426; and the C. L. P. Act, sec. 268, has made no change in the law in this respect: it does declare what acts shall be a seizure, but it does not confine it to these acts only, nor does it assume to alter the law as it stood before. The writ was properly assigned by the old to the new sheriff, which the latter was bound to complete, and the plaintiff was entitled to rule the sheriff to return the writ.

C. S. Patterson for the sheriff.—The plaintiff's writ was never properly acted on by the old sheriff. There can be no seizure of lands now but by an advertisement in the *Gazette*, and all the advertisements should be completed before the expiry of the writ, which was not the case as to the plaintiff's writ. And so, also, as the advertisement is the seizure, the discontinuance of the advertisement is an abandonment of the seizure; there should be regular adjournments to preserve the lands in the custody of the law: *McKee* v. *Woodruff*, 13 U. C. C. P. 583; *Muir* v. *Munro*, 23 U. C. Q. B. 139; Impey on the Office of Sheriff, Edn. 1817, fo. 90. The present sheriff should not have been ruled: *The King* v. *The Sheriff of Cornwall*, 1 T. R. 552.

A. Wilson, J.—The plaintiff's writ of *fieri facias* against lands, which issued on the 30th of August, 1861, was in full force by renewal until the 13th of August, 1863. The defendants lands were advertised as seized by publication in a local paper on the 17th of June, 1863, and in the *Gazette* on the 25th of July, 1863: these advertisements did not specify the plaintiff's writ, but described the seizure as having been made upon the writs only of the Commercial Bank. This latter circumstance has been decided to be of no consequence, for, as it is a seizure, it is a seizure under all the writs, according to their priority, which the sheriff has then in his hands to be executed. This may be, perhaps, on the principle, that it is not what the sheriff "declares, but the authority which he has, that is his justification:" *Crowther* v. *Ramsbottom*, 7 T. R. 654.

The advertisements were first made while the plaintiff's writ of *fieri facias* was in full operation: the advertisements were, therefore, in law a seizure under his writ.

The former sheriff, then, on the 29th August, 1863, a few days only after the expiry of the plaintiff's writ of *fieri facias*, returned the writ that he had "lands on hand," &c. This, it is contended, he could not do, in addition to the fact that he had not advertised in the name of this writ specially, because all the necessary advertisements had not been made before the time the writ had expired; but we think there is no force in this objection: a seizure of goods made at the last moment of the operation of a writ against goods would be a valid inception of execution to enable the sheriff to complete the writ after it had expired. It is not necessary that all the advertisements should have been completed of a seizure and intended sale of lands before it could be held that these lands were seized. There are numberless answers to the validity of this objection; but the statute itself is very plainly expressed upon this point: "The advertisement * * * during the currency of the writ * * shall be deemed a sufficient commencement of the execution to enable the same to be completed by a sale and conveyance of the lands after the writ has become returnable." It is the "commencement" of seizure that is the important act, for that commencement is the *seizure*: after that the advertisement is continued, not for the purposes of seizure but of sale, and after that, by reason of such commencement, the execution may be completed by sale and conveyance, "after the writ has become returnable."

We see no objection to the return which the former sheriff has made to this writ of "lands on hand," and we see no other return upon these facts which he could properly have made to it.

The plaintiff upon this return issued the *venditioni exponas* and *fi. fa.* for residue, on the 10th of November, 1863, and delivered it to the sheriff on the 16th of the same month. In strictness it was not necessary, for the mere purpose of a sale of the lands, to issue the *venditioni exponas* at all, as the sheriff could, as well without it as with it, have proceeded to sell the lands then in his hands.

The day of sale, which was fixed for the 12th September, 1863, was allowed to pass without a sale, or an attempt to sell without any adjournment being made of the sale; and so matters remained until the *ven. ex.* was transferred by the old to the new sheriff, on the 9th May, 1864, and until the new sheriff, on the 18th June, thereafter, advertised the lands for sale, under the plaintiff's writ of *ven. ex.*, on the 10th September following: and it is contended that because no sale was made on the 12th September, 1863, the day appointed, and no adjournment was made then of any intended sale, that the whole proceedings by advertisement, and the first result and effects of them, fell utterly through—that the seizure ceased, and the lands were in effect abandoned; but that, as we think, is to confound the preliminaries of a sale with the act, fact, and object of a seizure.

The seizure has been made or has been evidenced by the advertisement: it does not cease to be less a seizure because the sheriff has accidentally omitted to continue the notice that he will sell the lands on a particular day, or because the printer has forgotten to publish it, or because the newspaper or Gazette may, from fire, failure, civil commotion, or any other of the many causes that might be mentioned, been suspended or destroyed. This would lead to the most serious and obvious evils, and would in some of these instances be making superior agency and inevitable accident the offence, rather than the excuse, of the person who was alone injured by it.

The difficulty, no doubt, arises from the fact that the seizure of lands cannot be so visibly and tangibly made as of goods, nor so visibly and tangibly abandoned; and although no positive rule can be laid down as to what shall constitute an abandonment of lands once seized, for it must be a matter of fact arising very much from intention, we are quite satisfied that the non-adjournment of the intended sale on the 12th September, 1863, and the publication of a new and apparently unconnected notice with the former one, made in the June afterwards are not such facts which constitute necessarily and conclusively an abandonment of the seizure, which was lawfully made under the *fi. fa.*