and all legal inferences fairly drawn from its enactments, clearly prove that real estates are bound by the delivery of the writ of *fi. fa.* against them to the sheriff, precisely like goods and chattels, and that they are not bound by the judgment under that act for the purpose of sale, as they are by the laws of England for the purposes of extent under the statute of Westminster 2nd."

Whatever doubts may have existed in the minds of individual judges, I believe the law thus settled has ever since been acted upon. The debtor has been considered competent to sell his lands, notwithstanding judgment recovered against him. His devise of them will pass the estate, which if he die intestate will descend to his heirs, The doctrine contended for by the plaintiff's counsel would prevent the heir or devisee from selling, or rather from conveying a good title, so long as there was a debt of the ancestor unpaid, though no judgment had been recovered or even an action commenced.

The law does not so fetter an executor, however numerous the debts owing by his testator. He not only can convert the whole personal estate into money, but it is his duty to do so in order to pay the debts. He is not compelled by the force of law to stand idle until a creditor recovers judgment, and issues execution. His powers enable him to take measures to save the estate, by a prompt administration of it under certain rules. This authority, however, does not extend over lands. If there be no sufficient means in the executor's hands to pay debts, all having been exhausted in a due course of administration, and notwithstanding that there is not the slightest ground for supposing that the executor will ever have any further assets which he must administer, the creditor by simple contract of the testator must sue the executor, for he can in that way only reach the testator's lands. *Forsyth* v. *Hall*, Dra. Rep. 291, expressly decided that he cannot, under such circumstances, sue the heir, who need have no notice, and cannot intervene in the action. The executor, under such circumstances, pleads only *plene administravit*, and it was for some time held that to this plea it was allowable to reply that the testator had lands: a replication which, if true, entitled the plaintiff to judgment against the executor, and to execution against the lands. Even if a debtor dies intestate, leaving no personal estate whatever, still an administrator must be appointed, in order that there may be a defendant against whom the creditor can get judgment and obtain an execution against lands, for neither an executor nor administrator can sell them, nor according to the plaintiff's contention can the heir, except subject to be afterwards sold in execution to satisfy the ancestor's simple contract debts.

The question is not, however, new in our courts. In *Levisconte* v. *Dorland*, 17 U. C. Q. B. 441, it was discussed; and Sir J. B. Robinson, C. J., expressed his opinion upon it. The case merits a careful consideration. It was an action against the administrator of Enoch Dorland, on a simple contract debt of the intestate. The defendant pleaded *plene administravit*, to which the plaintiff, admitting the truth of the plea, replied that the intestate died seised of real estate. The defendant rejoined, admitting that the intestate died seised of certain land, but that one S. D., who was his father and heir-at-law, for valuable considerations, conveyed to the defendant by deed all the right which, as heir-at-law, he then had: that at the time of the death of the intestate, one H. held a mortgage on the said lands to secure a sum of £500, being the full value of the land; and the defendant, solely to prevent costs accruing against the estate of the intestate, and for no other consideration, conveyed by deed the equity of redemption which he held under the deed from S. D. of the said lands, which were all the real estate whereof the intestate died seised.

The court, consisting of Sir J. B. Robinson, C. J., McLean and Burns, J. J., held the rejoinder bad. The Chief Justice said, "The plaintiff is entitled to his execution against the estate of which Enoch Dorland died seised upon this judgment against his administrator, according to the decision in *Gardiner* v. *Gardiner*. * * * The heir of Enoch Dorland cannot by his conveyance to the defendant prevent the creditors of Enoch Dorland from having their debts satisfied out of the real estate." The decision is, however, at the conclusion, rested on this ground, "the plaintiff having admitted that the goods have been fully administered only desires judgment in order that he may have execution against the lands of which Enoch Dorland died seised, and the defendant as administrator cannot obstruct him in obtaining such execution, and has no interest in the question whether there are lands or not."

I fully concur in both these last propositions, though the conclusion I should have deduced from them is, as I had previously said in *Sickles* v. *Asselstine*, 10 U. C. Q. B. 203, that the plaintiff was wrong in his replication; and I should only have thought the defendant entitled to judgment, not for the goodness of the rejoinder, but for the fault of the replication; and as to the replication, such appears to have been the opinion of Burns, J., from what he says in giving judgment. I think, however, the judgment for the plaintiff may be sustained, on the ground that there is nothing in the rejoinder to shew that the conveyance made by the heir of Enoch Dorland was executed before the *fi. fa.* against the lands was placed in the sheriff's hands. *Gardiner* v. *Gardiner* had conclusively settled that lands could be reached through a judgment against the executor or administrator, and though I have never felt the force of the reasoning on which it is founded, I have always treated it as settling the question. The impropriety of the replication in *Levisconte* v. *Dorland*, has been distinctly adjudged; see *Hogan* v. *Morrissy*, 14 U.C.C.P. 441; and *Seaton* v. *Taylor*, 8 U. C. Q. B. 303; and *Sickles* v. *Asselstine*, 10 U. C. Q. B. 203, must be considered to be overruled. As to *Gardiner* v. *Gardiner*, it is deprived of some of the weight which it might otherwise possess, by the (to my mind) very satisfactory judgment of Sir J. T. Coleridge, in the Privy Council, in the case of *Bullen* v. *A'Beckett*, 1 Moore, P. C. C., NS., 223.

If indeed the necessary consequence of the decision in *Gardiner* v. *Gardiner* was, that the land of which a debtor by simple contract died seised was liable for the satisfaction of that debt, no