born alive. The report is a sorry production for so promising a commission. The failure is accountable only on the supposition that the members were glad to get rid of a difficult and disagreeable subject, of little political significance, in any way that they could before Christmas, with more or less decency short of returning the commission to the Home Office avowedly unexecuted.—*Solicitor's Journal.*

UPPER CANADA REPORTS.

QUEEN'S BENCH.

(*Reported by* C. Robinson, Esq., Q.C., *Reporter to the Court.*)

Reid v. Miller.

Lands—Liability of for debts.

The liability of lands for debts under 5 Geo. II. ch. 7, is not affected by the death of the debtor. He, or his heir or devisee after his death, may sell and convey to a *bonâ fide* purchaser for value, at any time before judgment has been entered against him or his personal representatives, or execution against lands issued upon it: and such purchaser will have a good title as against creditors.

Levisconte v. *Dorland*, 17 U. C. Q.B. 437, remarked upon.

[Q. B., T. T., 1865.]

Ejectment for the south half of lot number 19, in the fourth concession of the township of Grantham.

The case was tried at Niagara, in April, 1865, before Draper, C. J.

On all the facts, which were admitted,* the jury were directed to find for the defendants, leave being reserved by consent for the plaintiff to move to enter the verdict for himself.

In Easter Term *W. Eccles* obtained a rule *nisi* to enter the verdict for the plaintiff, pursuant to the leave reserved.

In this term *S. Richards*, Q. C., and *Atkinson* shewed cause. *Robert A. Harrison* supported the rule.

The authorities cited are referred to in the judgments.

Draper, C. J.—For the purpose of determining the question argued before us, the case may be greatly condensed. The Crown granted the premises in question in fee in 1799, and by various *mesne* deeds and conveyances, all duly registered, the title became vested in George Rykert, who died seised thereof in November, 1857. He left a will, the probate of which was not granted until the 22nd of April, 1864, and which probate was registered on the 5th of January, 1865.

George Rykert left three sons surviving him, viz, George, John Charles, and Alfred, who were their father's co-heirs. They made an agreement between themselves for the division of their father's estate, apparently not in compliance with the disposition as made by the will, between them. In order to effectuate their agreement, they joined in conveying the whole estate to a third person; and he, for the same purpose of giving effect to the agreement, conveyed the premises in question to John Charles Rykert in fee, by deed dated the 24th of April, 1858. John C. Rykert being in possession, by deed dated the 19th of April, 1859, for valuable consideration, conveyed in fee to Elijah Parnall, and he being in possession, by deed dated the 1st of August, 1859, mortgaged the premises in fee to Thomas Burns, to secure payment to him of $600, which he owed to Burns, with interest. And by deed, dated the 4th of March, 1861, Parnall mortgaged the same premises to Crysler and Durham, to secure $400 with interest, which sum he owed to them. By deed dated the 2nd of October, 1862, Crysler and Durham conveyed and assigned their mortgage to Burns; and by deed dated the 18th of January, 1864, Burns conveyed and assigned the premises to the defendant. On the same 18th of January, 1864, the sheriff of Lincoln, for a consideration of $1000, sold and conveyed the premises to the defendant in fee. In this deed it was set forth, and the parties to this suit admitted it to be true, that the sheriff sold under an execution then in his hands against the lands of Elijah Parnall and John C. Rykert. All the deeds made since the death of George Rykert were duly registered.

At the time of his death, George Rykert was indebted on two promissory notes, one for £1060, and the other for £530, both made by him jointly with his son John Charles and a third party, dated the 19th of December, 1856, and payable one year after date. The holder of these notes, on the 3rd of September, 1862, commenced an action against the executrix and executors of George Rykert, and on the 29th of the same month recovered judgment, and issued execution against the goods which were of the testator, which was returned *nulla bona;* and on the 4th of October, 1852, issued execution against these lands, on which the sheriff afterwards sold the premises, and conveyed them in pursuance of the sale to the plaintiff.

When Burns took the mortgage from Parnall, he had notice of the note for £1060.

The plaintiff's argument was rested upon the statute 3 & 4 Wm. & M. ch. 14, and upon the 5 Geo. II. ch. 7, which last, it was insisted, extended to *all* debts, the principle established by the former act as to specialty debts; and it was urged that the lands of a deceased debtor should by force of these acts be held to be so liable to and chargeable with *all* his just debts, as to enable the creditor, on obtaining judgment against the personal representative of such debtor, to take and sell his lands on an execution, although the heir of the devisee of the debtor had, even before the recovery of such judgment, sold them for valuable consideration to a purchaser who had no notice of the debt.

It is clear that during the lifetime of the debtor his lands are not bound by the *debt*, though liable to its satisfaction, and chargeable with it by judgment and execution. In *Doe McIntosh* v. *McDonell*, 4 O. S. 195, it was treated as a settled point, that lands are not bound under the 5 Geo. II., until the delivery to the sheriff of a writ against lands. Mr. Justice Sherwood read an unreported judgment given previously by him in a case of *Doe dem. Clarke* v. *Updegrove*, in which he concluded that "the words of the 5 Geo. II.,

* The facts appear more fully in the report from which this is taken but as they are sufficiently stated in the judgment of the Chief Justice they are not, from want of space, given here at length.—Eds. L. J.