the defendant's position to be within it, I suppose he would not be within it, for he does not live with the tribes on their reserved land, but is the owner in fee simple of patented lands of greater assessed value than $100, not set apart from the lands of the tribe, but acquired by himself.

That Act however is repealed, and the Acts now in force are 31 Vic. cap. 42, and 32 & 33 Vic. cap. 6 of Canada. The only immunities or disabilities of an Indian now, whether enfranchised or unenfranchised, relate to the property he acquired from the tribe, and that no person can sell to him spirituous liquors, or hold in pawn anything pledged by him for spirituous liquors. But Indians may now sue and be sued, and have, except as above, so far as I can see, all the rights and liabilities of other subjects.

In *Totten* v. *Watson*, 15 U. C. Q. B., 392, the Court of Queen's Bench, in the time of Sir John Robinson, decided that the prohibition of sale of land by Indians, applied only to reserved lands, not to lands to which any individual Indian had acquired a title; and from this case and sec. 2, cap. 9, Con. Stat. Can., it is quite plain that an unenfranchised Indian might purchase and hold lands in fee simple. The defendant then has the necessary property qualification. Being a subject he must have all the rights of a subject which are not expressly taken away; then why is he not qualified to be Reeve of a township? it is certainly for the relator to show why. I think that he is qualified, and that judgment must be for the defendant with costs.

Judgment for defendant with costs.

ENGLISH REPORTS.

COMMON PLEAS.

Yglesias v. The Royal Exchange Assurance.

Evidence—Commission to examine witnesses abroad—Costs of sending a barrister from England.

In cases of great importance and intricacy the master may allow the successful party, on taxation of costs, the expenses of sending out an English barrister on a commission to examine witnesses abroad.

[C. P. 18 W. R. 381, Jan. 29, 1870.]

This was an action on a marine policy of insurance on cochineal from the Canary Islands to this country, and at the trial before the Chief Justice at the Guildhall a verdict was found for the plaintiff. The defence raised was that the plaintiff, who had made advances on the cochineal and represented the shippers, had fraudulently shipped barley instead of cochineal, barley being of far less value than cochineal, and had then jettisoned it, and made this claim on the defendants for the sum insured on the cochineal. At the instance of the defendants criminal proceedings had been taken against the shippers in the Spanish courts.

Before trial the plaintiff obtained a commission to examine witnesses in the Canaries to prove the fact of the shipment of the cochineal, and appointed three commissioners, two of whom were mercantile men residing in the islands, and the other was an English barrister sent out from this country. The latter was the only commissioner for the plaintiff who actually sat. The defendants also sent out a barrister from this country as a commissioner, and he cross-examined the plaintiff's witnesses, but called none himself though he was at liberty to do so. The examination itself occupied twenty-two days. On taxation of costs for the plaintiff the master allowed a claim amounting to £575 for his legal commissioner going to the Canaries and sitting there.

Watkin Williams moved for a rule to review the taxation, on the ground that the master ought not to have allowed the costs of an English barrister going to the Canaries to conduct a commission. He contended that from the proceedings in the Spanish criminal courts the details of the case were well known, and that the plaintiff ought to have been satisfied with one of the mercantile men on the spot as his commissioner. He cited *Potter* v *Rankin*, 17 W. R. C. L. Dig. 31, 38 L. J. C. P. 130, L. R. 4 C. P. 76.

J. C. Matthews showed cause in the first instance, and contended that it was a matter in the discretion of the master.

Bovill, C. J.—The Court cannot lay down any rule that shall be applicable to all cases. Generally speaking the master would never think of allowing the expenses of a barrister sent out from this country. But there may be cases of overwhelming importance in which it would be necessary to send one out. There is no rule against it, but it must depend entirely on the nature and circumstances of the case. This was a case of overwhelming importance to the plaintiff and the shippers whom he represented, and the investigation was very complicated and of the most minute description. Over 800 questions were put in cross-examination by the commissioner for the defendant, and when the trial came on before me it lasted five days, and mainly turned on the interrogatories. The matter was in the discretion of the master, who investigated it with the papers and briefs before him, and before we interfere it must be clearly shown that he has exercised his discretion wrongly. So far from that being the case, I think he was positively right in allowing these expenses.

Montague Smith, J., concurred.

Brett, J.—As a rigid rule must very often lead to injustice, it is best for the master to act on his discretion. Yet the Court is not to act on a rigid rule of not interfering.

Rule discharged.

Penton v. Murdock.

Negligence—Contagious disease—Glandered horse.

Declaration that defendant knowingly delivered a glandered horse to the plaintiff to be put with his horses without telling him it was glandered; whereby the plaintiff, not knowing it was glandered, was induced to and did put it with his horse, *per quod* his horse died.

Held, after verdict for plaintiff, a good declaration, though no concealment or fraud or breach of warranty was averred.

[18 C. P. W. R. 382, Jan. 25, 1870.]

Declaration—For that the defendant wrongfully kept a horse well knowing the same to be glandered and to be in a contagious, infectious, and fatal disease called glanders, and well knowing the premises wrongfully deliv red the said horse to the plaintiff, to be kept and taken car of by the plaintiff for the defendant in a stabl