executions renewed in order to preserve his rights. This decision is said to have been affirmed by the full Court on rehearing. See Wilson v. Proudfoot (1868), 15 Gr. at p. 107. The reference to 13 Gr. 302 is incorrect. The decision of the full Court does not appear in Grant's reports or elsewhere that I can discover.

Vankoughnet, C., also held, in another case, that the filing of a bill in Chancery to enforce equitable execution of a judgment was equivalent to a seizure at law: Ex relatione Mowat, V.-C., in Wilson v. Proudfoot, supra. The facts are not shewn, but it must have been a case in which there could have been no execution of the fi. fa. by the sheriff.

In Yale v. Tollerton the interest sought to be made available by the execution creditor was such as could not be taken or sold by the sheriff under the writ of fi. fa., and resort to equity was necessary in order to render it available.

That being so, there seemed no good reason, after a decree had been obtained, for continuing in the sheriff's hands a writ under which he could take no effectual proceeding. As much had been done to constitute an inception of a seizure under the fi. fa. as the nature of the case permitted. Vide Doe Tiffany v. Miller (1850), 6 U. C. R. 426; Bradburn v. Hall (1869), 16 Gr. 518.

It is important to note that the execution creditor not only instituted the proceedings—was the actor in them—but carried them to decree during the currency of the writ.

In the present case the Michigan Clothing Company were not the actors in instituting the partition proceedings. And they do not appear to have done anything towards establishing their claim in the proceedings until long after the expiry of the fi. fa.

During its currency they took no step to preserve their rights. They put in no answer or concise statement of facts shewing their claim under sec. 31 of the Act. When the order for sale was pronounced they had not proved their claim, and their fi. fa. was spent. And until an order for partition or sale was obtained there was nothing to prevent the petitioner from dismissing the petition. The petitioner was dominus litis, and the proceedings had not attained the stage at which the company could prosecute them: Handford v. Stone, 2 S. & S. 196; Taylor's Chancery Orders (notes to Order 184), p. 210.

I think they were bound to keep alive the lien which they had at law, at least until there was some act or declaration