer to the passage of persons along roads and across bridges. Thus, the reference to *'passage'* as well as applying to any ferry toll might also cover any road and bridge tolls.¹¹² There is nothing, however, exceptional in the duchy being exempt from all these tolls. Citizens of the City of London, for example, were exempt from all tolls¹¹³ and partial (or full) exemption also applied to many other boroughs and towns. All of these tolls are now obsolete, with many of them having been replaced by statute or contractual charges (for example, in the case of ferries, charges at fairs and port dues).

(d) Jura Regalia of Chester

In a charter of 1349, the Earl of Lancaster was also granted:

all other liberties and jura regalia pertaining to a count palatine, as freely and entirely as the Earl of Chester is well known to obtain within the same county of Chester.¹¹⁴

The grant of such *jura regalia* was confirmed in a later charter to apply to John of Gaunt and his heirs.¹¹⁵ Thus, potentially, these privileges still apply to the duchy today. As it is, the palatinate of Chester - whose rights were referred to - was abolished in 1830¹¹⁶ (in any case, a monograph on it tells little about its *jura regalia*).¹¹⁷ However, as to what *jura regalia* the duchy of Lancaster had, mention is made in a charter of confirmation to John of Gaunt of 29 June 1396 of the following privileges given to the duchy (see also *Annex A*):

- Assay That is, the weighing and assize of bread and other matters which belonged to the office of the clerk of the market.¹¹⁸ This is long obsolete. Indeed, when Blackstone wrote (in 1766) about clerks of the market they were almost obsolete because justices of the peace, sheriff's tourns and court leets all had the power to inquire into false weights and measures.¹¹⁹ Then, the Markets and Fairs Clauses Act 1847 required the owners of markets to provide proper weights and measures for commodities sold at fairs, obviating the clerk's job.¹²⁰ Courts of clerks of the market were abolished in 1977;¹²¹

¹⁰⁹ To prevent the selling of goods at underweight, from early times there was established in London the king's beam (or tron), the common beam and the small beam. A king's beam (tron) had been established in London at least from 1245, see HT Riley, *Chronicles of the Mayors and Sheriffs of London 1188-1274* (London, Trubner 1863), pp 13-4 (prior and canons of St Bartholomew's sought to set up a new tron). See also, pp 27, 37 (1256, method of weighing) and p 123 (foreigners fined for trying to avoid using the tron in 1269). Pesage seems to have been a toll for weighing less heavy commodities, where the term tronage was applied. See also Pease, n 105, p 56.

¹¹⁰ OED, n 99 (piccage) 'When the soil is broken, the payment is often called piccage.' Gunning, n 106, p 85 'Pickage is a duty for picking holes in the lord's ground, for the posts of the stalls.' There is also pennage 'a sum payable for the liberty to erect pens. However, piccage and pennage are merely names for particular varieties of stallage.' OED, n 99 'A toll paid for breaking the ground in setting up booths, stalls, tents etc at fairs.'

¹¹¹ Ibid n 99 (groundage), 'A duty levied on vessels lying upon a shore or beach, or entering a port.'

¹¹² Roads and bridges subject to tolls are now few in England and Wales (some 16 or so). Further, with one or two possible exceptions, the right to impose the toll is laid down in legislation which would provide for any exemption for the duchy. See McBain, n 2, p 76.

¹¹³ Thus, a charter of Henry I (1100-35) of 1132 provides that 'all the men of London shall be quit and free, and all their goods, throughout England, and the ports of the sea, of and from all toll and passage and lestage [lastage], and all other customs.' See WG Birch, *The Historical Charters and Constitutional Documents of the City of London* (London, Whiting, 1884), pp 3-4.

¹¹⁴ This is subject to a saving for the Crown, see Hardy, n 8, p 10 '(saving always the tenths and fifteenths, and other contributions and subsidies granted and hereafter to be granted to us and our heirs by the commonalty of our realm... and the pardon of life and limbs in case that any person of the same county, or other person in the same county, ought for any delict to lose his life or limb; - and also the superiority and power of correcting those things what shall have been erroneously done there in the courts of the same Duke, or if the same Duke or his ministers shall have failed in doing justice there also in the courts of the same Duke).'

¹¹⁵ Hardy, n 8, p 33

¹¹⁶ William IV c 70 (1830). See also Baines, n 9, p 82.

¹¹⁷ JB Yates, *The Rights and Jurisdiction of the County Palatine of Chester* (printed for the Chetham Society, 1854). See also Doddridge, *Historical Account of the Ancient and Modern State of the Principality of Wales, Duchy of Cornwall and Earldom of Chester* (1630, written 1603), p 122 *et seq.*

¹¹⁸ Hardy, n 8, p 96 'assay and assize of bread, wine, and ale, and of all manner of other victuals whatsoever, and of other things pertaining to the office of the clerk of the market of us and our heirs.' The right of the duchy to prisage and butlerage (customs on wine) was abolished in 1809, see Somerville, n 10, vol 2, p 270.

¹¹⁹ Pease, n 20, n 105, p 13, 'It has been stated recently that one of the latest recorded instances of a clerk of the market exercising powers as a king's officer was in Middlesex, in 1738, when such an officer was authorised by letters patent to inspect all weights and measures within the "little virge."'

¹²⁰ Hardy, n 8, 156. The Weights and Measures Acts 1878-1897 provided for the use of the same weights and measures throughout the UK

- Waif.¹²² Waifs comprises stolen goods which are cast away by a thief in flight.¹²³ The Crown has the right to them in preference to the owner (i.e. the victim) as a punishment for the victim not pursuing the thief. The grant of this privilege to the duchy of Lancaster meant that it - as opposed to the Crown - acquired this privilege. A previous article by the author has argued for the abolition of this right since it is obsolete and the caselaw is very old.¹²⁴ Further, the prospect of waifs arising in modern times is remote, given the presence of a police force to pursue criminals (as opposed to the victim and his friends in times past), the ability of the police to identify the owner of goods *etc*;
- Estrays. These are animals of a tame or reclaimable nature found wandering in any manor or lordship whose owner is unknown. A previous article by the author has argued for the abolition of this right since it is also obsolete.¹²⁵ Further, the prospect of estrays arising in modern times is remote, given the legal requirements to micro-chip agricultural animals *etc*;
- Deodands. There were chattels which had brought about the death of a living being.¹²⁶ They were confiscated by the Crown. This privileged was franchised to the duchy.¹²⁷ However, deodands were abolished in 1846;¹²⁸
- Treasure Trove. Treasure trove is now governed by the Treasure Act 1996 and a previous article has considered it.¹²⁹ Although the duchy has long been held in right of the Crown, prior charters granting treasure trove to the duchy were confirmed.¹³⁰ Thus, the duchy still retains this privilege. If the duchy is abolished, this prerogative will revert to the Crown.¹³¹ It may be noted that any treasure trove in respect of the duchy, a relatively rare occurrence, does not pass to the Queen in person;
- Mainour.¹³² (Also called 'manner'). Essentially, this privilege comprised the right to stolen goods which were found on the thief (literally, in his hands). Closely related to waif (see above) mainour has long been obsolete;
- Wreck. This is now governed by the legislation. The Merchant Shipping Act 1995 provides that the Crown is entitled to all unclaimed wreck found in the UK (or UK waters) except where the right has been granted to others.¹³³ Wreck is claimed in Lancaster by the duchy.¹³⁴ If the duchy is abolished the right to wreck (a rare occurrence in modern times) will return to the Crown.¹³⁵ It may be noted that any treasure trove in respect of the duchy does not pass to the Queen in person;

and for county and borough councils to appoint inspectors of weights and measures. See also Pease, n 105, pp 98-100

¹²¹ Administration of Justice Act 1977, s 23 and Sch 4, pt 1. The office of clerk of the market never seems to have been abolished, however. At Oxford there are still two clerks of the market although these are (academic) ceremonial positions.

¹²² Hardy, n 8, p 97.

¹²³ This was a punishment for the victim not pursuing the thief. The caselaw is very old and there is no need to make such an exception to the general law of property in which ownership is retained by the person with title to the stolen goods. Further, the prospect of waifs arising in modern times is remote, given the presence of a police force, the ability to identify the owner of goods *etc*.

¹²⁴ McBain, n 2 (the last case cited by Halsbury is in 1600).

¹²⁵ *Ibid.* (last case cited by Halsbury is in 1785).

¹²⁶ Walker, n 1 (deodand) 'A person chattel which had been the immediate cause of the death of a living being and which at common law was forfeit to the Crown to be applied to pious uses...The rights to deodands were commonly granted by the Crown to manorial lords and others...'

¹²⁷ Hardy, n 8, p 97.

¹²⁸ Deodands Act 1846 (9 & 10 Vict c 62).

¹²⁹ GS McBain, *Modernising the Monarchy in Legal Terms - Part 3*. (2012) KLJ, vol 23, pp 1-25.

¹³⁰ See G Hill, *Treasure Trove in Law and Practice from the Earliest Times to the Present Day* (1936), p 245 'the King in his right as Duke of Lancaster is entitled to treasure trove within the whole County Palatine.' See also Hardy, n 8, pp 97, 137, 161 & 320 (letters patent and charters of 1396, 1399, 1414 & 1461). See also *AG of the Duchy of Lancaster v GE Overton (Farms) Ltd* [1982] Ch 277. The sovereign in right of Lancaster is also entitled to gold and silver mines on duchy land, see GS McBain, *Modernising the Monarchy in Legal Terms: Part 2*, (2011) KLJ, vol 22, p 102, n 46 referring to the Limitation Act 1980, s 37(6).

¹³¹ See generally, McBain, n 129. Halsbury, vol 12(1), para 373 'Treasure so vesting in the Crown [pursuant to the Treasure Act 1996] is to be treated as part of the hereditary revenues of the Crown.' For duchy treasure trove (and non retention of the same), see Somerville, n 10, vol 2, pp 334-6.

¹³² OED, n 99 (mainour), 'The stolen thing which is found in a thief's possession, when he is arrested; chiefly in the phrase 'taken, found with the mainour.' J Cowell, *Interpreter or Booke containing the Signification of Words* (1607, rep Law Book Exchange 2002) 'Mainour, alias Manour, alias Meinoure, signifieth in our common laws, the thing that a thief takes away or steals' (spelling modernized). Blackstone, n 20, vol 4, p 303 'when a thief was taken with the mainour, that is, with the thing stolen upon him, *in manu*.' Also, vol 3, p 71 ('if taken with the mainour (or *mainoeuvre*, *a manu*) that is, in the very act of killing venison or stealing wood, or preparing to so to do, or by fresh and immediate pursuit after the act is done.'). See also Selden Society, vol 70, p 93.

¹³³ Merchant Shipping Act 1995, s 241. See also Halsbury, vol 12 (1), paras 272 & 277. Also, (5th ed), vol 94, para 1003 *et seq*.

¹³⁴ Halsbury, n 14, vol 12 (1) para 277 and (5th ed), vol 94, para 1006 and the Merchant Shipping Act 1995, s 243 (6). See also Hardy, n 8, pp 38, 57, 88, 128 & 311. For the rare occasion in which wreck was claimed in the past by the duchy, see Somerville, n 10, vol 2, p334, 374 & 411.

¹³⁵ GS McBain, *Abolishing Some More Obsolete Crown Prerogatives - Part 2*, Liverpool Law Review vol 32, issue 3 (2011), pp 275-315 (also online).

In conclusion, all the above prerogatives are obsolete apart from those relating to treasure trove and wreck. Both of the latter are relatively rare and are not availed of by the Queen in person. If the duchy were abolished, the process for them would be administratively simplified with persons finding treasure trove and wreck only having to deal with the Crown.

(e) Abolishing the County Palatine of Lancaster

As previously indicated, the county palatine of Lancaster was created in 1267 and it was accorded *jura regalia* in 1351 (see 1). However, by 1461, it had become part of the duchy.¹³⁶ And the duchy itself is vested in the Crown. In a previous article it has been contended, therefore, that the title of the ‘*county palatine*’ of Lancaster is an empty one.¹³⁷ Not least since all the *jura regalia* accorded to the county palatine are now all obsolete save for wreck and treasure trove. And these - as well as rarely occurring - are not received by the Queen in a personal capacity. As a result, they pass to the Crown in a political capacity, in right of the duchy and could as easily pass to the Crown directly, saving administration.

It is asserted that the county palatine of Lancaster should be abolished since it serves no useful legal purpose.

4. Duchy of Lancaster – Privileges

If the county palatine of Lancaster is abolished, this will still leave the duchy. The only modern text which appears to deal with the legal position of the duchy is Halsbury. It records that the duchy has various privileges accorded to it by the common law and legislation, many of which relate to land. These are now considered:

(a) Court the Duchy Chamber of Lancaster and Attorney-General

The Court of the Duchy Chamber of Lancaster still exists - although it has long been obsolete *qua* court since it has not sat since 1835.¹³⁸ It exercised an equity jurisdiction.¹³⁹ This court was also a court of appeal from the chancery court of the county palatine of Lancaster (abolished in 1971, see 3(a)). Reference was made to the duchy court in Sir Thomas Smith’s, *The Commonwealth of England* (1589)¹⁴⁰ as well as in other legal texts.¹⁴¹ It is asserted that the duchy court of Lancaster, being long obsolete, should be abolished with any jurisdiction it retains (if necessary) being merged with the High Court. The duchy of Lancaster also had a Star Chamber. However, it was abolished in 1640-1.¹⁴² Certain courts - the Barmote courts - exist within the duchy¹⁴³ and the chancellor of the duchy is responsible for appointing the steward and barmaster of the barmote courts on behalf of the sovereign in right of her duchy. These courts do not sit in practice and are obsolete. The duchy of Lancaster also has its own attorney-general. He (or she) is appointed by patent under the seal of the duchy¹⁴⁴ and represents the duchy in legal matters before the courts.¹⁴⁵ Given that the duchy is now part of the Crown and

¹³⁶ See n 37.

¹³⁷ McBain, n 2.

¹³⁸ Halsbury, n 14, vol 10, para 857 ‘The Court of the Duchy Chamber of Lancaster...had jurisdiction concerning equities relating to land held of the Queen in right of the duchy...The court has never been dissolved, but has not sat for a long period.’ Baines (writing in 1888), n 9, p 90 noted that this court ‘has been for many years practically obsolete, but not abolished. It used to be a court of appeal for the chancery of the county palatine, but now all appeals from the latter go to the Court of Appeal as from 1873 (see Judicature Act 1873, s 18). It has a nominal jurisdiction in reference to the estates of the duchy, which be in various counties, and are generally called ‘Duchy Liberties.’

¹³⁹ Ibid. See also Blackstone, n 20, vol 3, p 78 and Somerville, n 6 (second article), p 63.

¹⁴⁰ This was the 3rd ed. Noted by Somerville, n 10, vol 1, p xiv who also notes ‘There is a little confusion in it between the duchy court and the chancery court of Lancaster, and this is continued in effect by Coke, who in his *Fourth Institute* (1st edn, 1644) [see Coke, n 22, vol 4, p 206] discusses the procedure and privileges of the county palatine of Lancaster under the head of the court of the duchy chamber at Westminster.’

¹⁴¹ J Stow, *Survey of London* (1598, rep Dent & Sons Ltd, 1963), p 398; W Fleetwood, *Ducatus Lancastriae* (see Baines, n 9, p 81); Somerville, n 10, vol 1, pp 318-9 and Lambard, n 42, p 12

¹⁴² 15 Car 1. See also Baines, n 9, p 68. Privileges of wards and liveries attached to the duchy were abolished in 1660. 12 Car II. See also Baines, n 9, pp 68 & 74 and Somerville, n 10, vol 2, p 37.

¹⁴³ Halsbury, n 14, vol 10, para 856 ‘The Great Barmote Courts and Small Barmote Courts of the High Peak are ancient courts with jurisdiction relating to lead mining rights and civil pleas relating to those rights in parts of Derbyshire...The Barmote courts of Wirksworth and adjacent liberties are similar to those of the High Peak...’. See also vol 31, paras 588-9.

¹⁴⁴ Ibid, vol 8(2), para 538 ‘The Attorney General of the Duchy of Lancaster is appointed by patent under the seal of the Duchy of Lancaster to represent the interests of the Crown in respect of the duchy.’

¹⁴⁵ See also *Duchy of Lancaster* (1884) 14 QBD 195.

the obsolete nature of the duchy court of Lancaster, it is asserted this office should be abolished. The Crown's Attorney-General can handle such cases, which rarely arise in any case.

(b) Privileges in respect of Land

Halsbury refers to various privileges and restrictions which have arisen in the law as a result of the status of the duchy, *viz.*

- The non-recital of a prior grant for life invalidates a subsequent grant of duchy land,¹⁴⁶
- Three usurpations of an advowson in the duchy will not put the Crown out of the right,¹⁴⁷
- Grants of duchy land are not void by reason of the minority of the sovereign,¹⁴⁸
- In the absence of express words, or necessary intendment, the Crown in right of the duchy is not bound by legislation. However, this rule is subject to various exceptions;¹⁴⁹
- Grants of duchy land are generally directed by the Duchy of Lancaster Lands Act; 1855 to be made under its seal. They constitute a matter of record and require no delivery;¹⁵⁰
- Although the possessions of the duchy are within the restrictions on alienation imposed by the Crown Lands Act 1702, the chancellor and council can dispose of land not '*convenient*' to be held¹⁵¹ as well as inter-mixed land.¹⁵² They can also exchange land¹⁵³ and purchase any land they deem '*convenient*' to be held.¹⁵⁴

None of these privileges are of great merit (and have rarely been availed of). Further, any restrictions have generally been avoided. Thus, the repeal of all these would cause little change in practice.

(c) Bona Vacantia and Escheat

Bona vacantia and escheat are now seen as two aspects of the vesting in the Crown of property which has no owner.¹⁵⁵ The term '*bona vacantia*' is applied to: (i) the residuary estate of persons dying wholly, or partially, intestate and without a husband, wife or other relative within the statutory classes; (ii) the property and rights of a dissolved company and certain other corporations; (iii) certain other interests including certain interests in trust property.¹⁵⁶ In the case where bona vacantia occurs in the duchy this will pass to the duchy.¹⁵⁷ '*Escheat*' is the capacity of the chief lord to resume land granted by him (or a predecessor in title) on determination of the estate granted. It may arise on disclaimer.¹⁵⁸ Escheated realty (which rarely occurs) in the duchy will pass to the duchy.¹⁵⁹ As it is, the duchy gives its revenue from bona vacantia and escheat, to two registered charities.¹⁶⁰ This is handled by a private firm of solicitors on behalf of the duchy. If the duchy were abolished, the Crown would receive bona vacantia and escheat directly, simplifying things.

¹⁴⁶ *Alcock v Cooke* (1829) 5 Bing 340 (130 ER 320).

¹⁴⁷ *R v Archbishop of York and S Buck* (1591) Cro Eliz 240 (78 ER 496) at 241 in respect of the sovereign (Elizabeth I [1558-1603] holding an advowson in right of the duchy of Lancaster 'she [the sovereign] shall have her privilege in this as if it had been in right of the Crown.'

¹⁴⁸ *Duchy of Lancaster Case* (1561) 1 Plowd 212 (75 ER 325).

¹⁴⁹ *A-G of the Duchy of Lancaster v Moresby* [1919] WN 69. As Halsbury note, the effect is that the tax immunity of the Crown extends to the duchy. See Halsbury, n 14, vol 12(1), para 301.

¹⁵⁰ Halsbury, n 14, vol 12 (1), para 304. Duchy land is granted and demised (and rents and revenues received and applied) under the order and direction of the chancellor and council and other officers of the duchy. *Ibid*, para 305. Land can be annexed to the duchy by letters patent under the great seal, although this has not occurred for many years. *Ibid*, para 306.

¹⁵¹ Halsbury, n 14, vol 12(1), para 308.

¹⁵² *Ibid*, para 309.

¹⁵³ *Ibid*, para 310. For the allocation of monies to improve duchy land, see para 312.

¹⁵⁴ *Ibid*, para 315.

¹⁵⁵ *Ibid*, para 231.

¹⁵⁶ *Ibid*, para 235.

¹⁵⁷ *Ibid*, paras vol 12(1) 231 *et seq.* Also, vol 17(2), paras 174 & 613-4. Agreement is reached with the treasury solicitor to prevent the need for two grants when a resident in the duchy dies intestate leaving land outside it. See vol 17(2), para 174.

¹⁵⁸ *Ibid*, para 233.

¹⁵⁹ *Ibid*, paras 232-3. Also, vol 17, para 656. See also Somerville, n 10, vol 2, pp 410-1.

¹⁶⁰ See Wikipedia (Duchy of Lancaster). Also, Duchy of Lancaster website, n 11. Hamilton, n 18, p 83 (duchy received close to £1m from intestacies between 1952-72).

(d) Legislation and Charters

There are a number of charters which govern the duchy (see Annex A) some of which are treated as Acts of Parliament. Most of these are now obsolete. There are also a number of pieces of legislation referred to by Hardy in his text on the duchy of Lancaster, in respect of the period 1339-1558; these have been repealed. As for modern legislation relating to the duchy (much of which is antiquated) it deals, for the most part, with the removal of restrictions on alienating duchy land or dealing with duchy funds, as well as the use of the duchy seal.¹⁶¹

(e) Duchy Officials and Powers of Appointment

The chancellor of the duchy of Lancaster is a government minister appointed by the sovereign on the advice of the Prime Minister and is answerable to Parliament for the running of the duchy.¹⁶² Given this, the chancellor rarely has any involvement in the running of the duchy, this being left to the vice-chancellor.¹⁶³ Other duchy officials include: an attorney general, receiver general, auditor, clerk of the council, solicitor, chief clerk, surveyor of lands, seal keeper, cursitor and clerk.¹⁶⁴

As for powers of appointment which the duchy exercises:

- Pursuant to the Local Government Act 1972, the duchy has the right to appoint high sheriffs and lords lieutenant in the ceremonial counties of Greater Manchester, Merseyside and Lancashire;¹⁶⁵
- The Queen, in right of the duchy, has the right to 42 advowsons, that is, the right to present priests to livings in preference to the diocesan bishop. Given that only one of these advowsons adjoins a duchy estate today, the giving up of this right in favour of the diocesan bishop would not seem onerous;¹⁶⁶
- The duchy also makes various minor ceremonial appointments which mainly relate to charities or seats on school, or university, councils.¹⁶⁷

If the duchy were abolished, the Crown would directly deal with the appointment of high sheriffs and lords lieutenants. Doubtless, the relevant bishops could deal with the advowsons.

5. Abolishing the Duchy of Lancaster

Just as the county palatine has little legal purpose, so does the duchy. Thus, the Court of the Duchy Chamber, *qua* court, has been obsolete since 1835; certain legal privileges in respect of duchy land are not worth retaining and the duchy does not benefit from bona vacantia and escheat in practice.

It is argued that the duchy should be abolished. This would enable matters to be dealt with by the Crown directly and remove obsolete legislation and charters. It would also remove a layer of administration and officials who - like the attorney general of the duchy - are, in truth, no longer necessary. All this can only be to the public good since it will make what now is, essentially, the administration of State property, more transparent, and accountable. It would also be to the benefit of the sovereign who is regularly lambasted for having great wealth

¹⁶¹ i.e. Duchy of Lancaster Acts 1779, 1787, 1808, 1812, 1817, 1920 & 1988. Also, the Duchy of Lancaster (Accounts) Act 1838 and the Duchy of Lancaster Lands Act 1855. See the Statute Law Database website.

¹⁶² Halsbury, n 14, vol 8(2) para 354 'The Chancellor of the Duchy of Lancaster...has ministerial departmental duties...[and] can therefore be assigned special tasks to perform, but otherwise serve[s] as minister without portfolio.'

¹⁶³ Wikipedia (Duchy of Lancaster) 'Since for at least the last two centuries the estate has been run by a deputy the Chancellor has rarely any significant duties pertaining to the management of the duchy itself. He is usually a minister without portfolio. In recent times his duties, administrative, financial and legal, have been said to occupy an average of one day a week.' See also Duchy of Lancaster website.n 11 'The Chancellor has delegated certain functions - particularly those relating to asset management - to the Duchy Council.' See also Somerville, n 10, vol 2, pp 353-4.

¹⁶⁴ Halsbury, n 14, vol 8(2), para 354. The duchy solicitor is a corporation sole and he stands in relation to the affairs of the duchy as the treasury solicitor does to the Crown, see vol 8(2), para 542 and Duchy of Lancaster Act 1920, s 3(1). For older offices which disappeared, see Somerville, n 6 (second article), p 66.

¹⁶⁵ See Duchy of Lancaster website, n 111. A power to appoint justices of the peace ended in 2005.

¹⁶⁶ Ibid. The Queen, in right of the duchy, also has the right to appoint a cleric to the Queen's chapel of the Savoy. Ibid.

¹⁶⁷ viz (a) Benevolent Fund trustees; (b) Constable of Lancaster castle; (c) Trinity Hospital, Leicester; (d) Wyggeston's Hospital, Leicester; (e) Whalley Education Foundation; (f) Lancaster University Council; (g) Salford University Court; (h) Liverpool University Court; (i) King's School Pontefract Endowment Fund; (j) Lancaster Royal Grammar School; (k) Duchy Mineral Agent; (l) Campbell Blair Orphans Endowment Fund.

and property when, like the duchy, they do not really belong to her in person.

Thus, it is contended that the duchy should be abolished and its land holdings merged into the Crown Estate.¹⁶⁸ This would not impact on the revenues of the Queen, since she is already receiving revenue from the latter and she could also receive a sum that reflected former duchy revenues.¹⁶⁹ The actual process of abolition would be relatively simple in legal terms.¹⁷⁰

Appendix

Appendix A – Charters Relating to the Duchy of Lancaster

<u>Date of Charter</u>	<u>Content</u>
7 May 1342	Cancelled in 1349. ¹⁷¹
25 Sept 1349	Grant to Earl of Lancaster for life of: (a) acquittance of tolls; (b) return of writs and summons of the exchequer; (c) attachments of pleas of the Crown; (d) chattels of felons and fugitives; (e) fines and amercements, forfeited issues, forfeitures <i>etc.</i> ¹⁷²
6 Mar 1351	Henry, Earl of Lancaster created Duke of Lancaster. Grant to him for life of: (a) a court of chancery, chancellor, justices, cognizance of pleas, and other <i>jura regalia</i> in the county of Lancaster which pertain to a county palatine as freely as the Earl of Chester enjoyed the same in the county of Chester. ¹⁷³ The Duke to send knights of the shire and burgesses to serve in Parliament and to appoint collectors of parliamentary taxes and subsidies. ¹⁷⁴
13 Nov 1361	Grant to the Duke of Lancaster ¹⁷⁵ and Blanche (his wife) and heirs of certain liberties in the lands and fees of the said Blanche <i>viz.</i> (a) return of writs; (b) pleas of withernam; (c) fines and amercements; (d) chattels of felons and fugitives. ¹⁷⁶
12 May 1362	Grant to the Earl of Lancaster and heirs of certain liberties in all their lands and fees of Henry, the late Duke of Lancaster, <i>viz</i> (a) return of writs; (b) pleas of withernam; (c) fines and amercements; (d) chattels of felons and fugitives. ¹⁷⁷
13 Nov 1362	John, Earl of Lancaster created Duke of Lancaster in Parliament, to hold the name and honour of Duke to him and his heirs male in perpetuity. ¹⁷⁸

¹⁶⁸ The duchy comprise some 46,000 acres of land including historic buildings and farm land in many parts of England and Wales, with large holdings in Lancashire. In the fiscal year 2010 it was valued at £348m.

¹⁶⁹ In 1760, the duchy could have been merged with the Crown Estate. However, this opportunity was not taken. See Duchy of Lancaster website, n 11 'In 1760, George III (1760-1820) surrendered his other hereditary estates in return for the Civil List...The duchy of Lancaster, however, was not mentioned in this arrangement. This may have been because its revenues were not thought worth taking or because the duchy was seen as separate from the hereditary revenues of the Crown.' See also Somerville, n 10, vol 2, p 122. For other (many) occasions on which it was proposed the duchy be abolished, see Somerville, n 10, vol 2.

¹⁷⁰ Abolition of the county palatine of Lancaster will result in the automatic reversion of all *jura regalia* including wreck, treasure trove, rights to the foreshore and any rights to gold and silver mines. Abolition of the duchy would result in the reversion of bona vacantia and escheat (which were probably originally palatinate rights in any case) to the Crown - as well as the appointment of high sheriffs and lords lieutenants. It would also end the Court of the Duchy Chamber, duchy offices and advowsons held in right of the duchy.

¹⁷¹ Hardy, n 8, pp 1-5. It was replaced by the charter of 25th September 1349.

¹⁷² *Ibid*, pp 6-8.

¹⁷³ A reservation was made to the Crown of all tenths, fifteenths and other subsidies and taxes granted by Parliament and of the power of pardoning life with superiority and correction of errors or defect of justice in the courts of the Duke.

¹⁷⁴ Hardy, n 8, pp 9-11.

¹⁷⁵ *ie.* John of Gaunt.

¹⁷⁶ Hardy, n 8, pp 12-3.

¹⁷⁷ This grant extended the rights to lands acquired by John of Gaunt through his wife Blanche, on the death of her sister, Maud in 1362. See Hardy, n 8, pp 14-6.

¹⁷⁸ Hardy, n 8, pp 17-8.

- 14 Jul 1364 Charter of 7 May 1342 renewed in favour of John, Duke of Lancaster and Blanche his wife *viz* (a) acquittance of tolls; (b) return of writs and summons of the exchequer; (c) attachment of the pleas of the Crown; (d) chattels of felons and fugitives; (e) fines and amercements, forfeited issues, forfeitures etc. Limitation of the grant to the lands of the Earl of Lancaster on 7 May 1342.¹⁷⁹
- 25 Jun 1372 Grant of certain estates to the Duke of Lancaster in exchange for the earldom of Richmond.¹⁸⁰
- 28 Feb 1377 Grant to the Duke of Lancaster for life of: (a) court of chancery, chancellor, justices, cognizance of pleas and other *jura regalia* in the county of Lancaster which pertain to a count palatine as freely as the Earl of Chester enjoyed the same in the county of Chester.¹⁸¹ The Duke to send knights of the shire and burgesses to serve in Parliament and to appoint collectors of parliamentary taxes and subsidies.¹⁸²
- 4 Jun 1377 Grant that the Duke of Lancaster may retain the towns of Grinstead (parcel of the Manor of Marsfield), Seaford (parcel of the castle of leucats of Pevensy) and Laughton-in-le-Morthen (parcel of the honour of Tickhill) with the other estates given to him in exchange for the earldom of Richmond and enjoy therein certain liberties. *viz* (a) knight's fees; (b) advowsons; (c) wardships; (d) marriages; (e) escheats; (f) chases; (g) parks; (h) warrens; (i) woods; (j) fairs; (k) markets; (l) waters; (m) ways; (n) fisheries, (o) commons; (p) assarts; (q) wastes; (r) purprestures; (s) courts, (t) views of frankpledge; (u) hundred; (v) wapentakes, (w) wreck; (x) waif; (y) estray; (z) fines and amercements; (aa) forfeited issues and forfeitures in any of the king's courts; (bb) chattels of felons and fugitives; (cc) return and execution of writs and summons of the exchequer; (dd) fines and amercements of sheriffs and bailiffs of liberties for negligence.
- 15 Sept 1377 Confirmation by *inspeximus* of charter of 14th July 1364.¹⁸³
- 15 Sept 1377 Confirmation by *inspeximus* of charters of 25 June 1372 and 4 June 1377.¹⁸⁴
- 10 Nov 1378 General words in the grant of 28 February 1377 of a county palatine expressed on certain points, the general words declared to embrace the powers exercised by the Duke of Lancaster in virtue thereof, *viz* to have his exchequer and barons thereof in the county palatine and the appointment of justices of the forest except in pleas arising where the Crown is a party.¹⁸⁵
- 16 Feb 1390 Grant that the Duke and heirs male shall have in the county of Lancaster their chancery, justices to hold pleas and *jura regalia* as freely as the Earl of Chester, their exchequer and barons thereof and the appointment of justices of the forest except in pleas arising where the Crown is party.¹⁸⁶ The Duke and his heirs to send members to Parliament for the shire and boroughs and to assign collectors of subsidies and taxes granted by Parliament. Title of Duke of Lancaster to be retained.¹⁸⁷

¹⁷⁹ Ibid, pp 19-25.

¹⁸⁰ Ibid, pp 26-31. See also Somerville, n 10, vol 1, pp 52-3 and Castor, n 7, p 22.

¹⁸¹ Reservation to the Crown of all tenths, fifteenths and other subsidies and taxes granted by Parliament and of the power of pardoning life with superiority and correction of errors or defect of justice in the courts of the Duke of Lancaster.

¹⁸² Hardy, n 8, pp 32-4.

¹⁸³ Hardy, n 8, p 42.

¹⁸⁴ Ibid, p 49.

¹⁸⁵ Ibid, pp 62-4.

¹⁸⁶ Reservation to the Crown of Parliamentary aids and taxes, pardon of life, and correction of erroneous judgments or in failure of justice.

¹⁸⁷ Ibid, pp 65-70. Also, Somerville, n 10, vol 1, p 141 (grant of a chancery in Lancaster granted on the Duke of Lancaster in tail male).

- 29 Jun 1396 Confirmation by *inspeximus* of charters of 12 May 1362 and 15 Sept 1377 (both charters). Grant of certain additional liberties *viz* (a) all fines for trespass, *prae-fines* and *post-fines*, ransoms, amercements, forfeited issues; (b) forfeitures, year, day and waste imposed or adjudged in any court as fully as the king would have them if not granted to the said Duke; (c) assay and assizes of bread and other matters belonging to the office of clerk of the market; (d) chattels of felons and fugitives; (e) return and execution of writs, summons, *estreats* and *precepts*; (f) attachments of pleas of the Crown; (g) no sheriff or other bailiff of the king may intrude, unless in default; (h) fines and amercements of sheriffs and bailiffs of liberties for negligence; (i) waifs and estrays; (j) *deodands*; (k) treasure trove; (l) *mainour*; (m) saving of liberties before granted in fee tail.¹⁸⁸
- 14 Oct 1399 Recital that Henry IV held certain estates for life of the heritage of his wife Mary de Bohun (decd). Declaration that the said estates shall continue to be managed as though the king had not obtained the Crown. The tenants may enter and hold after their ancestors' death as they had been accustomed. Saving the royal prerogative as to marriages. The chancellor of England shall not present to church benefices belonging to the said heritage. All receivers and others to account before special auditors and not at the royal exchequer.¹⁸⁹
- 14 Oct 1399 Recital that Henry IV held the duchy and other estates in various counties by inheritance and that divers liberties and *jura regalia* had been granted therein by the several charters. Declaration of the royal intention that the duchy and other estates of the heritage of Lancaster shall not be changed by the assumption of the king's regal dignity and the franchises with which John, Duke of Lancaster held the same shall be continued. Settled on Henry IV and his heirs specified in the preceding charters to remain as before his accession to the Crown. The same liberties and *jura regalia* to be exercised as well in the said duchy as other the said estates, throughout, and to be governed by the like officers as before. The tenants may enter and hold after their ancestors' death, as they had been accustomed. Proviso for the tenants of the county palatine of Lancaster. Saving the prerogative as to marriages out of the county palatine. The chancellor or treasurer of England not to intermeddle in presenting to church benefices. All receivers and others to account before special auditors and not at the royal exchequer.¹⁹⁰

Appendix B – Acts 1399 - 1558 relating to the Duchy of Lancaster

<u>Date of Act</u>	<u>Content</u>
10 Nov 1399	Act declaring that Henry (the king's eldest son, later Henry V) shall bear the title, <i>inter alia</i> , of Duke of Lancaster and the franchises of the duchy to remain with his eldest son and the Dukes of Lancaster dissevered from the Crown. ¹⁹¹
22 Dec 1406	Settlement of the Crown after the king's demise on his four sons and the heirs of their respective bodies, successively. Proviso as to the Duchy. ¹⁹²

¹⁸⁸ Ibid, pp 71-98. See also Somerville, n 10, vol 1, p 65-6 and Castor, n 7, p 23, n 6.

¹⁸⁹ Ibid, pp 99-101. See also Somerville, n 10, vol 1, p 67 and Castor, n 7, p 22.

¹⁹⁰ Ibid, pp 102-40.

¹⁹¹ 1|Hen 4 (1399) Hardy, n 8, pp 141-2.

¹⁹² 8 Hen 4 (1406) Ibid, pp 143-50.

- 19 Nov 1414 Heritage of the earldom of Hereford shall be severed from the Crown and annexed to the duchy. Recital and confirmation of prior grants contained in charters. Declaration that the liberties, customs and franchises shall be exercised throughout without let from the king's officers. All matters heretofore passed under the duchy seal declared to be valid. The same seal to be used in the future for the affairs of the duchy. The liberties and *jura regalia* shall be exercised throughout the estates of the earldoms of Hereford, Essex and Northampton and by the officers and ministers of the duchy and these estates shall be subject to the same rule, management and seal and the same liberties and *jura regalia* be exercised therein as were used in the duchy out of the county palatine.¹⁹³ All matters relating to said estates heretofore passed under the duchy seal declared valid. The tenants and residents shall enjoy the liberties and customs without let from the king's officers. Presentations to ecclesiastical benefices shall pass under the duchy seal. Chancellor or treasurer of England not to intermeddle by reason of the king's title or of their offices. All lands which since the ordinance of Henry IV have come into the king's hands by escheat, forfeiture or otherwise, in right of the duchy, shall be annexed thereto, and all lands so coming into the king's hands in future shall be forthwith annexed to the heritage to which they are known to belong. All estates so annexed shall be subject to the like rule, management and seal and the said liberties and *jura regalia* be exercised there.¹⁹⁴
- 19 Nov 1414 Justices of the Peace (JPs) shall be appointed from persons resident in the respective counties, except justices of assize. Chief stewards of the duchy for north and south parts shall be JP's.¹⁹⁵
- 11 May 1416 Chief stewards shall be named in all commissions of the peace. Grants *etc* concerning the duchy passed under any seal, apart from the duchy seal, are void.¹⁹⁶
- 6 May 1421 Partition made of the heritage of the earldom of Hereford between Henry V (1413-22) and the countess of Stafford.¹⁹⁷
- 9 Nov 1422 Proceedings in Parliament relating to the partition of 1421 (*supra*) of the fees and advowsons in gross of the heritage of the earldoms of Hereford, Essex and Northampton.¹⁹⁸
- 26 Jun 1432 Proceedings in Parliament on the petition of the countess of Stafford that a partition be made of the fees and advowsons in gross of the heritage of the earldom of Hereford.¹⁹⁹
- 14 Jan 1440 Revenues of the Duchy be applied to the expenses of the king's household for 5 years.²⁰⁰
- 25 Jan 1442 Certain persons be assigned to receive the declaration of the feoffees of lands parcel of the duchy to the use of Henry V's will touching the execution of the same.²⁰¹

¹⁹³ This was following a recital that divers other estates had descended to Henry V by inheritance in right of his mother, daughter and co-heir of Humphrey de Bohun, Earl of Hereford, Essex and Northampton. See also Castor, n 7, p 32.

¹⁹⁴ 2 Hen V (1414). *Ibid*, pp 151-167. See also Coke, n 22, vol 4, p 205 and Somerville, n 10, vol 1, p 177 (the charter was necessary to prevent the Hereford estates being swallowed up in the Crown. Instead, they became part of the duchy).

¹⁹⁵ 2 Hen V (1414). See also Hardy, n 8, p 168.

¹⁹⁶ 4 Hen V (1416). *Ibid*, p 169.

¹⁹⁷ 9 Hen V (1421). *Ibid*, p 172-91. See also Somerville, n 10, vol 1, p 179.

¹⁹⁸ 1 Hen VI (1432). *Ibid*, p 192-6.

¹⁹⁹ 10 Hen VI (1432). *Ibid*, p 197-9.

²⁰⁰ 18 Hen VI (1440). *Ibid*, p 200. See also, p 202 (surplus revenues). See also Castor, n 7, p 42.

²⁰¹ 20 Hen VI (1442). *Ibid*, p 209. See also Castor, n 7, p 43.

- 6 Apr 1446 Confirmation of letters patent passed under the duchy seal for conveying certain lands to feoffees to perform the will of Henry VI.²⁰²
- 16 Jul 1449 Certain lands parcel of the duchy granted by letters patent to feoffees to perform the will of Henry VI.²⁰³
- 20 Nov 1459 Appointment of new feoffees to perform the will of Henry VI.²⁰⁴
- 7 Oct 1460 Lands parcel of the duchy shall not be governed by a distinct seal and officers but shall be managed by the officers and seal of the duchy as they were in ancient times before the making of such feoffment.²⁰⁵
- 7 Oct 1460 The Commons pray that the revenues of the duchy be paid over by the Reciever-General to the treasurer of England, to be employed for the present necessity of the realm. Answer. Not to extend to lands in feoffment. Receiver-General to account before auditors of the duchy and not in the exchequer.²⁰⁶
- 7 Oct 1460 Appointment of new feoffees.²⁰⁷
- 4 Nov 1461 Henry VI attainted of high treason. All his possessions of the duchy to be forfeited to the Crown. Said possessions to be incorporated and called the Duchy of Lancaster. The king to hold the same to him and his heirs, kings of England. The county of Lancaster to be a county palatine, parcel of the duchy. It shall have a seal, chancellor *etc.* Another seal called the seal of the duchy and a chancellor *etc.* Officers of the duchy and the tenants shall enjoy all liberties *etc.* as in the time of Henry V.²⁰⁸
- 14 Nov 1461 Confirmation by *inspeximus* of charter of 14 Oct 1399. Recital of Act of 4 Nov 1461.²⁰⁹
- 23 Feb 1475 Act that certain lands, parcel of the duchy be put in feoffment for the performance of the will of Edward IV.²¹⁰
- 1 Mar 1475 Act extending Ordinance for the payment of the king's debts assigned by patent bill or tally on the possessions of the duchy.²¹¹
- 20 Jan 1483 The king in right of the duchy shall not be deprived of wardship and marriage and reliefs by reason of feoffments in trust *etc.*²¹²
- 7 Nov 1485 Repeal of Act of 23 Feb 1475. The lands late in hands of the feoffees under the said Act, the county palatine of Lancaster and all estates parcel of the Duchy vested in Henry VII and his heirs for ever with all liberties, to be governed by like officers and seals in an ample manner separate from the Crown as in the time of Henry IV or any subsequent king.²¹³

²⁰² 24 Hen VI (1446). Ibid, p 220-31.

²⁰³ 27 Hen VI (1449). Ibid, p 232.

²⁰⁴ 38 Hen VI (1459). Ibid, p 241.

²⁰⁵ 39 Hen VI (1460). Ibid, p 258.

²⁰⁶ 39 Hen VI (1460). Ibid, p 261.

²⁰⁷ 39 Hen VI (1460). Ibid, p 264.

²⁰⁸ 1 Edw IV (1461). Ibid, p 279. See also Somerville, n 10, vol 1, p 230.

²⁰⁹ 1 Edw IV (1461). Ibid, p 285.

²¹⁰ 14 Edw IV (1475). Ibid, p 326. See also Somerville, n 10, vol 1, p 239.

²¹¹ 14 Edw IV (1475). Ibid, p 332.

²¹² 22 Edw IV (1483). Ibid, p 337.

²¹³ 1 Hen VII (1485). Ibid, p 341.

17 Oct 1491	Putting lands, parcel of the duchy, into the hands of feoffees. ²¹⁴
25 Jan 1504	Appointment of new feoffees. ²¹⁵
16 Jan 1542	Act concerning the order of wards and liveries. ²¹⁶
23 Nov 1545	Act for annexing certain lands to the duchy. ²¹⁷
4 Nov 1547	Certain chantries, colleges, free chapels and the possessions of the same be given to the king. ²¹⁸
21 Oct 1555	Act for enlarging the duchy. ²¹⁹
15 Apr 1558	Annexing certain manors to the duchy. ²²⁰

Copyrights

Copyright for this article is retained by the author(s), with first publication rights granted to the journal.

This is an open-access article distributed under the terms and conditions of the Creative Commons Attribution license (<http://creativecommons.org/licenses/by/3.0/>).

²¹⁴ 7 Hen VII (1491). Ibid, p 349. See also Somerville, n 10, vol 1, p 276.

²¹⁵ 19 Hen VII (1504). Ibid, p 350.

²¹⁶ 33 Hen VIII (1542). Ibid, p 351.

²¹⁷ 37 Hen VIII (1545). Ibid, p 354.

²¹⁸ 1 Edw VI (1547). Ibid, p 356.

²¹⁹ 2 & 3 P & M (1555). Ibid, p 361. See also Somerville, n 10, vol 1, p 302.

²²⁰ 4 & 5 P & M (1558). Ibid, p 362.