In the Supreme Court of Canada.

No. 7. Factum of the Attorney-General of Canada—*continued.*

berlain, Constable of England, Keeper of a Castle or gaol, Governor of a Workhouse, Commissioner of Sewers, Forester and Common Constable. But Gray C.J., says that this was for the reason that each of these offices might be executed by a deputy (*Robinson's case*, ibid., p. 379). Women were also decided to be capable of voting for and of being elected to the office of sexton of a Parish, "a sexton's duty being in the nature of a private trust": *Olive* v. *Ingram*, (1738) 7 Mod. 263; and so, also, of being appointed an overseer of the poor (*The King* v. *Stubbs*, ibid supra); but upon an exhaustive and learned review of the cases, in *Robinson's case*, ibid supra, p. 379, Gray C.J., concluded as follows :—

> "And we are not aware of any public office, the duties of which must be discharged by the incumbent in person, that a woman was adjudged to be competent to hold, without express authority of statute, except that of overseer of the poor, a local office of an administrative character and in no way connected with judicial proceedings."

This appears, on the authorities, to be a correct statement of the law, but the judgments of the dissenting judges in *The Queen* v. *Crosthwaite*, ib. supra, and of the judges who took part in the more recent decision of *Frost* v. *The King*, ib. supra, and also the judgment of the Court of Appeal in Alberta, in *Rex* v. *Cyr* (1917) 3 W. W. R. 849, in which it was held that a woman was under no disqualification in that province from being appointed a police magistrate, at least throw some doubt upon the general proposition that women were, by the common law, excluded from the exercise of all public functions. However, whatever doubt there may be about that general proposition, this much is clearly settled, that by the common law of England women were under a legal incapacity either to vote at the election of, or to be elected, a Member of Parliament, or, if peeresses in their own right, to have a seat and vote in the House of Lords.

10. The policy of the common law, in regard to the exclusion of women from public functions, appears to have followed substantially that of the Roman law, in which it was laid down in general terms "*feminae ab omnibus officiis vel publicis remotae sunt*": Ulpian lib. ii. D. tit. de reg. Juris. Ulpian witnessed, however, in his own lifetime a historic breach of this general principle, of peculiar interest in the present case. Lampridius, in his biography of the profligate Roman Emperor Elagabalus (Heliogabalus), A.D. 218-222, says that, when the Emperor held his first audience with the Senate (on his arrival in Rome in July, 219), he gave orders that his mother should be asked to come into the Senate Chamber and that on her arrival she was invited to a place on the Consul's Bench and there took part in the drafting of a decree and expressed her opinion in the debate. And Elagabalus, says Lampridius, was the only one of all the Emperors under whom a woman attended the Senate like a man, just as though she belonged to the senatorial order: The Scriptores Historiae Augustae, ed. of the Loeb Classical Library,