shall have the estate at the time of the election, and that it was rated in their names at the proper amount on the last revised assessment roll.

But how is it held in analogous cases? Take the case of voters at municipal elections—their right depends upon the 75th section (now varied by the Statute of Ontario, but not as affecting the present matter)—they must be severally, but not jointly rated on the then last revised assessment roll, for real property held in their own right or that of their wives, as proprietors or tenants—and the clause declares such rating absolute and final. Certainly in this case the law permits no enquiry into incumbrances.

The only oath that can be administered to a freeholder appearing on the roll to have the proper qualification is, that he is of the full age of twenty-one years, is a natural born or naturalised subject, that he has not before voted at that election and that he is the person named in the Roll: see *Reg. ex rel. Ford* v. *Cottingham*, 1 U. C. L. J. N. S. 214; *Reg. ex rel. Chambers* v. *Allison*, lb. 244.

Then as to parliamentary elections (section 81) the law is as I take it the same. The requirement is, that they should be entered on the last revised assessment roll, as the owner or occupant of real property, of the actual value, &c. No encumbrance affects the right. There can be no enquiry as to qualification except as to the identity of the party with the name on the roll

I will notice two other cases where the legislature has intended an opposite effect, and has expressed it very clearly.

As to candidates at parliamentary elections, the qualification is to the value of £500 sterling, expressed to be "over and above all rents, charges, mortgages and incumbrances, charged upon and due and payable out of or affecting the same;" Imp. Stat. 3-4 Vic. cap. 35, sec. 28. No one can have doubt or hesitation here.

Then take the case of magistrates. By Consol. Stats. Canada, cap. 100, sec. 3, the qualification must be "over and above what will satisfy and discharge all incumbrances affecting the same, and over and above all rents &c., payable out of or affecting the same."

Looking at the careful and explicit language used in these cases, it seems not reasonable to conclude that in the case of municipal candidates the legislature meant any more than the grammatical meaning of the language used conveys, and I therefore think that the defendant being rated in his own name on the last revised assessment roll for a freehold estate—of the proper value—and having that estate at the time of the election, is properly qualified, and that the judgment standing against him does not affect it.

I must give the costs against the relator, as it does not appear that exertions were made to ascertain whether the incumbrances charged as affecting the valuation were existing at the time of the election.

Judgment for defendant with costs.

Regina ex rel. Gibb v. White.

Municipal election—Disqualification—Indians—Enfranchisement.

An Indian, who is a British subject and otherwise qualified (in this case by holding real estate in fee simple to a sufficient amount), has an equal right with any other British subject to hold the position of Reeve of a municipality, even though not enfranchised, and receiving as an Indian a portion of the annual payments from the common property of his tribe.

[Chambers, March 23, 1870—*Mr. Dalton.*]

O'Brien, for the relator, obtained a *quo warranto* summons to try the validity of the election of the defendant to the office of Reeve of the Township of Anderdon, in the County of Essex.

Tht statement of the relator complained that Thomas B. White had not been duly elected to the office of Reeve in the Township of Anderdon and usurped the office under the pretence of an election held on the first Monday in January; and that Dallas Norvell of Anderdon aforesaid, merchant, was duly elected thereto, and ought to have been returned at the said election; and the following causes were stated why the election of the said T. B. White to the said office should be declared invalid and void, and the said Dallas Norvell be duly elected thereto, namely:—That the said Thomas B. White was an Indian, and a person of Indian blood, and an acknowledged member of a tribe of Indians, and not in any way enfranchised or exempted from the disabilities of Indians, and as such was disqualified from holding the property qualification necessary to entitle him to such office, and that therefore he had not the necessary qualification, either of property or otherwise, and that the said Dallas Norvell was the only other candidate for the said office, and should be declared elected.

There appeared to be no dispute about the facts of the case. The defendant was born in Ontario, as was his father before him; he was the son of the Chief of the Wyandotts, or Huron Indians, of Anderdon; he was never "enfranchised" under our statute, and from time to time received his portion of the annual payments from the property of his tribe; he had for the last twelve years been engaged in trade — latterly rather extensively; he had been for some years the owner in fee simple of patented lands in Anderdon, on which he lived; but these lands were not allotted to him from the lands of the tribe, but were acquired by himself. The value was beyond the necessary qualification.

Osler, shewed cause.

O'Brien, contra.

Con. Stat. Can. cap. 9; Con. Stat. U. C. cap. 81; 31 Vic. (Can.) cap. 42; 32, 33 Vic. (Can.) cap. 6; Treaty and Proclamation in Public Acts, 1763 to 1834, [20], [32]; *Reg.* v. *Baby*, 12 U. C. Q. B. 346; *Totten* v. *Watson*, 15 U. C. Q. B. 394; *The Chorokee Nation* v. *The State of Georgia*, 5 Peters 60; 2 Kent's Com. 72, 73, 3 *Ib.* 381, were cited on the argument.

Mr. Dalton.—There is a marked difference in the position of Indians in the United States and in this Province. There, the Indian is an alien, not a citizen, see the case in 5 Peters 1, 27, 58, 60: "The Act of Congress confines the descriptions of aliens capable of naturalization to *free white persons*. * * * It is the declared law of New York, South Carolina and Tennessee, and probably so understood in other