only, and ditch or water-course is omitted, upon which, it is contended that there is no remedy to recover the amount payable in respect to a ditch or water-course

We do not think so. When we see that this section, as well as those which precede it, respecting ditches or water-courses, gives the right to recover from the dafaulting party the amount of work the other performs, upon his default, not exceeding in price per rod fixed by the Statute, we think we should not be justified in holding that, because in prescribing the proceeding for its recovery, the Legislature had omitted to repeat the word ditches or water-courses, it intended to withhold that which it had so clearly given. Looking at the provision of the original Statute and of this, we are of opinion that the proceedings mentioned in the eleven sections of section 16, have reference to ditches or water-courses, as well as to fences. In *Doe Murray* v. *Bridges* 1 Bar. & Ad. 858, it is said by Tenterden, C. J.: "We are to look at the Act to learn by what mode the intention is to be carried into effect."

In this view of it, it follows that this plaintiff had his remedy under this Statute and no other; that he ought to have demanded of this defendant performance of this award, and if she made default, that he ought to have opened her ditch, and compelled her to pay for it under the provisions of this Act: *The Vestry of St. Pancras* v. *Batterbury*, 2 C. B. N. S 477. Cockburn, C. J., at page 486, says: "Where an Act of Parliament creates a duty or obligation, and gives a remedy for a breach of it by a peculiar proceeding, a question arises whether the remedy so provided is the only one to be had recourse to, or whether it is cumulative."

Here, as in that case and for similar reasons, we think the Legislature intended that the summary proceeding pointed out should be the only one.

To hold otherwise would, we think, open an appaling source of litigation ruinous to all concerned in it, and opposed to the spirit and intention of the Legislature, which, we think, was, to place in the hands of either party interested the right to specific performance of the the relief sought, but not damages by suit for non-performance of it.

Judgment for defendant on exceptions to declaration.

COMMON LAW CHAMBERS.

(*Reported by* HENRY O'BRIEN, Esq., *Barrister-at-Law, Reporter in Practice Court and Chambers.*)

BROOKE v. THE BANK OF UPPER CANADA.

Corporation—Forfeiture of bank charter—Effect on tenure of office by president and directors—Service of process.

Service of process was made upon A. as president of a bank. The last election of officers was in June, 1866, when A. was elected president for one year. No election of directors or president had taken place since then, and A. never in fact resigned his office as president. In September, 1866, the bank suspended specie payment, and before 60 days thereafter they assigned their property and assets to trustees, and from thence had ceased to do business as a bank. It was provided by the charter, amongst other things, that a suspension of specie payment for sixty days, or an excess of the debts of the bank by three times the paid up stock and deposits, &c., should operate as a forfeit of the charter, &c.

Held, 1. That the total annihilation of the bank was not contemplated by these provisions, and it does not follow from the loss of the charter that there must be a dissolution for all purposes.

2. That some formal process is necessary finally to determine and put an end to all the functions of a corporation.
3. That notwithstanding the suspension and assignment, the bank was still a corporate body, liable to have its property sold or administered for the satisfaction of debts.
4. That A. must still be looked upon as the president of the bank, and an application to set aside the service upon him was discharged with costs.

[Chambers, October 10, 1867.]

This was a summons to set aside the service of process made upon Mr. Allan, who was served as president of the Bank of Upper Canada, upon the ground that the bank having suspended specie payments for more than sixty days consecutively, a forfeiture of their charter had been created, and that there existed no such corporation as the defendants were represented to be, and that even if there were such a corporation, that Mr. Allan was not the president, or an officer of the bank.

It appeared from the affidavits filed that the last election of officers was in June, 1866, when Mr. Allan was elected president for one year, and that the bank suspended specie payments in September, 1866; and before sixty days therefrom, the bank (on the 12th November, 1866) assigned, with the consent of the shareholders, all their property and assets to trustees, and had ceased from that period to do any business as a bank. That no meeting was held in June, 1867, for the election or directors and president, and that Mr. Allan had never in fact resigned his office of president.

Maclennan shewed cause. He contended that the bank did exist in fact as a corporation, notwithstanding the forfeiture of the charter; that properly its corporate powers could not be determined, whether by suspension of specie payments or by the assignment of its assets, except by proceedings taken for that purpose, and that the officers last elected, and who had never resigned, must be considered to be the proper officers of the bank for service of process and other purposes. He referred to the act of incorporation, 19 & 20 V. c. 121, secs 7, 8, 33, 35, 36; Grant on Banking, 462, 539; *Stewart* v. *Dunn*, 12 M. & W. 655; Grant on Corporations, 283, 295, 301, 305, 306, 309; Angell & Ames, on Corporations, sec. 777.

G. D. Boulton supported the application, and argued that the forfeiture of the charter, which, it was expressly declared by statute, should follow in the event of suspending specie payments, was in fact a dissolution, or was equivalent to a dissolution of the corporation; and, in such a case there could be no longer any officers of the corporation, for the corporation itself was utterly gone and determined, and the service itself was therefore irregular. *Slee* v. *Bloom*, 19 Johnston, 456; Kyd on Corporations, 447, 515; 1 Bl. Com. 500, 501; Angell & Ames on Corporations, sec. 779; 19 & 20 Vic. secs. 2, 7, 8, 32.

ADAM WILSON, J.—By sec. 7 of the act, ten directors are to be elected annually at a general meeting of the shareholders, to be held annually on the 25th of June, and the directors elected shall be capable of serving as directors for the ensuing twelve months; and at their first meeting after such election the directors shall choose out of their number a president and vice-president, who shall hold their offices during the same period.