dom to depend to a great extent on the connections between the right to vote and the liability to taxation. Why are women to form a striking and an unfair exception to this rule?

[The learned counsel then proceeded to discuss the fitness of women for the exercise of political rights; but as in this part of his argument he did not introduce any additional legal matter, it is not here given.]

Mellish, Q. C. (*R. G. Williams* with him), for the respondent.—This is a case where the lady claims to vote for the borough of Manchester. That borough was created by the Reform Act of 1832. Now, my learned friend admits that the phraseology of that Act cannot be strained so as to include women among the electors to whom the franchise is given for the first time by that Act. Therefore, so far as the borough of Manchester is concerned, and, therefore, so far as the present case is concerned, the contention of my friend must rest on the construction of the Representation of the People Act of 1867.

Now it is admitted that, when that Act was passed, the common opinion was that women had not the right to vote, and therefore that Act was passed in view of that opinion. But I contend that the opinion which has prevailed for so long on this subject, both among lawyers and among ordinary persons, is strictly in accordance with the common law. In the first place, this common opinion is proof of what the common law is, in the absence of any proof to the contrary. Of course there may exist strong evidence which will rebut this presumption, but I submit that no such evidence has been adduced to-day by my friend.

There are two questions as to section 3 of the Act of 1867. First, does "man" include woman? and, secondly, is sex an "incapacity"? I can't see that, without Lord Romilly's Act, my friend has any case, though he seemed to think but poorly of the assistance he was to derive from that Act. Now the Act to be construed is not Lord Romilly's Act, but the Act of 1867. If your Lordships can gather in any way permitted to the judicial mind that the Legislature did not intend to include women by the Act of 1867 your conclusion cannot be affected by any difficulties of construction consequent on Lord Romilly's Act. Now, if the Legislature had intended to make this change, would they have done it in this way, this very vague and uncertain way. The 56th and 59th sections of the Act of 1867 throw some light on this point. By these sections, the two Acts of 1832 and 1867 are to be construed together. How can we possibly read these Acts together if Lord Romilly's Act, which was passed in 1850, is to be applied to interpret the one Act and not the other.

The word "man" no doubt itself admits of two constructions (1) in opposition to angels and beasts, and (2) in opposition to infants and women. If it is used in the latter sense in section 3, the contention is at an end. Surely that is what it does mean. If you take it in connection with the Reform Act of 1832 how could it mean anything else. By "male person" in the Act of 1832 the Legislature clearly meant this, and it must therefore have meant the same in section 3. For example, section 27 of the Act of 1832 applies to males only, but to males in warehouses, &c. Whereas the Act of 1867 applies to dwelling-houses only. So, if section 3 were held to include women, we should have an absurd inequality; sex would in some instances operate as an incapacity, and in some instances it would not. Now clearly the Legislature could never have deliberately intended this. Consider the Mutiny Act, 30 & 31 Vict. c. 152. The expression there is that so many thousand "men" shall be raised. Would that authorize a recruiting serjeant to enlist women? I submit not. Yet this is since Lord Romilly's Act.

But if we leave the consideration of the late Act, and examine what the state of the law was anterior to its passing, I must say I rely equally with my friend on the phraseology of the early statutes. He says truly that the words in those statutes are very general, and in each case capable of including women as well as men. Quite so, but as a matter of fact such a construction as that contended for by my friend never was put on any of those statutes, as is sufficiently proved by the uniform practice that women did not vote at elections as far back as legal memory goes. For I contend that my friend has made out no case that they ever have voted in ancient times, and to that point I am coming in a moment. The statute 8 Hen. 6, c. 7, was a restraining statute. But I admit that that statute did not take away any franchise from women. If women had a right to vote before that statute they have it still if they are forty-shilling freeholders. And as to the latter statutes I equally concede to my friend that no rights were taken from women by them, for they are not disabling Acts at all. Now, I submit that whatever may have been the correctness of the opinion that women have not the right to vote at elections, at at any rate all the authorities show that in point of fact from the time of Coke to the present day women did not vote. What is the evidence with which my friend meets the presumption raised by this concurrent testimony? How does he seek to rebut the great opinion of Lord Coke? His authorities are very ambiguous. As to women being suitors to the county court, the fact of their being bound to come to the county court does not prove that they went there as suitors. Others than suitors we know were bound to go. The extracts from Prynne only show that in four or five cases women seemed to have signed the indentures. Now, if it be as my friend contends we have a married woman appointing an attorney, and that attorney voting for her, as will appear on looking at the returns. In these cases the women were probably the patrons of the borough, and in one case it is not certain that she was not the returning officer. You have thus three or four ambiguous signatures against the uniform usage and opinion of the last 300 years. It does not appear, indeed, except in the case where the woman's was the only signature, that the returns were disputed, and in that case the return was held bad. There is nothing to show that superfluous signatures would vitiate the return. In the case of *Olive* v. *Ingram* the dicta are more for me than they are against me, as will be seen by reading the judgment. Lee, C. J., it is true, gives contradictory opinions in different parts of his judgment, but in the conclusion he is in my favour. Therefore, in that case the authority of