Memoir on the Duchy of Lancaster

(1) This Duke Henry died of the Plague Anno 35°. Edw°. 3 -

Memoir on the Duchy of Lancaster

The immense Possessions of the Earls, and the last Duke of Lancaster, who were descended in a direct line from Edmund Crouchback, the younger Son of Henry 3°. and the first Earl of Lancaster of the House of Plantagenet, became vested in John of Gaunt the 4th. Son of Edward the 3d., by virtue of his marriage* with Blanche the younger of the two daughters & Co-heiresses of Henry the last Male lineal Descendant of Edmund Crouchback (1) (in whose person this Earldom had been erected into a Dukedom°, with all the Regalities and Privileges of a County Palatine) and in consequence of the death, without issue of her elder Sister Maude.

* A. D. 1359

° 26. Edw. 3°. A.D. 1352

John of Gaunt, in the 36th. Edw°. 3°, was declared in Parliament Duke of Lancaster, with all the Regalities and Liberties of a County Palatine -

A. D. 1362

Not to the Possessions and Estates of the Duchy and the Administration of them that this Memoir will be confined -

On

(2) Et outre ceo, mesme nre. Sr le Roi considerant, comment diverses Libertées et franchises eient este grantez devant ces heures, si bien a son sey[sey]gnier come ses autres ses Auncestres Dues et Counts de Lanc, ait et grante, de l'advys et assent avauntditz, Le mesmes les Libertées et franchises soient et demorgent a son dit eisnez Feitz, et ses Heirs Dues de Lanc defseverez de la Corone d'Engleterre, quitement et entierement, solonc l'Effect et purport de les Grantes avauntdites. — Et sur ceo mustra une Chartre en Parlement est faite, et la Baille a son eisnez Feitz avant dit

Rolls of Parl.t 3 Vol. p. 428.

On the death of John of Gaunt Duke of Lancaster all these Possessions came to his Son Henry, (afterwards King Henry the 4th.) by Descent in right of his Mother.

One of the very first measures of his reign was to procure an Act of Parliament by which his eldest Son Henry (afterwards King Henry the 5th.) should have and bear the name of Duke of Lancaster — and that all such liberties and franchises as had been before granted as well to his Father, as to others of his ancestors Dukes and Earls of Lancaster should be and remain to his said eldest Son and his Heirs Dukes of Lancaster <u>disevered from the Crown of England</u> wholly and entirely according to the effect and purport of the aforesaid Grants (2) — And thereupon the King delivered a Charter thereof made in Parliament to his said Son.

Rolls of Parlt. 3. Vol. p. 428.

Henry "well knew that he had "the Duchy of Lancaster upon a good and "indefeazible Title, and that his Title to "the Crown was not so good, and therefore "he had some Distrust that in time to "come the Crown might be taken from "him, or his Heirs, and was desirous

"nevertheless

"nevertheless that the Duchy should continue
"to him and his heirs, and he knew at the
"same time, that if the possessions of the
"Duchy should be mixed with the possessions
"of the Crown, and not be notoriously cut
and dissevered from the Possessions of the
"Crown, it might be the means of causing
"the Duchy the sooner to be taken away
"from him or his heirs, or that at least
"he or his heirs would receive no good
"by their being mixed with the possessions
"of the Crown; if the Crown should be taken
"from him or his heirs".

See Plowden's Commentaries 1. Vol: p. 212 - et seq. "Case of the Duchy of Lancaster"

Such are the reasons and motives which all the Judges and Counsellors assembled at Serjeants Inn Fleet Street by the Command of Queen Elizabeth in Michaelmas Term in the 4th year of her Reign (to confer together in order to understand the Law in a certain Case depending in the Duchy Court between the Queen on the one part, and divers of her subjects severally on the other part, wherein the Queen required their Resolution upon the matter in Law), imputed to Henry the Fourth for "the politic scheme" devised by him and carried into effect by the said Act of Parliament and the Charter

at

(3) – Nos volentes dictam hæreditatem nostram, aut libertates ejusdem, occasione instantis exemptionis Regalis Status, et dignitatis nostræ, in aliquo mutari, transferri, diminuiri, seu degorari –

(4) Sed eandem hæreditatem nostram cum juribus et libertatibus suis prædictis eisdem Modo et Formâ, conditione et Statu, quibus nobis descenderunt, et revenerunt – Nobis et dictis hæredibus nostris in dictis chartis specificatis plenariè et integrè conservari, continuari, et habere volumus –

(5) Quod tam Ducatus noster Lancastriæ, quam Vo^a nobis et dictis hæredibus nostris in Chartis prædictis specificatis in Formâ prædictâ remanenant in perpetuum –

at the same time granted in and by the authority of the same Parliament and then delivered to his Son Henry - This Act and Charter are the Foundation of the peculiar Constitution, & the separate and exclusive system of Administration by which the Possessions and Estates of the Duchy of Lancaster are at this day governed -

By this Charter which was entitled "Carta Regis Henrici quarti de "Separatione Ducatus Lancastrie a Corona "Auctoritate Parliamenti Anno Regni sui "primo" - it was ordained, that the Duchy of Lancaster, and the Possessions and Liberties thereof "should not in any thing "be changed, transferred, diminished or "derogated from by reason of his assumption "of the Royal State and Dignity"(3) - But that the same, with all their Rights and Liberties "should fully and entirely be "preserved, continued and had in the same "mode, form, condition, and estate in "which they descended and came to him"(4) - "And that the said Duchy of Lancaster &c "should remain to him and his heirs (as "specified in the Charters thereinbefore "recited) in the form aforesaid for ever"(5) - And that they "should so, and in such

"manner

(6) - Et quod taliter, et tali modo, et per tales officiarios et Ministros in omnibus remaneant, deducantur, gubernentur, et pertractentur, sicut remanere, deduci, gubernari, et pertractari deberent, si ad Culmen dignitatis Regiæ assumpti minime fuissent.

(7) The Case referred by Queen Elizabeth, for the Consideration and Decision of the Judges was this - King Hen: 8th being seized of certain Lands in right of his Duchy of Lancaster made a Lease to W.C. by the advice of the Council of the said Duchy, and under the Duchy Seal for 21 years, and died after whose death King Edward 6th by like advice made a Lease to R.W. of the same Lands for 21 years to commence immediately after the expiration &c of the first Term the said King Edward being then within the age of 21 years.

The Judges held that "the prerogative "which the Common Law gives to the "person of the King to be always of full "age, and never within age, is as firmly "annexed to him with regard to the "Duchy Lands" - and in conformity with this principle they decided that "the Lease "made by Edward 6th was not voidable by "reason of his Nonage".

Plowden's Commentaries 1 Vol: p. 217.

"manner, and by such Officers and Ministers
"in all things remain, be ordered, governed
"and demeaned, as they ought to have
"been, if he (Hen: 4th) had never attained
"the Regal Dignity."(6)

The Judges decided that by these words the Duchy is a Duchy, with the like Liberties, & Franchises as it was before separated, divided and severed from the Crown, and from the Ministers and Officers of the Crown, and from the Receipt of the Revenues of the Crown, and from such Order of Conveyance as the Law requires in the passing of the Possessions of the Crown. But nevertheless they held that the Charter extends only to the Estate, Condition and Order of the Lands of the Duchy, but does not reach to the person of the King who has the lands, in points touching his person, nor does it diminish or alter the pre-eminences which the Law gives or attributes to the person of the King, but the same continue as well with regard to the Possessions of the Duchy of Lancaster, as the Lands which come to him from other Ancestors.(7)

Wherefore it seemed to them that the whole intent of Hen: 4th and of this Charter

(5)

(8) My Lord Coke says — Hen. 4th. by this Charter severed the Possessions of the Duchy from the Crown — and that which John of Gaunt held for life is established forever. — And this separation Hen: 4th. made for that he knew he had the Duchy of Lancaster (par mutis regnis) by sure and indefeasible Title — and he could not be both Rex & Dux: — but specially that his Title to the Crown was not so assured, for that after the decease of R.2. the right of the Crown was in the Heir of Lionel Duke of Clarence 2d. Son of E.3. — John of Gaunt Father of Hen: 4. being the 4th. Son: and therefore he intended not, that by the Law of the Crown the Duchy shd. go with the Crown, and that he should be seized thereof in Right of the Crown, as the King afterwards was of the Possessions of the Duchy of York, Earldom of March and others —

4th. Inst. p. 205.

(9) Hen. 5., in right of his mother, Mary one of the two Daughters & Co-heiresses of Humphry de Bohun Earl of Hereford, Essex & Northampton, inherited large Estates which were the possessions of that Earl. — He adopted the same Line of Policy with regard to them, as his Father Hen. 4. had done with regard to the possessions of the Duchy of Lancaster. — By this Charter in Parliament in the 2d. year of his Reign all his possessions which he inherited from his Mother, were dissevered from the Crown of England, and annexed to the Duchy of Lancaster, and to be of the same nature — Until this Act of Severance, they were vested in him Jure Coronæ.

Id. Ib.

Charter and Act, was only to sever the Lands, Possessions, Privileges, Jurisdictions, & Hereditaments of the Duchy, from the Hereditaments of the Crown, vizt, in Survey, Order, Government and Process, but not in Person, so long as by the Grace of God, the Crown and the Duchy should continue and abide together in the Blood of the Duke of Lancaster, and of the said Blanch Mother of the said Henry 4.th; and that if the Crown should afterwards by any means be Taken out of the Blood of the Duke of Lancaster, that yet the said Duchy should continue in the Blood of the said Duke - So that the Intent of the Charter may be satisfied without derogating from the Person of the King, or destroying the Dignity or Pre-eminence which the Law attributes to it.[8]

Henry the 5.th by Charter granted in and by the Authority of Parliament in the 2.^d year of his Reign confirmed the said Charter of his Father in all respects[9]

In the next year (the 3.^d of the Reign of Henry 5.th) an Act of Parliament was passed, by which the Charter of the preceding year was confirmed, and it was

enacted

enacted That no Grant &c. which might concern any of the Possessions of the Duchy of Lancaster, or the Officers and Ministers of the said Duchy, "should for the future be "made under any other Seal of Him his Heirs "or Assigns great or small, ordained or to be "ordained but only under His Seal for the "Duchy aforesaid – and if any should "happen in any wise to come under any "other Seal for the future, they should not "be valid or effectual by any means but "should be judged and deemed vain null "and void for ever" –

Upon this Act the Judges observed, that by "making all Charters of any of "the possessions of the Duchy sealed with "any other than the Duchy Seal to be void, "it declares the Intent of the said Sirra Henry "to be that the said Duchy and all the "possessions thereof should be distinct, "separate, and used, from the Possessions of "the Crown" – and they consider that this Act of Henry 5th was done "with the same "politic design", as that by which his Father Hen. 4th was influenced in separating the Duchy from the Crown, immediately on his accession to the latter –

A. D. 1461. By the Act of Attainder of Henry 6th passed in the 1st year of Edward 4th the original Possessions

Possessions of the Duchy of Lancaster, and all the Annexations to it by Henry the 5th and since his time, were declared to be forfeited to Edward 4th - and to "be from the 3d day of "March then last to the said Duchy of Lancaster "corporate, and be called the Duchy of Lancaster" - and that King Edward the 4th should "have, seize, "take, hold, enjoy and inherit" all the said Possessions "by the same Name of Duchy from "all other his Inheritances separate to him & "his Heirs Kings of England for ever -, and that "the County of Lancaster be a County Palatine" -

It was further enacted that there sho.d be a Seal, Chancellor, Judges & Officers of the County Palatine, and "over that another "Seal, called "the Seal of the Duchy of Lancaster", "and a Chancellor for the keeping thereof, Officers "Counsellors for the guiding and governance "of the same Duchy, and of the particular Officers "Ministers Tenants and Inhabitants thereof, "in as great ample and large Form as Henry "calling himself Henry 5th at any time therein "had used and enjoyed lawfully" -

And, that, all Freedoms Liberties Franchises Privileges Customs and Jurisdictions, should be had used exercised and enjoyed by the said Officers Ministers Tenants & Inhabitants of the said Duchy as in the time of Hen: 5th.

With respect to this Act the Judges observed that as, on the one hand, the House

of

of Lancaster doubting their Title to the Crown, intended to preserve their Inheritance of the Duchy of Lancaster, in which they had no manner of doubt whilst it was disjoined from the Crown, so, on the other hand King Edward 4th 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. So that the said Inheritance of the Duchy was thereby placed & settled only in the Body Politic of the King; — and the County Palatine of Lancaster, and the Court of the Duchy, and the Liberties and Franchises thereof would have been utterly dissolved and extinguished in the Crown, if there had been no other provision made in this Act.

But King Edward 4th being nevertheless desirous that the Duchy and all that belonged to it, should continue as it was before, as to the Order and Direction of it, proceeded to establish and confirm, by the same Statute, the County Palatine from the 3d day of March preceding, and that he should have the possessions thereof by the name of the Duchy, from the 4th day of

(9)

of March, to him and his heirs Kings of England for ever – Yet the Statute provides how he should have them, – namely, "from "all other his Inheritances separate" – and how separate? – Not separate from the person of the King, as King, but separate only from the Order and Mode of Administration of the other Possessions of the King, so as that they should pass by another Seal than the Possessions of the Crown, were used to do, and by other Means than Possessions of the Crown should pass by – and by other Officers than the Officers of the Possessions of the Crown, and by all such other Rules and Methods as were in use in the said Duchy before the passing of the said Statute.

This Statute therefore ordained three Things – First, – It re-established the County Palatine of Lancaster – Secondly, – it vested it in the Body Politic of the King of this Realm, and his Heirs – and, thirdly, it separated the Possessions of the Duchy from the order and course of administration of the other Possessions of the Crown.

In this Form the Duchy continued until the Time of King Henry the 7th.

It may be proper, however, here to mention, that by an Act of Parliament passed

passed in the 14th. year of King Edward the 4th. the Honor, Castle, Lordship, and Manor of Tutbury with certain other of the possessions of the Duchy were vested in the Archbishop of Canterbury and others in trust for the uses of the King's will.

A. D. 1485 No sooner had King Henry 7th. acquired the Crown than he procured an Act of Parliament to be passed by which the said Statute of the 14th. Edward 4th. was repealed, and it was further enacted that He (K. Hen: 7) should "have hold enjoy and possess from "the 21st. Day of August (1485) to him and "his heirs for ever all the Honors, Castles, "Lordships, Manors, Lands, Tenements, Rents, "Reversions, Services, Possessions, and other "Hereditaments with their Appurtenances, "in the said Act contained, and the County "Palatine of Lancaster, and all Honors Castles "&c. possessions & other Hereditaments with "their Appurtenances that were parcel of "the said Duchy of Lancaster in the hands "or possession of the said Edward late King "of England on the 4th. day of March in the "first year of his Reign, or at any time after, "or in the hands or possession of Richard 3d. "late in Deed, and not in right, King of "England any time during his Reign "with all Liberties, Freedoms, Franchises, and "other Things, as well to the said County Palatine, "as

(10) It is curious that in this Public Act should be asserted that which is not true - Hen: 4. - Hen. 5 & Hen. 6 are here miscalled King Henry the 7th's noble "progenitors" - There can be little doubt that this was an intentional Deception practised upon the people of England for the purpose of concealing from them, who were then little versed in the history of their Country the Defect in his Title to the Crown, - to which he had no original right whatever, but that of Conquest; - His Paternal Descent was derived from Owen Tudor a Welsh private Country Gentleman, his Grandfather (who had raised himself to Distinction by his Marriage with the Dowager Queen of England Catherine of France the widow of Hen. 5th) - and his Maternal Descent (in right of which he affected to claim the Crown) was derived in the third degree from John Beaufort Earl of Somerset the illegitimate Son of John of Gaunt by Katherine Swinford:- The Act of legitimation of their Issue (10. Ric. 2.) containing an express exception of any right to the Crown (exceptâ dignitate regali) - This Defect was however cured - in the person of his Son Hen: 8th the legitimate Heir through his Mother of the House of York.

(11) The Act thus begins - "Forasmuch as the "King and Queen our Sovereign Lord and "Lady considering and regarding the Estate "of the Duchy of Lancaster, being one of the "most famous Princeliest and stateliest pieces

of

"as to any other the premises appertaining or
"belonging; and to be governed by like Officers,
"and use like Seals, as for Time past had been
"used & accustomed, in as ample and large
"Manner, and in like manner Form and
"Condition separate from the Crown of
"England, and the Possessions of the same,
"as Hen: 4th, Hen 5th & Henry 6th the King's
"Noble progenitors (10), late Kings of the Realm,
"or the said Edward late King had & held,
"or any of the said Kings had and held,
"any Act or Statute then before made in
"any wise notwithstanding."—

After repeated Arguments of Counsel it was finally decided, that, by force and Virtue of this last Act of Parliament, King Henry 7th had the Duchy in his Body natural as King Henry the 5th had it, disjoined from the Crown, and not as King Edward 4th had it.

Cap. 20 By an Act of 2 & 3 Philip and Mary, after reciting that the Possessions and yearly Revenues of the said Duchy were greatly diminished by reason of sundry Gifts Grants and Sales made by Hen: 8. and Edw: 6 and by sundry Exchanges of Possessions belonging to the Duchy for other Lands which had not been annexed to the Duchy, but been in the order Survey and Governance of other Counts and Places (11) — It was enacted —

That

"of Our said Sovereign Lady the Queen's ancient
"Inheritance do perceive and consider that the
"Possessions & yearly Revenues" &c &c — "And
"forasmuch also as Their Majesties do mind
"& intend to preserve, advance, maintain
"and continue the Ancient & honorable
"Estate of the said Duchy" —

Sect.

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That all the possessions of the Duchy which since the 27.th January in the 1.st year of King Edw. 6.th had been granted away or exchanged should be re-united & re-annexed for ever to the Duchy, for and as parcels & members thereof and should be of the same nature, quality, kind and condition as the other ancient possessions of the Duchy - and should be "in the letting, "Setting, Order, Rule, Survey, Receipt and "Governance of the Chancellor, Council and "Officers of the said Duchy of Lancaster for the "time being for evermore, in like and the "same manner and form to all intents and "purposes as other the said antient Possessions "of the Duchy". - And that all Grants of them annexed Possession should be made and pass under the Duchy Seal.

Sect. 4 The King and Queen and the Heirs and Successors of Her Majesty were empowered by Letters Patent under the Great Seal of England to annex other Estates in England "unto "their said Duchy of Lancaster, for the further "Augmentation Honor and Estate" thereof. - but so that such Estates should not exceed

Sect. 8 "in the whole the yearly Value of Two Thousand "Pounds" -

That power, it appears, was afterwards exercised by that King and Queen by Letters Patent.

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The Duchy of Lancaster, thus settled and established, as a Possession for ever severed from the Crown by the above mentioned Statutes of Hen: 5 and Hen: 7th and thus augmented by Philip and Mary has from that time been held and enjoyed by all succeeding Sovereigns as a distinct and separate Estate. No Act of Parliament has ever since been passed to repeal, or in any manner to alter, control, or affect that Settlement, which, on the contrary, has been recognized by several Acts of Parliament

The Duchy of Lancaster, therefore, and all its Possessions still remain severed from the Crown, and are at this day held and governed according to the Tenor of those Settlements in its own peculiar order and course of Administration as an Estate separate and distinct from all the other Possessions of the Crown.

It was the obvious intention and policy of the two first Sovereigns of the House of Lancaster Hen: 4 & Hen: 5. that their Duchy Possessions should be considered, as totally and for ever severed from the Crown Estates - and be enjoyed as a separate and distinct possession, under the governance of its own Officers & Ministers - and so anxious were they to preserve distinct from the Crown this their undoubted Patrimony, and so jealous of any encroachment or innovation

upon

(12) - Quod omnes et singuli Receptores &c. coram certis specialibus Auditoribus &c. de tempore in tempus adhoc limitand. et assignand., dumtaxat et non coram Thes. et Baronibus de Scaccario Regis computent et respondeant continue in futuro - Ita quod Thes. et Baronibus de Scaccario predicto de aliquibus hujus-modi Denariis &c. - inde audiend., habend. reddend. vel terminand., in futuro, se non intromittant, allo modo

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upon its Independance that in the Parliamen=tary Charters above cited it was ordained that all Receivers &c of the Revenues of the said Duchy should account only before special Auditors &c.a to be appointed by them their Heirs and Successors from time to time and not before the Lord High Treasurer and Barons of the Exchequer - who are thereby in express terms prohibited from interfering therein.- (12) And the Act of the 3. Hen. 5. (as we have before seen) proceeds so far as to declare that every Grant of the Possessions of the Duchy under any other Seal great or small than the Duchy Seal, shall be absolutely null and void.-

Another decisive proof of the extreme Jealousy of the early Sovereigns with regard to any foreign Interference in the Concerns of their Duchy Possessions, and that they were considered by them as their own personal and private Estate may be found in the antient forms of the Oaths of Office taken by the Officers of the Duchy and which are in use at the present Day - They swear to keep secret all Things that shall be communed in the Council of the Duchy, and not to disclose them to any but the King himself, or to others of the Council.

The

The Possessions of the Duchy have been for several Centuries and at this day are managed under the immediate Direction of the King Himself. The King's Warrants are countersigned by his Chancellor of his Duchy, without the Interference, or even the Knowledge of any Officer of the Crown. — It has ever been considered that the Duchy Rights would not be bound by the King's general Assent to an Act of Parliament, as King.

From the Manifest Tenor of these Acts of Parliament (for such they are, being Charters granted in and by the Authority of Parliament) — and the uniform Order and Course of Administration of the Possessions of the Duchy under them continued without variation down to the present day, nothing can be more clear than that those Possessions are the personal and private Estate of the King severed and separated for ever from the other Possessions of the Crown.

Committees of the House of Commons have in modern times acquiesced in this view of the subject. The Chancellor of the Duchy has declined upon more occasions than one to make Returns required by Parliament upon the Ground that the Duchy was the private Estate of his Majesty — and that Ground of refusal has

has been acquiesced in. – Indeed it is urged that it might be inconsistent with his Oath of Office for the Chancellor of the Duchy to make such Returns –