pose of the assets of the testator; that over them he has absolute power; and that they cannot be followed by the testator's creditors. It would be monstrous if it were otherwise. * * It is also clear, that if at the time of alienation the purchaser knows they are assets, this is no evidence of fraud, for all the debts may have been already satisfied; or if he knows they are not all satisfied, must he look to the application of the money? No one would buy on such terms."

The plaintiff's counsel urges, that since 5 Geo. II., ch. 7, and the decisions of our courts thereon, lands must be regarded as chattels for satisfaction of debts, and liable to the like remedies therefor. If we concede this to him, and even carry it a step beyond the doctrine established in *Gardiner* v. *Gardiner*, and hold the lands to be assets in the widest sense of the term in the hands of the executor or administrator, out of which (that is, by sale of which) the latter can satisfy the debt, we would still have to place the lands in a far worse position than pure personalty; as the latter could be certainly sold to raise money to pay debts, and the purchasers hold them by an undoubted title, while the real estate could in practice never be safely realized, subject, as it is urged, to a specific lien to the extent of all unpaid debts.

It is too late to question the doctrine laid down in *Gardiner* v. *Gardiner*, after its universal adoption for thirty years. But we are not bound to go beyond its boundaries, and add another heavy burden to be borne by heirs and devisees, nor do I feel pressed by any difficulty suggested at the bar as to the manner of reaching the real estate, or compelling an accounting from the heir.

The plaintiff relies chiefly on some expressions used by the judges in *Levisconte* v. *Dorland*, 17 U. C. Q B. 437. I do not consider that the point now before us presented in that case. It was there only necessary to decide against an attempt by an administrator to answer the plaintiff's replication of lands and claiming judgment against them, by setting up a mortgage on the land prior to testator's death to its full value, and that the heir at law conveyed it to the administrator (the defendant), who to save costs released the equity of redemption. I concur in the decision against this rejoinder, and think the plaintiff should have had judgment, leaving him to all remedies thereunder.

From an early period our courts have decided that lands are not bound until delivery of execution process against them to the sheriff. I speak not now of the effect of the statutes recently repealed as to registering judgments.

The statute 5 Geo. II., chap. 7, makes no especial provision for suits against personal representatives, heirs or devisees, beyond what they can gather from the words, "lands," &c., "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, 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, and shall be subject to the like remedies, proceedings and process in any court of law or equity," &c., "for seizing, extending, selling or disposing of any such houses," &c., "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."

If the statute have, as it were, converted lands into mere personalty for the payment of debts, giving them all the incidents of chattels, then an executor or administrator can deal with them as chattels, and turn them thus into money, and the *bona fide* purchaser acquires indefeasible title thereto. Our courts deny this application of the statute. It remains to be considered if a power of sale remains with the heir or devisee.

The fee cannot, I think, remain in abeyance, but on the death of the ancestor vests at once in the heir-at-law. The latter, I may assume, enters into possession. There is no will speaking of debts or creating any charge on the lands. The heir proposes to sell. A purchaser makes the usual searches in the county registry, finds the title clear, examines the sheriff's office, finds no execution process, causes search to be made for judgments, finds nothing; and then in good faith, knowing of no debts, purchases for value from the heir.

We are now told that if two or three years afterwards a promissory note endorsed by the ancestor be discovered, or any claims be advanced for wages, &c., &c, and a suit be commenced, and judgment ultimately recovered against an executor or administrator, that this land, so sold and in the hands of an innocent purchaser, has been always specifically liable for this debt, and can be sold on execution process on the judgment.

I hope that this will not be found to be the law of the land; and in the absence of any decision on the express point, I must at once express my dissent from any such position.

It is suggested that if the law be not so, then a fraudulent heir may at once by a sale defeat the creditors of his ancestor.

A fraudulent executor or administrator may possibly effect the same injustice; and in the case of executors no security would be forthcoming to redress the wrong. I presume a court of equity has ample powers to interfere when required for the administration of an estate, and if there be any legal difficulty in proceeding at law against an heir, the equity jurisdiction can hardly fail to compel an account.

The difficulty that presses on me is this: Had our courts, when deciding that lands could be sold on a judgment against executors or administrators, advanced a step further, and determined that, as the statute in their judgment made them assets, subject to like remedies and process as personal estates, they could be sold as personalty by the executors, then the remedy would be complete in practice. I think, if I could overcome the first difficulty, which is disposed of by *Gardiner* v. *Gardiner*, and hold that the heir's estate could properly be divested by process in a suit to which he was not a party, I would have felt myself easily drawn to the conclusion that as mere personalty the executor could sell. In *Thomson* v. *Grant*, (1 Russ. 540.) Sir Thomas Plumer says: "The executor's right of retainer over personal property is clear;