

Eng. Rep.]

CHORLTON v. LINGS.

[Eng. Rep.]

It was maintained, on the part of the objectors, that under the existing statutes the claimant was disqualified on account of her sex.

The revising barrister held that Mary Abbott, being a woman, was not entitled to be placed on the register, and her name was erased from the said list of claimants.

There were also struck out of the list the names of 5,346 whose names and qualifications are set forth in the schedule, and as the validity of their claims depends on the same point of law as that raised in the case of Mary Abbott the appeals were consolidated.

If the Court shall be of opinion that the said Mary Abbott is not entitled to have her name inserted in the list of voters for the said borough of Manchester then such names and the names referred to and set forth in the schedule above mentioned will remain erased; but if the Court shall be of opinion that the said Mary Abbott is entitled to have her name inserted in the said list of voters then her name and the said names referred to and set forth in the schedule are to be restored.

The following are the appellant's points for argument:—

1. That there is no disability at the common law whereby a *feme sole* otherwise duly qualified is prevented from voting in the election of a member or members of Parliament.

2. That the Representation of the People Act, 1867, section 3 confers the right to be registered, and when registered to vote for a member or members to serve in Parliament for a borough, on every man who is qualified as in such section is mentioned.

That in the 13 & 14 Vic. c. 21 (Lord Romilly's Act), it is declared by section 4, 'that in all Acts words importing the masculine gender shall be deemed and taken to include females unless the contrary is expressly provided.' That the words 'every man' denote the masculine gender, and that in the Representation of the People Act, 1867, the contrary is not expressly provided. Therefore, the words include 'every woman' and that a *feme sole* duly qualified according to the provisions of the said last mentioned Act is entitled to be registered, and when registered to vote for members of Parliament.

*Coleridge, Q. C.*, (*Dr Pankhurst* with him), for the appellant.—My main argument is this—women have this right at the common law, they have in ancient times exercised it, and no statute has ever taken it away. This is my main argument, and I shall enter upon it at once, though, of course, I also rely upon the construction of the word "man" in the Representation of the People Act, 1867. I shall, however, make that point last. Now, as to the position that at common law women have this right, and have in ancient times exercised it, the argument as to sex cannot be local; if, therefore, I can satisfy your Lordships that in counties the right was anciently exercised by women, that argument will avail for the present case, though it is the case of a borough. The first statute affecting the franchise in counties is 7 Hen. 4, c. 15. The words are, "From henceforth the elections of such knights shall be made in the form as followeth; (that is to say) at the next county to be holden after the delivery of the writ of the Par-

liament, proclamation shall be made in the full county of the day and place of the Parliament, and that all they that be there present, as well suitors duly summoned for the same cause as other, shall attend to the election of the knights for the Parliament, and then in the full county they shall proceed to the election freely and indifferently, notwithstanding any request or commandment to the contrary; and after that they be chosen, the names of the persons so chosen (be they present or absent) shall be written in an indenture under the seals of all them that did choose them, and tacked to the same writ of the Parliament, which indenture so sealed and tacked shall be holden for the sheriff's return of the said writ, touching the knights of the shires."

Now, here the suitors are those who are to have the franchise, and why not female suitors as well as male suitors? In 1 Hen. 5, c. 1, again, the words used are large enough to include both sexes, and I shall show as a matter of evidence, that women did in fact exercise the franchise. Now the elections for counties were held in the county court: 1 Bl. 178. What was this county court? It was a court where the freeholders were judges: 1 Reeves, 47. [*BOVILL, C. J.*—In Saxon times there is no mention of anything in their Parliaments except of wise *men*.] I am not speaking of the Witenagemote, but of the county court, to which clearly women as well as men must have been suitors, and it was in these county courts that the elections for the knights of shires were held. Now I contend that it is for my learned opponents to show that the county court held for the election of the knights of shires was different from the ordinary county court which tried causes. If the statute of Marlbridge, 52 Hen. 3, c. 10, be referred to, it will be seen that women attended the county court on some occasions, for the following passage is to excuse the attendance of nuns on certain occasions, namely, when members of Parliament were to be elected: "De turnis vicecomitum provisum est, ut necesse non habeant ibi venire archiepiscopi, episcopi, abbates, priores, comites, barones, nec aliqui viri religiosi, nec mulieres, nisi eorum presentia ob aliquam causam specialiter exigatur." Now if we go back to early parliamentary history, we shall find that the method of returning members was by indenture; the electors, or some of them, executing the indenture. Copies of such indentures are to be seen in *Prynne's Brevia Parliamentaria Rediviva*, 152, 153. I have also here certified copies of such indentures from the Record Office, one or two of which I refer to. They contain the names of women as returning the members. The several dates of these returns are, 13 Hen. 4; 2 Hen. 5; 7 Edw. 6; 1 & 2 P. & M.; 2 & 3 P. & M. [*WILLES, J.*—In the last case, the woman is the only person who executes the indenture. That looks rather as if she was the returning officer, which she undoubtedly might be]. But that will not account for the case in 7 Edw. 6. There, the woman is mentioned in conjunction with others as sending up the members. [*BOVILL, C. J.*—The writ in the case in 2 & 3 P. & M., is directed to the lady. Would not that make her the returning officer?] It is not so in the case in 1 & 2 P. & M. Heywood, in his treatise on County Elections, 2nd ed, p. 255, says that it is usual to cite Coke's 4th Inst.