in ordering the appellant to go to Mersina, the respondents were giving a lawful order, which the appellant was bound to obey, that his disobedience was justifiably treated by the respondents as *faute grave* under Article 5 of the Regulations, and that his dismissal was justified.

For these reasons their Lordships are of opinion that the appeal should be dismissed, and they will humbly advise His Majesty accordingly.

[BELCHER, C.J., CREAN AND FUAD, JJ.]

THE MUNICIPAL COUNCIL OF KARAVAS BY ITS MEMBERS, VIZ., CHRISTODOULO KYRIACO AND OTHERS.

v.

KYRIACO CHR. TSIOMOUNI.

Form of proceedings under section 76 of the Municipal Councils Law, 1885—Action—Application.

Defendant having exceeded the limit laid down in the permit given him for extension of his building and having thereby encroached upon the road, plaintiffs brought an action to restrain him, which was dismissed on the ground that the remedy provided by Section 76 must be sought by way of application and not by action. From this decision plaintiffs appealed.

Held, that the Municipal Councils Law, 1885, created new rights and duties and, therefore, the particular remedies specified in that Law for their enforcement must be followed.

Appeal by plaintiffs from judgment of District Court of Kyrenia dismissing action (No. 109/27).

Christis (with him *Phylactou*) for appellants.

Plaintiffs sued as private individuals as well as members of the Council. In any case the statutory remedy does not exclude the common law remedy of action for injunction. The Court could have treated the action as an application, there being no special form of application provided in the Law.

Triantafyllides (with him *Mitsides*) for respondent.

Application is a distinct form of remedy and the only one provided by the Law in proceedings under Section 76. Plaintiffs sued in their corporate name and there is nothing in the writ to indicate that they sued as individuals. *Alecco Zenon* v. *Hafiz Haji Ali* is authoritative on the point.

The judgment of the Court was delivered by Crean, J.

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JUDGMENT :—

CREAN, J. : The appellants instituted an action in the District Court of Kyrenia against the respondent in which they asked for an order (1) restraining the respondent from interfering with a road in the Municipality of Karavas ; (2) that he should pull down any building or construction which he erected on the wall of the road in question and bring it back to its former condition, and that (3) any registration in his name be set aside or amended.

On the case coming before the District Court for hearing and argument, it was held by the learned President that the remedy sought by appellants must be by way of application and not by way of action, and the action was dismissed with costs.

From this decision this appeal is lodged resting upon three grounds. The first is that the remedy for trespass on a road can be pursued by action. The second is that such an action can be instituted by the Municipal Council and not only by the Crown. And the third ground reads :— " That even if the remedy for the trespass in question cannot be pursued by action by the Municipal Council, the Court, so long as no special form of application is provided under Section 76 of the Municipal Councils Law, ought, after plaintiffs' application in this behalf, to treat the writ of summons in this case as an application, with the proper distinction as regards the question of costs, and proceed to examine the substance of the case on its merits and decide thereon."

From the file of the District Court it appears that the respondent got permission from the appellants to extend his building and that instead of confining himself to the designated extension, he passed over the limit and encroached upon the road.

Section 33 of Law 8 of 1885, Part V, directs that the front of every new building or addition to a building shall not be erected so as to encroach upon the roadway indicated in any plan referred to in Section 26. And Section 57 of the same law sets out that any person who in any Municipal area knowingly does any act in contravention of Part IV or V of this law shall be liable for each offence to a penalty not exceeding two pounds. Power to pull down or remove premises is also given to Municipality by this section.

A further remedy for any act in contravention of Parts IV and V is given by Section 76. This section runs :—" If any work be begun or done in contravention of Parts IV and V of this law or of any bye-law or order made by any Municipality under Section 40, the President of the District Court or a Judge thereof may, on the application of the Municipality, by summary order direct that such work

shall be stopped pending the determination by the District Court, on the application of the Municipality, of the questions that have arisen in regard thereto, etc." Power is given to the District Court to make such order as shall seem to it fit with regard :—(1) to any work so begun or done ; (2) to the payment of any expenses arising out of such contravention.

The allegation in this case is that the respondent has erected a building which encroaches on one of the roads of the Municipality without permission. For this encroachment the appellants have filed this action, and in doing so have ignored the existence of Sections 33, 57 and 76 of Law 8 of 1885, though these sections would appear to have been drafted to meet precisely such a case as this.

For the appellants it is submitted that in the filing of this action the persons whose names appear as plaintiffs are acting as private individuals though they are members of the Municipality, and that, therefore, they do not come under Law 8 of 1885. Perusal, however, of the writ of summons negatives this submission, for the writ clearly states that the action is brought by the Municipal Council of Karavas, by its members, and then certain names are set out. In any event we are of opinion that as the plaintiffs are in fact the Municipality of Karavas, any proceedings on their behalf must be instituted in the name of the Municipality. If it were otherwise each individual member would be entitled to sue, and that, as pointed out by counsel for the respondent, would lead to such a multiplicity of actions as to make the position impossible in regard to actions in which Municipalities are concerned.

It is further argued on behalf of the appellants that statutory remedies do not oust common law remedies, that injunction is the proper remedy in this case, and that there is no special provision to meet a case such as this, therefore, according to Rules of Court of 1927 they can bring an action.

The claim in this case is that the respondent built a certain building without a permit from the Municipality. If he did so, it was in contravention of Part V of Law 8 of 1885. For a contravention of this Part Sections 57 and 76 make provision, and on reading these sections we cannot imagine anything more specific than the remedies that they provide.

In regard to the submission that an injunction is the proper remedy in this case, we would point out that there are two forms of injunction, one preventive, the other restorative. In this case the building has been erected,

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therefore the restorative form is the only one that could be asked for; that is, an order that the building be demolished so that the road would be restored to its former measurements. Sections 57 and 76 make ample provision for the making of such an order, and we see no reason why it should be ignored, or why the appellant should not consider them as special provisions to meet such a case as this. The same powers exactly are given by these provisions, and the same orders granted under them as might be granted on an application for injunction.

Counsel for the appellant further argues that even if a special form or remedy is provided, it does not prevent an application being made by action, and that the case should not have been dismissed by the District Court.

We know of no authority for this proposition, and if it were a sound one, it appears to us, the purposes and objects of the Municipal Laws and the Rules of Court, 1927, would be defeated. On the other hand there is much authority against such a proposition and we think, from the decisions on the point, that it must be taken as a settled rule of law that if a statute creates an obligation and enforces the performance in a specified manner, it is to be assumed that performance cannot be enforced in any other way.

In the case of *West* v. *Downman* (1), very concisely lays down this principle, as follows:—"It is a settled rule that if a statute creates a new right and gives a particular remedy for enforcing it, there is no other remedy." And this principle was followed by this Court in *Zeno* v. *Hafiz Haji Ali* (2).

The Municipal Law 8 of 1885 creates new rights, obligations and duties and gives particular remedies for enforcing them. We are of opinion that these particular remedies for enforcing them must be followed, which in this case is by proceedings under Section 57 or application under Section 76, and we, therefore, dismiss the appeal with costs.

Appeal dismissed with costs.

(1) (1880) 14 Ch.D., Jessel, M.R.
(2) (1921) C.L.R., Prelim. Issues.