

**“This Miniature Nation”**

*A Commentary on various matters of historical and legal  
interest in relation to the Isles of Scilly.*

**Dr John Kirkhope**

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## **About the Author**

I have degrees and post graduate qualifications from the Open University, Nottingham Trent University, Bristol University and Cambridge. Most relevantly to this work I have been awarded a Doctorate from Plymouth University. My thesis was an examination of the Duchy of Cornwall and is entitled “The Duchy of Cornwall – A Feudal Remnant”. Professionally I qualified as a solicitor and a Notary Public. The law and its arcane and dusty corners have been of interest of me for many years.

Members of Parliament and Members of the House of Lords have consulted me on matters relating to the Laws of Cornwall and the Duchy of Cornwall. My advice has also been sought by the Devon and Cornwall Police. Recently I have been asked to submit evidence to two House of Commons Select Committees.

My work has attracted media attention which has been unexpected, for example, there have been interviews for the Today Programme on Radio 4, Radio Devon and appearances on two BBC Television programmes. In addition my studies have attracted considerable newspaper coverage.

## Foreword

While researching the Duchy of Cornwall for my thesis<sup>1</sup> I frequently came across intriguing references to the Isles of Scilly to which, I promised myself, I would return when time permitted. I subsequently wrote a booklet entitled “The Laws of the Duchy of Cornwall, the Isles of Scilly and Devon”<sup>2</sup> in which, amongst other things, I considered the particular status of the Isles of Scilly.

However, my interest had not been satiated. For example, I did not know that until a change in the law in 1953<sup>3</sup> the people on the Islands paid no tax and there was a concern in Government the Islands were becoming a tax haven.

Despite the assertion by the Duchy of Cornwall that:

“...the Isles of Scilly have been part of the Duchy of Cornwall since its beginning in the 14th century. Today the Duchy owns most of the land and nearly a third of the residential buildings on the islands.”<sup>4</sup>

I question whether the Duchy claim can be substantiated. It will be demonstrated that the doubts I have reflect the reservations raised by Government from time to time.

Next there is the unique governance of the Islands and what justifiably can be called its peculiar constitution. In particular the questions: Are the Islands part of England? And are they part of Cornwall? Which remain outstanding. I do not claim to give final answers but I do hope to add and encourage debate.

This commentary is almost entirely based on the National Archives files I have studied. A complete list of the relevant files is contained within the Bibliography but I would draw attention to two specific files which were closed until I made a request under the Freedom of Information Act 2000 that they be opened.<sup>5</sup> The title of this

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<sup>1</sup> Kirkhope, J., *The Duchy of Cornwall – A Feudal Remnant* (2013) Thesis (Ph.D.) University of Plymouth

<sup>2</sup> Kirkhope, J., *The Laws of the Duchy of Cornwall, the Isles of Scilly and Devon* (2013 Kindle Books)

<sup>3</sup> Finance Act 1953 section 29

<sup>4</sup> <http://www.duchyofcornwall.org>

<sup>5</sup> TNA CUST 45/246 - Memorandum on Taxation in Scilly Isles and correspondence on specific cases (1905) and IR 40/12106 – Scilly Isles: imposition of income tax; Finance Act 1953 (1952-1954)

work “This Miniature Nation” is based on a comment made in a talk given by a Mr Moyle in 1901 which can be found in National Archive File HLG 8/75.<sup>6</sup>

If, after reading this relatively brief work, others are persuaded to progress the researches which I have started I shall feel my efforts have been rewarded.

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<sup>6</sup> TNA HLG 8/75 – Scilly Isles Constitution and Governance

## Who Owns the Isles of Scilly?

The Duchy confidently asserts:

“The Isles of Scilly have been part of the Duchy of Cornwall since its foundation in the 14<sup>th</sup> Century.”<sup>7</sup>

The claim is supported by Government. For example in a letter dated 16<sup>th</sup> June 2009 from the Department of Communities and Local Government it was claimed:

“...the Isles of Scilly, including St Mary’s, has been part of the Duchy of Cornwall since the 14<sup>th</sup> Century....”<sup>8</sup>

Despite the certainty evidenced in the above statements and the public functions performed by the Duchy on the Isles of Scilly<sup>9</sup> there is some ambiguity in the Duchy’s claim to the Islands. For example, in the papers relating to a dispute which became known as the Cornwall Foreshore Case the Duchy observed:

“These Islands, as before mentioned, were parcel of the Earldom, and held as of the Great Honor of Dunheved or Launceston; *but although parcel of the Earldom, they are not expressly named in the Duchy Charter*<sup>10</sup>; (emphasis added) but that the Seignory of these Islands did pass to the Dukes, though not specifically named in the Charter is clear from the *Inquisition Post Mortem* of Ranulph de Blanchminster, in the 22<sup>nd</sup> Edward III, eleven years only after the creation of the Duchy, which states that he held of the King no land in Cornwall, but that he held of the Lord Edward Duke of Cornwall the Castle of Sully with the Islands to the said Castle appertaining; and his heir being under age, the profits in the next year are accounted to the Duke.”<sup>11</sup>

As further evidence the Duchy cited an “Inrolment” of the Duchy of Cornwall of 22<sup>nd</sup> June 1637 by which the Scilly Isles were leased to Sir William Godolphin.

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<sup>7</sup> [www.duchyofcornwall.org/aroundtheduchy\\_islesofscilly.htm](http://www.duchyofcornwall.org/aroundtheduchy_islesofscilly.htm)

<sup>8</sup> Letter from Iain Wright M.P., Dept. of Communities and Local Government and Local Government, to Andrew George M.P. 16<sup>th</sup> June 2009

<sup>9</sup> For more details of the public functions see Kirkhope, J., *The Laws of the Duchy of Cornwall, the Isles of Scilly and Devon* (2013 Kindle Books)

<sup>10</sup> Great Charter of Creation of the Duchy of Cornwall 17<sup>th</sup> March 1337 (Regarded as an Act of Parliament)

<sup>11</sup> The Tidal Estuaries, Foreshore and Under-Sea Minerals within and around the Coast of the County of Cornwall – Arbitration by Judge Sir John Patteson (1855 London Shaw & Co.)

There are, however, those who have raised questions about the status of the Isles of Scilly. For example, Robert Heath in his 1750 study of the Scilly Isles:

"After the Dissolution of Abbies and monastical Estates, the ecclesiastical Jurisdiction of Scilly devolving to the See of Exeter, the Civil Power was granted by the Crown to Lords Proprietors, on Condition of their paying certain Rents into the Hands of the Receiver for the Dutchy of Cornwall, for the Tenure of those Islands; by which they came to be acknowledg'd as Part of the Jurisdiction of the said Dutchy; but only by the King's Favour: *For I cannot find by any Records that they were ever annex'd thereunto.* (Emphasis added)

And here I shall observe, that in the Grant of the Dutchy of Cornwall (which I have seen) to the Prince of Wales, as eldest son of England, there is no mention made of the Islands of Scilly...whence if Scilly appertains, or is part of the said Duchy, *it is rather permitted by Favour than given to be so by Royal Authority;* especially as the Grant of those Islands to several late Proprietors, is expressed in so ample a Manner."<sup>12</sup> (Emphasis added)

Later in 1824 Fortescue Hitchins wrote:

"When the county of Cornwall was erected into a Duchy, these islands seem either to have been forgotten or purposely omitted as they are not mentioned in the general grant. *This omission has given rise to some disputes whether they belong to the Duchy or not.* It is certain that some Kings of England have made separate grants of them when there have been Dukes of Cornwall; and when the dissolution of religious houses took place, the lands which belonged to the abbey of Tavistock fell to the Crown; and hence it is presumed, that the dominion of these islands accompanied their destiny. *If, therefore Scilly is now considered as a part of the Duchy, it is rather permitted by favour, than given so by royal authority.*"<sup>13</sup>(Emphasis added)

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<sup>12</sup> Heath, Robert, *The Isles of Scilly (A natural and historical account of the Islands of Scilly)* (First published 1750)

<sup>13</sup> Hitchins, Fortescue, *The History of Cornwall* (1824) Volume II page 687

The following lengthy quote appeared in a memo written by a Mr J Hall in 1889, quoting from a work of 1831, in connection with a proposed Local Government Bill<sup>14</sup>:

“It has been questioned whether (the Scilly Islands) ever belonged to the Duchy of Cornwall, as they are not specified in the grant (of the Duchy of Cornwall 17<sup>th</sup> March 1337) for the erection of the Duchy; and though it may be inferred that they were in some respects dependent on it, *there are no records to show that they were ever annexed to it*. After having been granted away by Henry VIII they reverted to the Crown by exchange, in the reign of Queen Mary; and Elizabeth, in 1571, gave them to Francis Godolphin, but after having been more than 200 years under the sway of the Godolphins and Osbornes, Dukes of Leeds, they have again lapsed to the Crown (1831) and are at present under the Duchy of Cornwall.”<sup>15</sup> (Emphasis added)

The most significant challenge to the Duchy’s claim to the Scilly Isles came in 1832/1833 when the case was examined by the Law Officers of the Crown. Initially in 1832 the question was raised “...as to whether the Scilly Islands generally formed part of the Land Revenues of the Crown..”. The question was submitted to Solicitors of the Office of Woods and Forests who in two opinions dated 8<sup>th</sup> and 10<sup>th</sup> June 1832 advised the Scilly Isles belonged to the Crown<sup>16</sup> . Further information was supplied which caused the solicitor to modify his opinion and an application was made to the Law Officers of the Crown (a copy of whose opinion appears in the Appendix) who having:

“...carefully examined the copies of several documents submitted to us together with the very able statements and arguments and elaborate searches which accompany them and we are of the opinion upon the whole that the Scilly Islands are to be considered as part of the properties of the Duchy of Cornwall and they do not belong to the Crown *jura coronae*<sup>17</sup>..”

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<sup>14</sup> TNA HLG 8/75 – The Scilly Isles: Constitution and government

<sup>15</sup> Gorton, J. G., *A Topographical Dictionary of Great Britain and Ireland* (1831 – 33) Vol. III p 340

<sup>16</sup> TNA BT 297/556 – St Mary’s Pier. Scilly Isles: Mr Dorien Smith and Duchy of Cornwall (1889 – 1922)

<sup>17</sup> Right of the Crown

They also said:

“it is to be regretted that in a matter of so much importance there should not be a regular series of authentic public documents by referring to which the question between the Crown and the Duchy of Cornwall might be at once satisfactorily decided.”<sup>18</sup>

They went on to say:

“..we are further of the opinion under all the circumstances that there is nothing of sufficient ground....to call in question the right of the Duchy as it has been asserted...*for forty years.*” (emphasis added)

The papers do not reveal why the question was raised in 1832 neither do they provide copies of all the evidence submitted. But it is clear from the documents that are available there is not an overwhelming unequivocal support for the Duchy’s claim to the Islands. The two initial opinions found the Islands were the property of the Crown and although the Law Officers later took a different view they could find support only for the assertion that the Duchy had enjoyed the Islands for forty years not since the fourteenth century as the Duchy claims. Needless to say the Law Officers Opinion has never been tested in Court.

Augustus Smith wrote in 1838 to the then Prime Minister, Lord Melbourne, requesting he be appointed Governor of the Islands. In the letter he stated: “..the Islands were held under the Duchy of Cornwall *from the reign of Elizabeth.*”<sup>19</sup>

Mary Coates, in her paper to the Royal Historical Society in 1927, offers a different explanation of how the Scilly Isles became part of the Duchy:

“*Annexata Maneria* added to the Duchy by subsequent Acts of Parliament....these included...fifteen manors confiscated by Henry VIII after attainder of Henry Courtenay, Marquis of Exeter...and lastly fifteen more obtained by the Crown through the dissolution of the Priors of Launceston

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<sup>18</sup> TNA CRES 58/742 - Scilly Islands (1832 – 1892)

<sup>19</sup> TNA HO 44/52/69 Letters concerning the application of Augustus Smith, lessee of the Scilly Isles to be appointed governor (1838)

and Tywardreth...in the list of the 15 Courtenay Manors we find....and the farm of the Scilly Isles.”<sup>20</sup>

The right to the Isles of Scilly is claimed by the Duchy relying to some degree on documents which predate the Duchy Charter of 1337. They argue that they “succeeded” to the property rights and privileges of the Earls of Cornwall and thus, by implication, enjoyed the benefits of the Earldom. That argument was not accepted by the Crown in, for example, a dispute with regard to Royal Mines<sup>21</sup> within Cornwall<sup>22</sup> and I can find no reason to see why it should be accepted with regard to the Isles of Scilly.

What is clear is that the Crown felt able to dispose of the Islands as it wished well after the 14<sup>th</sup> Century. Since there is no indisputable document by which it can be demonstrated the Islands were passed to the Duchy of Cornwall the questions which remain are: by what means did the Islands become the property of the Duchy and when did that take place?

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<sup>20</sup> Coate, Mary, “The Duchy of Cornwall: Its History and Administration 1640 to 1660” (1927) *Transactions of the Royal Historical Society* p 147

<sup>21</sup> The right to gold and silver recovered from mines is usually a Royal Prerogative

<sup>22</sup> TNA CRES 34/21 – Wheal Newton Question between Crown and Duchy of Cornwall as to right of Royal Mines within duchy (1859 – 1861)

## **Are the Isles of Scilly subject to Acts of Parliament?**

The question may appear to be extraordinary but it has exercised the minds of Civil Servants over many years. The files held by the National Archives contain many examples of discussions in which this issue was addressed. For example, there is a file, dating from 1899, entitled “Application of Acts of Parliament to the Islands of Scilly”<sup>23</sup>. Mr. Dorrien Smith wrote to the Ministry of Local Government about a number of matters. Specifically he asked: “The matter I want your help is this. It is very difficult for me to recognise what acts apply to Scilly and what don’t..” A paper was produced by the Ministry in which reads in part as follows:

“It appears it is still an open question as to how far Public General Statutes can be said, in the absence of special provision, to apply to the Isles of Scilly.

The position of the Isles in this respect seems to have been somewhat fully considered upon the occasion of the application for the provisional order under Sect. 49 of the Local Government Act 1888 and I find the that the following minute was made by Mr Molton:

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

This opinion would appear to have been expressed with reference to the particular matter then in hand, namely, the provisions to be considered in the provisional Order then under consideration and not as expressing the view that in all circumstances public general statues could only be held to apply to the Islands when the Isles were specially mentioned or usage had sanctioned the application. At the same time the Board would hesitate to lay down any general rule on the subject, especially in regard to Acts having relation to local government, and would have to consider each Statute separately before coming to a conclusion as to its applicability to Scilly.”

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<sup>23</sup> TNA HG 1/6/16 – Application of Acts of Parliament to the Islands (1899)

It is obvious that the question of whether Acts of Parliament did apply to the Islands was not clear cut.

There is a 1923 National Archive file “Royal Commission on Local Government – Scilly Isles Constitution and Government”<sup>24</sup>. Within the papers there is a memorandum, written in 1899 by a Mr J R C Hall, which records the Duchy of Cornwall’s assertion that the Islands are part of the County of Cornwall, something others would vigorously dispute. It also goes on to point out that there are a series of Acts relating to:

“..the removal of the Poor, among which may be quoted

17 Geo. II cap 5 (Poor Rate Act 1743)

3 & 4 William IV cap 40 (Poor Removal Act 1833)

8 & 9 Vic. Cap 117 (Poor Removal Act 1845)

In which the Islands are treated as not even forming part of England.”

Mr Allorothy wrote a memorandum in 1923 in which he posed the question: “Are the Isles of Scilly included in the term “England”? His reply was:

“It is possible for those holding the opposite view to quote a series of Acts of Parliament relating to the Poor Law which have treated the Islands as not in England. Other Acts, however, refer to them as part of the County of Cornwall. The Duchy of Cornwall officials hold that the Islands are part of the County of Cornwall chiefly on the strength of an award made in 1869 by Sir J T Coleridge under Section 7 of the Cornwall Submarine Mines Act 1858.”

However he goes on to quote Article 30 of the Isles of Scilly Order of 1890 passed under the Local Government Act 1888 which says:

“Except so far as is herein expressly provided nothing in this Order contained shall affect or prejudice any question as to whether the Isles of Scilly are or are not part of the County of Cornwall.”

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<sup>24</sup> TNA HLG 8/75 Scilly Isles Constitution and Government

## The Governance of the Isles of Scilly

The Isles of Scilly enjoy a form of administration unlike any other comparable community. That is not only true today: it would appear to have been always the case.

The Islands were held under a series of leases by the Godolphin family (Duke of Leeds) until 1831. A Council of twelve men were appointed by the Duke. This Council: “were not particularly scrupulous about the limits of their powers”<sup>25</sup>. Women were ducked at the “quay head” and men and women were ordered to be publicly whipped. The lease by which the Godolphins held the Islands conferred upon the lessee:

“..the conclusive jurisdiction in all complaints and causes, except heresies, treasons, matters of “life and limb”, and Admiralty questions.”

The inhabitants of the Scilly Islands, like those of Jersey, could not be sued in the Courts of Law at Westminster for anything done on the Islands.

After the dissolution of the Duke of Leeds Council, following the surrendering of his lease, a public meeting was held on 5<sup>th</sup> May 1832 which considered the management of the affairs of the Islands, and was followed by a further meeting on 12<sup>th</sup> May 1832. A committee was initially appointed, and afterwards elected, which managed the affairs of the Islands for the next fifty years.

As an aside on 22<sup>nd</sup> October 1838 Mr Augustus Smith, who had taken over the lease of the Islands, wrote to Viscount Melbourne, the then Prime Minister, requesting that he be made Governor of the Islands on the same terms as the previous lessees. He pointed out that:

“I may further observe that the office of Governor is unattended by any salary or emoluments, in declining to fill it up therefore no saving would be gained to the Public Purse”<sup>26</sup>

The Local Government Act 1888 reorganised Local Government within England and Wales. An order was issued under that Act entitled “Provisional Order of the Local

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<sup>25</sup> TNA HLG 8/75 – Scilly Isles Constitution and government

<sup>26</sup> TNA HO 44/52 – Letters concerning the application of Augustus Smith to be appointed governor (1838)

Government Board relating to the Isles of Scilly” better known as the “Isles of Scilly Order 1890” which Mr Moyles, in 1901 in a talk to the newly formed St Mary’s Literary Society, asserted “..completely altered much of the local government of the Islands, and is without doubt the most important event of the last hundred years connected with the internal affairs of our miniature nation”<sup>27</sup>

The Order provided that a “Council of the Isles of Scilly shall be established consisting of a chairman, 4 Aldermen and 20 councillors. What Mr Moyles described as “..our local parliament”. The councillors were to be elected and Mr Dorrien-Smith, the then lessee, or his successor under the lease, would be Chairman. It was provided by the Order that a Council should be formed ..”separate from those of the county of Cornwall.”

Despite the more formal and democratic system of Government for the Islands it could still be said:

“(the Islands) are leased to Mr Smith Dorrien Smith who keeps the people sober and moral by a strict limitation of the number of licensed houses and by expulsion of any undesirable person. Mr Smith’s power appears to be unlimited.”<sup>28</sup>

The Local Government Act 1972 provided for the continued existence of the Council of the Isles of Scilly. The unusual status of the Islands means that much administrative law that applies to the rest of England applies only in modified form to the Islands.

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<sup>27</sup> TNA HLG 8/75 – Scilly Isles Constitution and government

<sup>28</sup> TNA CUST 45/246 – Memorandum on Taxation in Scilly Isles and correspondence on specific cases.

## The Isles of Scilly and Taxation

Files relating to the taxation position of the Isles of Scilly occupy a great deal of shelf space in the National Archives. Some of them are listed in the Bibliography. Until recently, as mentioned in the introduction, two of these files, CUST 45/246 which dated from 1905 and concerned Customs Duties and IR 40/12106 entitled “Scilly Isles, Imposition of income tax, Finance Act 1953” were closed because of the sensitivity of their contents. They have now been opened following my request under the Freedom of Information Act 2000.

The situation of the Islands in relation to tax was best described in 1905 as:

“No income tax, Land Tax, House Tax or Excise duties have ever been collected in the Islands. (*Mr Dorrien Smith did pay tax, the only person on the Islands to do so.*)

A Revenue Officer was appointed in 1805 but withdrawn on grounds economy.

The question of taxation raised in 1883, 1849, 1858 and 1862. There was no authority or machinery for collection of the assessed taxes or income tax. Because of poverty very little benefit would accrue.

Only St Kilda like the Isles of Scilly connection with the United Kingdom but did not pay tax.”<sup>29</sup>

(As a matter of fact there were also enquiries with regard to the taxation of the inhabitants in the Islands in the 1920’s, during the war in the 1940’s and after and also in the 1950’s.)

The obvious question, of course, is how this astonishing situation came about. The answer is rather arcane. It dates back to the Income Tax Act 1803 section III which reads:

“And whereas it is expedient to appoint Commissioners for the general Purposes of this Act from and among the Persons appointed Commissioners for the Execution of an Act passed in the Thirty eight Year of the Reign of his

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<sup>29</sup> CUST 45/246 Memorandum on Taxation in Scilly Isles and correspondence on specific cases. (1905)

present Majesty intituled *An Act for granting an Aid to His Majesty by a Land Tax to be raised in Great Britain for the Service of the Year one thousand seven hundred and ninety-eight....*<sup>30</sup>

The problem from the point of view of the of the Inland Revenue was that no Commissioners had ever been appointed for the purposes of the Land Tax for the Isles of Scilly and thus there were no persons who could be appointed as Commissioners for Income Tax. The argument went that while the people on the Islands were subject to tax there was no machinery to assess their liability to tax or to collect the tax. Furthermore during the various enquiries conducted by the Inland Revenue into the matter it was concluded that a change in the rules would be more trouble than it was worth. In other words the cost of collection would outweigh the tax collected.

A very interesting discussion arose in 1942 with the Duchy of Cornwall with regard to the assessment of the Duchy agent in respect of a residence which he was allowed to occupy in Scilly. The Assessor to the Duchy of Cornwall:

“..recently contended that as the house is not Crown property and Brown (the agent) is not a Crown Official he should not be charged to tax..”

This claim is inconsistent with the usual assertions of the Duchy that the privileges they enjoy are by virtue they the Duchy ultimately being part of the Crown. It would appear to be another example of the Duchy being a private estate when that is advantageous but part of the Crown when that is more convenient. The position of the Duchy does seem to be determined, to some degree at least, by what tax liabilities may be incurred depending on the particular stance it adopts from time to time.

There was a concern within the Inland Revenue in 1943 that the Islands were becoming a tax haven. It was being used by persons to avoid paying surtax (a tax on investment income). They state:

“Worse than the exemption of the Islanders from direct assessment is the fact that in the past one or two surtax payers took sanctuary in the Isles, and thereby escaped paying their full surtax.”

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<sup>30</sup> TNA IR 40/4729 – Taxation: The Scilly Isles (1921 – 1935)

The only surtax payer on the Islands was Major A.A.S. Smith-Dorrien.

In 1944 the Inland Revenue complained:

“The non-existence of General Commissioners with jurisdiction in the Isles creates an impossible position at the appeal stage, even if we could have made assessments without them; all cases appealed against would be in dispute and there is no one to determine them.

The matter was discussed with the Chancellor in 1942 but there was no enthusiasm for doing anything about it.”

The Duchy of Cornwall was against the appointment of the necessary official to allow the tax to be collected and it was agreed the whole matter would be deferred until the end of the War.

It is recorded in 1946 that the people on the Islands were: “The sort of people who won’t keep proper records and are a nuisance from the Tax Inspectorate view.” In the same year Inland Revenue said:

“I do not think we should put forward legislation at the present time. We should get very little tax at present we cannot afford to put trained staff on the job of getting the assessment..”<sup>31</sup>

So the inhabitants of the Islands were: “...in the happy position of escaping tax on income arising in the Isles or received from outside the Isles without the deduction of tax.” The only individuals who did not enjoy this privilege were the staff employed by the Post Office, who since they were paid from London did pay Income Tax on their earnings, a fact which they strongly resented and about which they made representations but without success.<sup>32</sup>

The happy situation enjoyed by the Islanders was brought to an end with the passing of the Finance Act 1953 section 29 which determined the Isles of Scilly would be part of the income tax division of West Penwith. The background to the change is interesting. There was some public disquiet. For example the records contain a letter

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<sup>31</sup> TNA IR 40/8312 – Liability of residents of Scilly Isles to United Kingdom Income Tax

<sup>32</sup> TNA IR 40/8312 – Liability of residents of Scilly Isles to United Kingdom Income Tax

from Mr G Kiloh who lived in Chester to his local M.P. Mr Garner Evans<sup>33</sup> in which he said: “He wished to point to a series of anomalies regarding the Isles of Scilly.” He was exercised by the fact that while the Islanders enjoyed the benefits of the National Health system and food subsidies but did not contribute towards the costs. In fact, he said, the people on the Islands: “..would seem to be subsidized at the expense of the people of the mainland.” He also pointed out the people on the Islands did not pay dog licenses or road fund licenses. The reply he received from the Treasury explained the people on the Islands were subject to the various charges but there was no machinery for collection.

In addition there was a paper prepared by the Inland Revenue for the Chancellor of the Exchequer in which the Civil Servant recorded:

“This submission is the result of my stumbling quite accidentally on the curious fact that owing, as the Revenue say, to a defect in the legal machinery, residents in the Scilly Isles have not, in fact, paid income tax on income arising in the Islands.”<sup>34</sup>

The official went on to explain that he estimated imposing income tax was worth “...£100,000 a year in revenue.” The Chancellor was asked to authorise the Revenue to prepare the necessary clause for the next Finance Act. In simple terms the decision seemed to be the revenue generated was worth the cost of implementing the change.

Before the passing of the Act and, indeed afterwards, strong representations were made to Mr R A B Butler, M.P., the Chancellor of the Exchequer, that concessions should be made to the Islanders because of their special situation. Mr Greville Howard M.P. for Penzance of the Isles of Scilly was particularly active in this regard. Mr Howard pointed out:

“..the high cost of living in the Isles, arising from the fact practically everything has to be imported by sea, together with the extra expense of sending children to the mainland for secondary education and of visiting

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<sup>33</sup> TNA IR 40/12106 – Scilly Isles: Imposition of income tax; Finance Act 1953 (1952-54)

<sup>34</sup> TNA IR 40/12106 – Scilly Isles: Imposition of income tax; Finance Act 1953 (1952-54)

Penzance for medical treatment should be compensated for by countervailing relief from income tax.”<sup>35</sup>

The Council of the Isles of Scilly wrote the Chancellor on 18<sup>th</sup> June 1954 as follows:

“The Council of the Isles of Scilly urges the Chancellor of the Exchequer to recognise the need of special and substantial island allowance, equitable in their application to all branches of income, to offset the serious disadvantage of life in Scilly caused by isolation, smallness of size and population, and now aggravated to excess by full Income Tax”

The Council also sent a delegation to London to plead the case for the Islands.

The claims were resisted on the basis that:

“...many of the Western Isles of Scotland are subject to the same disadvantages as the Scillies. If a concession were made to the Scillonians the Hebrideans would no doubt protest that they too have to import nearly everything by sea and often over great distances..”

Sir Winston Churchill, the then Prime Minister got involved. The records contain a Cabinet Minute after the Budget Statement of 1953 as follows:

“THE PRIME MINISTER drew attention to the criticisms which were directed against the proposal..to enforce the collection of income tax on incomes earned in the Scilly Islands. The proposal seemed likely to involve the Government in political difficulties quite disproportionate to the amount of revenue which it would yield. The economy of the Scilly Islands had been built up on the basis that income tax was not payable there, and the residents had planned their lives on that basis. The sudden reversal of fortune which this proposal which this proposal would involve for them could be represented as a harsh and precipitate act of government.”

The Chancellor of the Exchequer was not moved. He replied:

“There was no logical ground for maintaining this immunity, which was not enjoyed by residents in any of the other small islands round the coast of

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<sup>35</sup> TNA IR 40/12023 – Scilly Isles: Claims for special treatment of farmers and residents. (1954 - 1956)

England, Wales and Scotland except the handful of people living on Lundy Islands.....It was estimate the change would yield an additional annual revenue of £100,000..”<sup>36</sup>

Mr Arthur A. Dorrien Smith wrote on 5<sup>th</sup> June 1953 protesting at the change and complained he had not been consulted. He concluded his letter by saying; “The Smith’s have in effect created Scilly as it is today, and I earnestly hope that we may be allowed to carry on.”<sup>37</sup>

In 1956 Mr Henry Brooke wrote that he had had a conversation with Mr Howard, M.P. who:

“..had got the idea that the Duchy of Cornwall (which owns most of the Scilly Isles) is so concerned about the prospects that the Duke of Edinburgh may be asked to have a word with some Minister and enquire what Government has in mind to do for the Islands.

...Mr Howard has a story that one evening after a good dinner a civil servant (nameless) told him that the Treasury now realised that they had made a great mistake in imposing income tax because the cost of collection almost equalled the additional yield, and that if this had been realised in time the Clause in the 1953 Finance Act would never have been put on the Statute Book.”

It does not take much imagination to suggest that the people on the Islands would agree with the nameless Civil Servant.

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<sup>36</sup> TNA IR 40/12106 – Scilly Isles – Imposition of income tax; Finance Act 1953 (1952-54)

<sup>37</sup> TNA IR 40/12106 – Scilly Isles: Imposition of income tax; Finance Act 1953 (1952-54)

## Appendix I

### *Scilly Islands*

#### *Cornwall*

#### *Copy Opinion of the Law Officers of the Crown*<sup>38</sup>

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It is to be regretted that in a matter of so much importance here should not be a regular series of Authentic public documents by referring to which the question between the Crown and the Duchy of Cornwall might be at once satisfactorily decided.

This however (owing to accident or neglect in past times) is not the case and the conclusion now to be arrived at, is one derived rather from argument and inference, than from positive and direct evidence.

We have carefully examined the copies of the several documents submitted to us together with the very able statements and arguments and elaborate researches which accompany them And we are of the opinion upon the whole that the Scilly Islands are to be considered as part of the possessions of the Duchy of Cornwall and that they do not belong to the Crown *jura Coronae*<sup>39</sup>.

And we are further of opinion under all the circumstances of the case that there is not any sufficient ground for our advising the Crown to call in question the right of the Duchy as it has been asserted and enjoyed for the last 40 years.

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<sup>38</sup> TNA BT 297/556 – St Mary’s Pier, Scilly Isles: Mr Dorrien Smith and Duchy of Cornwall (1889 - 1922)

<sup>39</sup> The Crown Royal Rights and Prerogatives

**Wm. Horne**

**J Campbell**

**Lincolns Inn January 1833**

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