may call it a prejudice—against the complete abandonment of *all* the protections which surround land at home; and we are of opinion that "this Canada of ours" would not add to her material interests by an authoritative recognition of any principle that would allow a homestead and a hoggerel to be dealt with in the same way, or by any extension of the doctrine in *Gardiner v. Gardiner*.

The case of *Gardiner v. Gardiner* was decided in 1832, and is reported in 2 K. B., O. S., 520. It excited much discussion amongst the profession at the time, and many were found who agreed with the minority rather than with the decision arrived at by the majority of the court. The decision, however, was not formally questioned on appeal, and the doctrine it enunciates has been acted on ever since. Thousands, nay, millions of acres have changed hands under its authority; and we believe few practitioners at the present day actually decline to pass a title on a sheriff's deed, whatever latent doubts may trouble them.

There are grave surroundings, therefore, to the subject; and yet, as our correspondent remarks, the doctrine enunciated by *Gardiner v. Gardiner* might at any moment be exploded by an adverse decision; and if it was, what would become of titles depending on sheriff's deeds?

Doubtless the courts would struggle, and perhaps rightly so, against disturbing the law as laid down, after being acted upon for so many years, and might approach it with "fear and trembling," as they contemplated results. Yet the judges may be placed at any moment in a position wherein they might be "plainly obliged" to resolve the question on its abstract merits, notwithstanding that the most calamitous results would follow.

No one can read the cases in our courts without entertaining some doubts as to *Gardiner v. Gardiner*, and there is nothing to be gained by shutting our eyes to latent danger (even where danger is imaginary, there is much satisfaction in ascertaining our position). Its nature and extent should be determined, that proper steps may be taken to avert it. In this spirit it is that we approach *Gardiner v. Gardiner*.

In considering this case, it is necessary to keep in mind what the common law was, and how far it has been varied. It is clear that by common law the lands of the ancestor could only be affected in the hands of his heir by a judgment against the ancestor in his lifetime, or the ancestor's obligation under seal binding his heir, each of which would operate as an estoppel on the heir claiming through the ancestor; and such judgment would have to be revived against the heir by *sci. fa.*, which was a double proceeding, being both an action and an execution combined, to which the heir could plead; and the obligation should be enforced by action of debt against the heir, in which action the specialty creditor could recover to the extent of the lands descended. The statutes, 29 Car. 2, cap. 3, secs. 10 & 11, 1 Ev. Stat. 218, and 3 W. & M. cap. 14, 1 Ev. Stat. 462, do no more than prevent the then practise of evading those common law liabilities by means of conveyances by the ancestor to others in trust for himself, which in effect left the land always his, and to descend to his heir, or by willing it, instead of leaving it to descend to the heir; but no man's land could, while he lived, either before or after these statutes, be seized or taken in execution, until or except by 13 Ed. I. stat. 1 (2nd West.), cap. 18, 3 Ev. Stat. 307, which first gave *fi. fa.* to levy the judgment debt off the goods and lands—that is, the profits of the lands accruing to the owner—or *elegit* of one half of the judgment debtor's lands itself; which half of the land the judgment creditor did not become the purchaser of, but was to take at an estimated valuation or rent, and hold until the estimated yearly profits or rent paid the debt, being in effect a sort of Welsh mortgage, and was merely a chattel interest or mortgage, which went to the executors, and not to the heirs of the judgment creditor.—(*See* 2 W. Saund. 68, foot note.)

Matters remained in this state until the passing of the English statute 5 Geo. II. cap. 7, sec. 4, upon the interpretation of which *Gardiner v. Gardiner* depends. The section is divisible into a number of sub-sections or branches, which subdivision, as it will make the section more easily comprehended, without altering the sense, we shall take the liberty of making by splitting it into three branches, as follows:

The *first branch* enacts that lands, &c., in the "plantations belonging to any person indebted, shall be liable to and chargeable with all just debts, duties and demands, of what nature or kind soever, owing by any such person to his Majesty or any of his subjects."

Second branch.—"And shall and may be ASSETS for the satisfaction thereof, *in like manner* as real estates are by the law of England, liable to the satisfaction of debts due by bond or other specialty."

Third branch.—And such lands, &c., "shall be subject to the like remedies, proceedings and processes in any court of law or equity in any of the said plantations respectively, for seizing, extending, selling or disposing thereof," "towards the satisfaction of such debts, duties and demands, and in like manner as personal estates in any of the said plantations respectively are seized, extended, sold or disposed of, for the satisfaction of debts."

It appears to us that in the first place, as respects aliens, no change is effected, but the lands remain as if the act