States, that Indians are not citizens, but distinct tribes, living under the protection of the government, and consequently they can never be made citizens under the Act of Congress."—2 Kent's Com. 72, 73.

In this Province they are subjects. Con. Stat. Can. cap. 9, so speaks of them (see preamble, and sec. 1, also the 16th sec. of the Act of last session). But authorities are needless for such a proposition. Chapter 9 (now repealed), was the Act in force for many years down to 1869, declaring the rights, and providing for the management of the property of the Indians, and its provisions have much to do with the present matter. The word *Indian* in that Act (sec. 1) is defined to mean only Indians, or persons of Indian blood, or intermarried with Indians acknowledged as members of Indian tribes or bands, residing upon lands which have never been surrendered to the Crown, or which having been so surrendered, have been set apart, or are reserved for the use of any tribes or band of Indians in common, *and who themselves reside upon such lands*. But any Indian (sec. 2) who is seized in fee simple in his own right of patented lands in Upper Canada, assessed to $100 or upwards, is excluded from the definition, and is not an Indian within the meaning of the Act. The Act goes on to provide means for the "enfranchisement" of the Indians, meaning the class so defined, and the apportioning to those enfranchised parcels of the lands of the tribe, to be held by such enfranchised Indians in severalty. And it confers certain immunities on the Indians, and subjects them to certain disabilities, always having reference, as I understand, to the above description of the class to which the Act applies. If this Act were now in force, whatever effect it might have on 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That Act however is repealed, and the Acts now in force are 31 Vic.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.

PENTON v. MURDOCK.

Negligence—Contagious disease—Glandered horse.

Declaration that defendant knowingly delivered a glandered horse to the plaintiff to be put with his horse 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 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 delivered the said horse to the plaintiff, to be kept and taken care of by the plaintiff for the defendant in a stable of the plaintiff with another horse of the plaintiff, and without informing the plaintiff that the said horse was glandered or had the said disease; by means of which premises the plaintiff, not knowing that the said horse of the defendant was glandered or had the said disease, was induced by the defendant to and did place the same in the said stable of the plaintiff with the said horse of the plaintiff, and the said disease was thereby communicated by the said horse of the defendant to the said horse of the plaintiff, *per quod* the plaintiff's horse died, &c.

On verdict found for the plaintiff,

Waddy moved in arrest of judgment, on the ground that the declaration disclosed no cause of action, inasmuch as it did not state any concealment, or fraud, or breach of warranty on the part of the defendant. He cited *Hill* v. *Balls*, 5 W. R. 740, 2 H. & N. 299, 27 L. J. Ex 45, and relied on the following passage in the judgment of Martin, B., in that case:—"In my view of the law, where there is no warranty, the rule *caveat emptor* applies to sales, and, except there be deceit, either by a fraudulent concealment or a fraudulent misrepresentation, no action for unsoundness lies by the vendee against the vendor upon the sale of a horse or other animal."

BOVILL, C.J.—The case is different from *Hill* v. *Balls*. There Martin, B., says, "It is consistent with everything averred in this declaration that the defendant told the auctioneer that the horse was glandered, and to sell him as such, and, indeed, that the plaintiff may have been so told, but that, relying on his own judgment, he believed the horse was sound, and bought him notwithstanding that he had notice that the horse was unsound." Any such supposition is excluded by the averments in this declaration, and the defendant must be held to have contemplated the consequences of his act, which were that the plaintiff's horse caught the disease and died.

MONTAGUE SMITH, J.—The declaration avers that the defendant induced the plaintiff to put the defendant's horse in a stable with a horse of the plaintiff, the defendant knowing, and the plaintiff not knowing, that the defendant's horse was glandered. I do not see what more there can be to constitute the cause of action. The plaintiff's ignorance is clearly averred, and, therefore *Hill* v. *Balls* does not apply.