

January, 1984

Articles

A note on the Isle of Man

By the Hon. William Cain, Attorney-General of the Isle of Man.

In July 1983 the Isle of Man Government, with the support of the Commonwealth Secretariat, organised a meeting in the Isle of Man of Law Officers from small Commonwealth Jurisdictions. In 1984 the Isle of Man will be host to the Thirtieth Commonwealth Parliamentary Conference. Although these events may have drawn, or may in future draw the attention of some Commonwealth lawyers to the Isle of Man, it is likely that the majority of readers of the *Commonwealth Law Bulletin* will have only the haziest idea about the Isle of Man and its constitution and status within the modern Commonwealth. At the same time it is probably true that with the development of the Island as an offshore financial centre in recent years, more Commonwealth lawyers will have had some contact with the Island than ever before. This article, it is hoped, will clear a little of the haze which has traditionally clouded the Island from the outside world.

The Island is 33 miles long and 11 miles wide and has a land area roughly comparable to Singapore, but with hills rising to 2,000 feet above sea level. Much of the centre of the Island is open moorland cut by steep-sided valleys. The northern part of the Island is an extensive fertile plain of agricultural land, and there is also good agricultural land along the east and southern coasts. The Island lies in the centre of the Irish Sea, almost in the centre of the British Isles, being approximately 26 miles to the west of England and 34 miles to the east of Ireland, with the Scottish coast some 17 miles to the north and the Welsh coast approximately 43 miles to the south. The Island is approximately 300 miles, or one hour flying time, from London, and 70 miles, or four hours sailing by sea from both Liverpool and Dublin.

The present population of the Island is 64,000 of whom more than 50 per cent were born in the Island. About half the population live in the principal town, Douglas, and the surrounding urban area, with the remainder divided between a number of smaller towns and villages, in particular Ramsey in the north, Peel, the site of the Island's ancient cathedral on the west coast, and Castletown, the old capital, at the southern end of the Island, near the modern airport. Douglas is the seat of government and also the principal sea port, and is an old established, perhaps old-fashioned, holiday resort catering for up to half a million visitors each summer. Tourism, although still important, now takes third place in the Island's economy to manufacturing which has developed since the Second World War, and to the rapidly developing financial sector, in particular the banking and insurance businesses, which have become established in the Island during the last decade. Farming, and, to a lesser extent, fishing, are still regarded as important, although both industries are relatively less important than at the beginning of the present century.

Culturally, until the early 19th Century, the island formed part of the Celtic fringe of the British Isles. The old language of the Island, Manx Gaelic, closely allied to Scottish and Irish Gaelic, was replaced by English as the language of the people during the 19th Century and is today only spoken by enthusiasts. But the Manx people have a strong sense of national identity and there is a keen interest in so much of the Island's cultural heritage as has survived to modern times. During the 19th and 20th Centuries there were waves of emigration from the Island to the United States, Canada, Australia and New Zealand, and the old Manx family names are now as likely to be found in Cleveland, Ohio, or Melbourne or Toronto as in the Island itself.

The Isle of Man is not, and has never been, part of the United Kingdom but is a Crown Dependency. It is not represented in the Westminster Parliament. Like the Channel Islands of Jersey and Guernsey it has a special relationship with the EEC which was negotiated at the time of accession of the United Kingdom to the EEC. The Island is for most purposes autonomous except for defence and international affairs for which the United Kingdom Government has responsibility. However the Manx people share with those of the United Kingdom a common citizenship, and like the people of the Channel Islands, are British citizens. While the Parliament at Westminster has power to legislate for the Island, as it has always had in respect of all British territories, Parliament, in general, only legislates for the Isle of Man in connection with matters having international significance. For most purposes Tynwald, the Manx Parliament, enacts legislation for the Island, although in practice Manx law is closely modelled on English law. The Island has its own independent legal system. The two Judges of the Manx High Court hold the ancient and honourable title of "Deemster". From the Island's Court of Appeal, composed of the Deemster whose judgment is not being appealed against and the Judge of Appeal, a part-time appointment held by a senior practising Queen's Counsel from England, there is a right of appeal to the Privy Council.

The Queen is represented in the Island by the Lieutenant Governor who is also formally the head of the Manx Government. In most matters he acts however on the advice and with the concurrence of the Executive Council which is elected by Tynwald. The administration of the various government departments is vested in statutory committees or Boards, the most important of which are normally represented by their Chairman on the Executive Council. It has recently been decided that a ministerial system of government should replace the present Board system and the Chairman of Executive Council, who is now elected by Tynwald at its first meeting following a general election, will then become known as the Chief Minister.

The Manx Government levies its own taxation and, since 1980, has had its own customs and excise service which is responsible for the collection of indirect taxation. The Manx Government also exercises complete control over all public expenditure in the Island. However the Isle of Man has an important customs and excise agreement with the United Kingdom, recently revised in 1979, under which the United Kingdom and the Isle of Man form a customs union. Similarly the Isle of Man has reciprocal agreements with the United Kingdom relating to

social security payments and National Health care. However the Island's social security system and its National Health service are both quite separate from those of the United Kingdom. The education system caters for primary and secondary education and for further education. For university education, however, Manx students must leave the Island to attend universities in England or Scotland. Overall the Manx government has managed to operate a balanced budget and there is no national debt.

The Legislature, Tynwald, consists of two houses, the House of Keys with 24 elected members, one of whom presides as the Speaker, the Legislative Council which has two *ex officio* members, the Bishop of the Island, occupying a seat by ancient tradition, and the Attorney General who has no vote, together with eight other members elected by the House of Keys. The Legislative Council elects its own presiding officer known as the President of the Legislative Council.

Bills are normally introduced into the House of Keys, then passed to the Legislative Council, and finally to a joint sitting of the two houses or branches, presided over by the Lieutenant Governor. A Bill which has been signed by a quorum of both branches is then sent to London for the Royal Assent. Since 1981 the granting of the Royal Assent has been delegated to the Lieutenant Governor except in the case of Bills dealing with certain reserved matters for which the Royal Assent can still only be given by the Queen in Privy Council.

A joint session of the Legislative Council and the House of Keys presided over by the Lieutenant Governor, known as "Tynwald Court", is generally held each month. Tynwald has responsibility for approving all public expenditure, which must first be authorised by the Finance Board, and for approving most subordinate legislation. Tynwald also elects the Boards, statutory committees and the Executive Council. Tynwald is the supreme policy-making body, and in the absence of a party system exercises far more power over The Executive Council than most parliaments exercise over the cabinet in fully-developed ministerial systems.

The Manx Government issues its own currency notes and coins, based of course on Sterling, and since 1973 has issued its own postage stamps. The Island also maintains a Register of Shipping under the Merchant Shipping Act 1894.

The obvious question which will occur to most readers of this article is why is it that an Island of 64,000 inhabitants lying in the centre of the British Isles and culturally part of those islands, has never been integrated into the United Kingdom? The answer lies in the Island's unique history, which can be traced back to the invasion of the Island by Viking settlers from West Norway in the 9th Century A.D. The Scandinavian settlers brought with them their language, and more particularly their law. They established in Man, as in other Scandinavian settlements in Northern Europe, the custom of holding an annual assembly presided over by the local King, to administer justice and resolve disputed points of law. Although within a few generations the Scandinavian invaders had adopted the Celtic language and the Christian religion of the native inhabitants, the Scandinavian form of government

which became known as the Tynwald, like the comparable assembly in Iceland, became firmly established. Under Scandinavian rule Man became a separate Kingdom, which also included for a period the Herbridean Islands off the west coast of Scotland, under the general suzerainty of the Kings of Norway. The rule of the Scandinavian Kings of Man came to an end in 1266 when the suzerainty over the Island was ceded by Norway to the Kingdom of Scotland. Subsequently Man became disputed territory between England and Scotland, but by 1333 the Island had come under the ultimate control of the Kings of England. No attempt was made, however, to incorporate the Island within the Kingdom of England. Instead the Kingship of the Island was granted by the English Crown successively to various English noblemen, eventually, in 1405, to Sir John Stanley. His descendants, who later became the Earls of Derby, continued as hereditary Kings of Man, the title later being changed to Lord of Man, until 1733 when the title passed by descent to the Dukes of Athol. Broadly speaking the English Kings and Lords of Man respected the ancient constitution and laws of the Island which derived from the Scandinavian period. By the beginning of the 17th Century Tynwald had taken on the appearance of a modern legislature and was enacting laws in a form which we would recognise as being Acts of Tynwald. However the hereditary Kings, and Lords, who rarely visited the Island, exercised complete authority over the Government through their appointed officials. On the whole the people of the Island acquiesced. But in the early 17th Century an attempt was made to interfere with the traditional "freehold" tenure by which land had been held by the Manx farmers since ancient times and to convert it into mere leasehold held of the Lord. As a result of the consequent unrest the Manx joined forces with the English parliamentarians, who had overthrown King Charles I, against the rule of the Stanley family. Although the hereditary Lords were restored to office on the restoration of King Charles II, the attempt to destroy the ancient rights of the Manx people to their land was eventually abandoned, and the ancient customary "Estates of Inheritance" of the Manx farmers were confirmed by an Act of Tynwald in 1704 known as the Act of Settlement, sometimes described as the Manx Magna Carta.

During the 18th Century the British Government became increasingly concerned about the loss of revenue which was being caused by the Island being used as a base for smuggling into Great Britain. Eventually the British Government prevailed upon the then hereditary Lord, the Duke of Athol, to sell his hereditary rights as Lord of Man to the British Crown. The sale of the Island to the Crown for £70,000 was ratified by an Act of Parliament of 1765.

After 1765, the Island was administered from London through the Lieutenant Governor appointed by the Crown, as if it were a Crown colony. However no attempt was made to integrate the Island with England, or to interfere with the status or powers of Tynwald, but Acts of Tynwald, which had previously required the assent of the Lord of Man to become law, now required the assent of the Crown.

In 1866, as a result of considerable agitation, Tynwald was given some degree of control over the expenditure of Island revenues, and during the following 90 years a local administration responsible to

Tynwald slowly developed. In 1958 the British government relinquished all control over the Island revenues, and this was followed by the establishment of a Finance Board, elected by Tynwald, to take charge of the Manx treasury. During the succeeding 20 years, in consequence of various Acts of Tynwald, most of the Governor's Executive powers were transferred to bodies appointed by Tynwald, and in particular to the Executive Council which was established in its present form in 1961. The proposed adoption of a ministerial form of executive government would complete the internal evolution of the Manx government.

Although the Isle of Man is not an independent State, and is unlikely in the foreseeable future to wish to become an independent State, its relationship with the United Kingdom, and within the Commonwealth, will, no doubt, continue to evolve in the direction of greater independence. Perhaps this could be a pattern of the constitutional development which might be relevant to other small Islands.

The Bailiwick of Guernsey in the Channel Islands

By Edmund Lenfestey of the Office of Her Majesty's Procureur.

The Bailiwick of Guernsey, which with the Bailiwick of Jersey, 20 miles away, comprise the Channel Islands, is made up of a group of small islands. The largest, Guernsey, with a population of 54,000, has an area of 24½ square miles. 20 miles to the north of Guernsey is the next largest island, Alderney, which is approximately 60 miles south of the nearest point on the mainland of England and only 10 miles from Cap de la Hague on the French coast. Alderney, 3½ miles by 1½ miles, has a population of 1,700, while Sark, 9 miles away from Guernsey, is merely 3 square miles and has a population of 600. Nearer to Guernsey are the much smaller islands of Herm, Jethou and Lihou, with only a very few inhabitants; they are administratively part of Guernsey.

There are no formal links between the two Bailiwicks, which were part of the Duchy of Normandy before the Norman Conquest of England. Although in close proximity to England, and within the British Islands, they do not form part of the United Kingdom. After the loss of continental Normandy by the King of England to the King of France in 1204, the two Bailiwicks remained in allegiance to the former and for centuries maintained a successful resistance against French claims to sovereignty. From 1204 onwards, the constitutions of each Bailiwick evolved separately, although to this day their chief posts and institutions of government have much in common. Each has a Lieutenant Governor, who is Her Majesty's personal representative and the official channel of communication between the Crown and the United Kingdom and the insular authorities; a Bailiff and Deputy Bailiff, who share the most important of the other offices held under the Crown, with the duties of presiding over the legislative assembly (The States) and the supreme Bailiwick Court (The Royal Court); and an Attorney General and Solicitor General (known locally as Procureur and Comptroller), who