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The Interlocutory Injunction with Special Reference to its Important Uses

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The Interlocutory Injunction, with Special Reference to its Important Uses.

THESIS.

Charles Henry Wells, Cornell University Law School. 1890.
Introductory.

In the following pages I shall endeavor to treat, with the brevity which must necessarily characterize a limited dissertation, on the uses of an equitable remedy, whose range of utility is exceeded perhaps by but one other. I have not attempted to treat of the equity practice and pleading involved in a scholarly discussion of the subject, more thorough and learned than this can possibly be, but I have confined myself to the three applications of this equitable remedy which I consider most important.

I shall touch briefly upon the history of the injunction writ and after considering the several necessary definitions, I shall pass to the requisites for obtaining the writ, and then follows the topic to which this treatise is mainly devoted.

That the injunction was borrowed from the Romans cannot be doubted; it partakes of the nature of a certain application of the interdicts according to the civil law. The term interdict was used in the Roman Law in three distinct but cognate senses: its use in one of these, i.e., where it was used to signify the Prea-
tor's order or decree, applying the remedy in the given case before him, when it was called decretal, bears a close resemblance to the injunction of our courts of Equity. It is said to have been called interdict because it was originally interposed in the nature of an interlocutory decree between the two parties contending for possession, until the property could be tried. Afterwards the appellation was extended to final decretal orders of the same nature. In the Institues interdicts are defined to be "Formulae by which the preator either commanded or forbade something to be done". (Book IV, Title XV.)

As we understand the injunction it may be said to be a writ remedial, issuing by order of a court of equity, and now also by order of a court of law, in cases where the plaintiff is entitled to equitable relief; and its general purpose is to restrain the commission or continuance of some act of the party enjoined. It is a writ which operates in personam and is preventive rather than restorative, although in the broadest sense it may be used both in the enforcement of rights and in the prevention of wrongs.

Injunctions are divided into mandatory and preven-
The first commands a defendant to do a certain thing, while the second commands a defendant to refrain from doing a particular act. The aid of the mandatory injunction is rarely exercised, and we need in this connection but to mention its existence.

Injunctions are known, according to the time over which they extend, as interlocutory or perpetual. It is with the first named that we are now to deal.

"Interlocutory or preliminary injunctions are such as are granted at any time before final hearing, generally upon the filing of the bill, and continue until the coming in of the answer, or until a hearing upon the merits or the further order of the court."

(High on Injunctions. Sec. 3.)

The only purpose of an interlocutory injunction is to preserve the subject in controversy in its condition at the time of granting the writ, and it does not in any way determine a right; it is simply a provisional remedy to prevent the commission of any further wrong. The court interposes only such restraint as will preserve matters in *status quo* during the litigation, and, by granting the relief sought, the court does not render any decision upon the merits of the case, because this proper-
ly belongs to the final hearing.

Mr. High in his valuable work upon this subject divides the interlocutory injunction into common and special, basing the distinction upon whether the writ issues of course or not, but I do not make this distinction here, because it can be treated more concisely under a different classification.

Having premised thus far of the origin and nature of the writ, I will next proceed to a consideration of --

The Requisites for Obtaining.

The remedy of the injunction is a very severe one and courts of equity will not grant it unless the party applying for the writ presents a clear case, sufficient to show that, in equity and good conscience, the court should restrain the party sought to be enjoined. As some one has truthfully said, "There is no power, the exercise of which is more delicate, which requires greater caution, deliberation and sound discretion, or more dangerous in a doubtful case, than the issuing an injunction. It is the strong arm of equity, that never ought to be extended, unless to cases of great injury where courts of law cannot afford an adequate and commensurate remedy in damages. The right must be clear,
so as to be averted only by the protecting preventative process of injunction."

Mr. Pomeroy states one fundamental principle which he says governs the court and furnishes the answer to any question, the solution to any difficulties which may arise. That general principle is as follows: "Whenever a right exists or is created by contract, by the ownership of the property, or otherwise, cognizable by law, a violation of that right will be prohibited, unless there are other considerations of policy or expediency which forbid a resort to this prohibitive remedy."

And this is a concise statement which must be present in order to obtain the desired relief by means on an injunction. Equity will not interfere to restrain the breach of a contract or the commission of a tort or the violation of any right where the injured party has a full, complete, and adequate remedy at law. When legal compensatory damages will fully remedy the breach of the complainant's rights equity will not interfere. If the subject matter is an equitable right, interest or estate, this question does not arise, because equity only has jurisdiction. Thus in Jersey City vs. Gardner, 33 N. J. Equity, 622, where land had been taken by the city and
held without paying the owner for the same and an action was brought to restrain the city from using said lands. The court held that the remedy of ejectment was adequate. Judge Knapp in his opinion said, "That courts of equity do not entertain jurisdiction of causes where there exists, at law, a remedy plain, adequate and complete to redress the wrongs complained of, stands prominent among the rules which serve to define the boundary of jurisdiction between courts of law and courts of equity."

There is another class of cases closely allied to that just described and growing out of it. Where the complainant can show there could be a remedy at law if a large number of separate actions were brought, but that the circumstances are such as to render the maintenance of the law actions vexatious and extremely impracticable, the court will grant the relief of the injunction, and thus protect the rights of the injured party in a single equitable proceeding. Wood vs. Monroe, 17 Mich., 230, is an excellent case upon this point and I deem it worthy of consideration, because the words of the judge who wrote the opinion in that case are entitled to the greatest weight. In that case a bill
was filed in equity to quiet the title of the complainant to certain lands and, among other grounds, the defendants contested the complainant's rights to a decree on the ground that it was not a proper case for relief in equity, because the complainant claimed by his bill a complete legal title, which could be fully examined and settled at law, and that a part of the defendants had already commenced suits in ejectment. To this, Judge Cooley said, "We do not think there is any force to this objection." The defendants were severally bringing actions against him in respect to one of the lots, and as he had an unquestionable right to file a bill to quiet his title to the others, and the questions were the same as to all, it was proper that, to avoid a multiplicity of suits, the ejectment suits should be enjoined, and the questions in controversy be all determined in one proceeding." And where a plaintiff was owner of a private wharf and had erected and maintained, at great expense, a saw-mill and a machine for unloading lumber and railroad ties, the defendants who were owners and proprietors of a steamboat, without the consent and against the plaintiff's notice forbidding it, continued to land at the plaintiff's
wharf as often as two or three times a day each week, thereby interfering with the plaintiff's business. The court in granting an injunction said that the damages, while they could be repaired in a law court, "he (the complainant) would have to sue for every time the defendants landed, and the burden of carrying on such a multiplicity of lawsuits would make his remedy as grievous as the injury." (Turner vs. Stewart, 17 Cent. L. J., 472.) This part of the subject will be more fully treated under a different head and I think I have made it sufficiently plain that the inadequacy of the legal remedy or its impracticability, and a real impending danger will be all that a complainant is required to show to a court of equity to entitle him to the remedy of the injunction. The courts make some distinction between the requisites for a preliminary and a perpetual injunction. In order to sustain an injunction for the protection of property pendente lite it is not necessary that the injured party should present such a case as will entitle him to a decree upon the final hearing.

Having briefly touched upon what circumstances are necessary for obtaining the writ, I will now pass to the a discussion of the important uses to which it has been
applied. First, as used to restrain proceedings at law, secondly, to restrain the commission of torts, third, to restrain the violation of contracts.

The Use of the Interlocutory Injunction to Restrain Proceedings at Law.

The use of the injunction to stay actions at law was one of the first uses of the remedy and was almost coeval with the beginning of the Chancery jurisdiction. When the courts of equity began to exercise this power it met with the most strenuous opposition of the common law judges, and this opposition continued down to the time of James I; but it was then firmly established and has never since been questioned. The objection of the common law courts was, that it interfered with their decisions and thereby curtailed their jurisdiction. But this reason is considered as frivolous by most writers, because it is held to be urged in direct contradiction to the nature of the writ itself, which operates in personam and does not interfere with the proceedings.

There is certainly weight to the objection. For it seems that if a person had a right, or it was adjudged that he had a right, by a court of law, and he was prevented from exercising that right at law, by means of an
injunction, it would be a direct interference with the action of a court of law which would have resulted had no restraining writ issued. And this was the opinion of Judge Reed in Merril vs. Lake, 16 Ohio, 405, when he said, "But it is said that this court does not, by its injunction, act upon the court, but the parties; but this, in effect is the same thing. If this court can enjoin the suitors in the court of common pleas, and compel them to litigate a matter pending in the court of common pleas in this court, it is the same thing in effect as restraining the court."

Be that as it may, we know that to-day, where unaffected by statutes, one of the most frequent and beneficial uses of this preventive remedy is to stay either the action at law itself or afterwards to interpose a barrier to the execution of the law court's decree. Whether the injunction is to be issued before or after judgment it matters not, and in this brief treatise we shall make no distinction.

Mr. Pomeroy divides the cases where the aid of the injunction to restrain proceedings at law may be invoked, into three classes, and for the want of a better one I adopt the same classification.

First, "Where the controversy, in addition to its
legal aspect, involves some equitable estate, right, or interest which is exclusively cognizable by a court of equity, so that a complete determination of the issues cannot be made by a court of law." In a controversy like that described above, equity not only may, but must interfere by restraining the action at law, and when it has done this it must assume jurisdiction of the whole matter, restrain the suit at law, and carry it to the final decision. The court of equity is set in motion by a suit instituted at the pleasure of the party whose equitable estate, right or interest is threatened. This rule assumes that the equitable questions involved in the defense extend to the entire cause so that their decision determines the controversy. And, when the cause contains both legal and equitable questions which are distinct, the court of equity while taking jurisdiction may not restrain the proceedings at law before the obtaining of judgment. In Mitchell vs. Oakley, 7 Paige, 68, it was held that in cases of concurrent jurisdiction a party could come into an equity court for relief upon the final hearing if he thinks proper to do so, "But when he asks the interposition of the extraordinary power of this court by means of a preliminary injunction, to
deprive his adversary of the right of a common law trial as to the matter of fact in dispute between them, he must show by his bill that some injustice would be done him, or that he would be deprived of some legal or equitable right, if his adversary should be permitted to proceed at law." Upon this division see Hibbard vs. Eastman, 47 N. H., 507.

Second,- The class of cases with which we have to deal now, are those which belong to another branch of the exclusive jurisdiction of equity: that is where the primary rights, interests or estates are legal, but the remedies sought and obtained are wholly equitable. Some writers treat these cases as those over which both courts of law and of equity have a concurrent jurisdiction to grant their respective and distinctive remedies. In a case involving actual fraud, where a suit is brought upon an instrument and the defense is fraud in procuring its execution, there is an example of this. If the jurisdiction is thus said to be concurrent and the only question between the two courts arises in regard to the adequacy of their separate remedies, as a general rule, the court which first acquires jurisdiction is permitted to retain exclusive control of the matter under issue.
Whether a court of equity will interfere to restrain the action or judgment at law or not in cases where the primary rights of both parties are legal, and the courts of law will grant their remedies and the courts of equity may also grant their peculiar remedies, depends entirely upon the adequacy or inadequacy of the legal remedy. (Wilkinson vs. Rewey, 59 Wis., 554, Ins. Co., vs. Bailey, 13 Wal., 616.) And if the remedy at law is inadequate or if by reason of some inability of a law court to mete out justice between the parties, through a mere judgment for the defendant in the action at law, but some affirmative relief like reformation or cancellation is required, equity will enjoin the action at law and carry the whole cause to its final determination.

Whenever a court of equity exercises its jurisdiction over a case involving only legal interests and primary rights, for the purpose of awarding its exclusively equitable remedies, because the legal remedies will be inadequate, it will always, if necessary, enjoin an action at law which interrupts the exercise of its jurisdiction. (Pomeroy's Eq. Juris. Vol. 3., 399.)

Third,- It will be noticed that in the class of (Merril vs. Lake, 10 Ohio, 405.)
cases mentioned in the two former divisions, the ground upon which the court of equity would interfere was some equitable feature or principle that was connected with the subject matter of the controversy, or in the remedies appertainable thereto, and this equitable element of the subject matter, or remedy, constituted a defense either absolute or partially to the legal action, and over which the court of equity had either an exclusive or concurrent jurisdiction.

We have nothing to do with an equitable feature or principle in this class. There is no equitable defense in any issue, no equitable right or interest of the defendant which in any way modifies the legal cause of action, but the issues are wholly legal, and the ground for the interference of equity is something which arises out of the trial in the law court. And from the nature of the case interference can be sought only after the trial has taken place and judgment rendered.

It is a fundamental principle of the jurisdiction of the equity court that where a legal judgment has been obtained through mistake, fraud, or accident, or where a defendant has been prevented by any of the above causes from setting up a valid legal defense in a trial
at law, a court of equity will restrain proceedings upon
the judgment so obtained and which is against equity
and good conscience to enforce. But the party thus
seeking relief must have been guilty of no negligence,
laches, or other fault upon his part or those acting
for him. Judge Grier in Truly vs. Wanzer, 16 U. S.
Dec., 339, gave the following language his judicial ap-
proval, "It may be stated as a general principle, with
regard to injunctions after a judgment at law, that any
fact which proves it to be against conscience to execute
such judgment, and of which the party could not have
availed himself in a law court, or of which he might
have availed himself at law but was prevented by fraud
or accident unmixed with any fault or negligence in
himself or agents, will authorize a court of equity to
interfere by injunction to restrain the adverse party
from availing himself of such judgment."

Among the instances of fraud which entitle a defen-
dant to this remedy are those where the complainant has
made false and fraudulent representations that the suit
will not be prosecuted against him, and relying upon
these representations he does not endeavor to contest
the case in the manner he would have done had there been
no fraud by the other party. (Han vs. Mortell, 28 Ill., 478.) In this case an agreement was made between the attorneys of the parties that the case should not be tried without notice from each other. The case was tried two years after it was commenced by a new attorney for the plaintiff, no person being present for the defendants. Judgment was taken by default without any knowledge of trial or judgment on the part of the defendants. The court held that this was such a violation of the agreement, whether by fraud or accident, as to affect the rights of the parties and warrant the issuing of an enjoining writ.

Another form of fraud which will entitle a defendant to this relief is where his witnesses have been bribed, or in any way tampered with, or where his evidence has been destroyed so as to prevent a full presentation of his defenses. See upon this division the following cases: Pearce vs. Olney, 20 Conn., 544, Carrington vs. Halabird, 17 Conn., 530. And upon the injunction to restrain proceedings at law generally: Butch vs. Lash, 4 Iowa, 215, Ferguson vs. Fisk, 28 Conn., 501, Hibbard vs. Eastman, 47 N. H., 507, an excellent case.
The Use of the Interlocutory Injunction to
Restrain the Commission of Torts.

The second important use of the injunction, which
I will now consider, is to restrain the commission of
acts for which an injured party would not have a compe-
tent remedy in a suit at law. Whenever it is so used
it is for the protection of legal rights and interests.
And here as in the other applications of this remedy
adequacy
or inadequacy of the relief in compensatory
damages determines the jurisdiction of the equity court.

(1) Of Waste.

Waste is any unlawful act or omission of duty, which
results in permanent injury to the inheritance. (Ch.
Black., 743, Tideman, R. P., $ Sem. 72.) At early
common law by the statute of Marlbridge the only punish-
ment for waste committed was single damages, but the
statute of Gloucester gave to the owner of the inheri-
tance treble damages, which could only be recovered
by an action of waste, also, "an action on the case in
the nature of waste" would lie. (Ch. Black., N. 304.)
But at a time comparatively modern, equity assumed jurisdic-
tion and now its restraining writ is often used to
prevent irremediable injury. It is not in derogation of the jurisdiction of the courts of law that equity does so, but rather in the aid of the legal right which the complainant possesses.

It is a fundamental principle that waste will not be restrained where there is any question as to the complainant's title and where the right to the premises is in doubt, as where a suit in ejectment is pending, equity will not interfere. (Pillsworth vs. Hopton, 6 Ves. 51, ) And in order to make out such a case as to warrant the court in issuing the writ the complainant must show that the injury is destructive of the inheritance, or productive of irreparable damage, and the facts must be shown to support such an allegation.

If an intention be shown to commit further waste, although the act is trivial at first, the court will interfere and prevent such threatened waste. Usually, one who applies for the injunction, must hold the legal title although the equitable title has been held sufficient in some cases, as in a sheriff's sake of lands before the legal title has been vested. Also a mortgagor is entitled to an injunction where the mortgagor is in possession of the mortgaged premises and commits
waste. The mortgagor may exercise acts of ownership but will be prevented from depreciating the value of the property so as to render the security insufficient. And the injunction may be allowed before the mortgage is due. These proceedings generally arise during the foreclosure of a mortgage when the mortgagor is anxious to strip the land of everything available. (High on Inj. 246.)

One of the most frequent cases in which the question of waste arises is in the cutting of trees by the tenant or person in possession. To sustain an application for the writ in this case it must be shown that the complainant has a clear title to the land, and that the trees are of some peculiar worth, because a court will not restrain the thinning of trees in a forest in order to increase their growth, or where they are of no particular value. The destruction complained of must be of some irreparable injury to the estate and not in accordance with the principles of good husbandry. What would be good husbandry in a locality will be governed by the customs of that place. Thus in one section of the country, the cutting of timber for the purpose of fenc-
timber of the same kind may be considered only proper for furniture or other fine work.

Another case where the writ is often used, is to restrain a tenant from selling or taking off the premises crops, manure or anything that will tend to run down the land and lessen its productiveness. (Pultney vs. Shelton, 5 Ves., 147.) The aid of the injunction may be properly invoked to prevent the tenant from committing voluntary waste to the premises, either by destroying, or altering against the terms of the lease. Although the tendency of courts of equity is to be more liberal in allowing the writ of the injunction to restrain the commission of waste than formerly, still a strong case of destruction or irreparable mischief must be made out to warrant the relief. (High on Inj., 240.)

(2) Of Trespass.

Trespass differs from waste in that the party who commits waste is in lawful possession, and has a right to the legitimate use of the property, while the trespasser enters upon the premises without any right whatever to its use. The granting of injunctions to restrain the commission of trespass undoubtedly grew out of the jurisdiction to stay cases of waste. At first
the Chancery court refused to interfere to restrain the trespassers. Lord Thurlow, in Flamang's case, was the first Chancellor who established a contrary rule, and he was followed by Lord Eldon, in Thomas vs. Oakley, 18 Ves. 183, (1811) which settled the controversy in England. The American courts were very diffident about adopting the remedy in cases of trespass. An injunction for this purpose was refused in Stevens vs. Beekman, 1 Johns. Ch. 317, (1814). Chancellor Kent said, I doubt, exceedingly, whether this extension of the ordinary jurisdiction of the court will be productive of public convenience. Such cases are generally of local cognizance; and drawing them into this court will be very expensive, and otherwise inconvenient." He also stated that Lord Thurlow had been misunderstood. Modern authorities are opposed to the doctrine of Chancellor Kent, and the tendency is to broaden the jurisdiction in restraining trespass generally, and not to confine it to special cases.

Here as in waste the party complaining must have a clear title and if the title is denied or be in doubt, especially where a defendant is in possession, the injunction will not usually be allowed, until title is established in a suit at law. Another principle which is
found underlying all cases, where the injunction is sought, is whether the remedy at law is ample and complete. If it is equity will not interfere. The injury complained of must be clearly established and the facts constituting such mischief should be set forth.

The aid of the injunction is often invoked to restrain the cutting of ornamental trees, or of forest trees where the estate is much injured thereby. (Wilson vs. The City of Mineral Point, 39 Wis., 160.) And although a clear title is necessary to obtain an injunction, where there has been a long and undisturbed possession of the premises under a title deducible of record, such possession couple with unmistakable proof of title will authorize the relief as against a mere trespasser without color of right. (Falls, etc., vs. Tibbetts, 31 Conn., 165.)

An injunction will be granted where the complainant shows a clear title and a continuous trespass which results in damages to his estate, irreparable at law, or when the nature of the trespass is such that it must necessarily lead to oppressive litigation, or a multiplicity of suits. (Turner vs. Stewart, 17 Cent. L. J., 472, High on Inj., Secs. 458 to 484, inclusive.)
(3) Of Nuisance.

It has long been established that courts of equity have the jurisdiction to restrain the continuance of nuisances, where the remedy of pecuniary damages, at law, will not adequately compensate the injured party. Where the rights of the person seeking the aid of equity are doubtful, he must first establish his right at law. (McCord vs. Ikler, 12 Ohio, 387) And if some of the questions in dispute are yet in litigation in a law court, equity will not interfere until it can have jurisdiction of the whole matter. (Rastman vs. Amoskeag, etc., 47 N. H., 71.)

The injury complained of must be actual and not contingent upon circumstances, which must necessarily be present, in order to inflict the injury. And where a person seeks relief in his own right, by injunction to abate a public nuisance, he must not only show that he has suffered damage distinct from that of the general public, but, the injury must be actual, substantial, not technical nor inconsequential; thus, the parties owning adjoining lots in a village, the court refused to enjoin the defendant from building a wall in front of his own lot, although partly constructed within the surveyed
limits of the highway, and obstructed the complainant's carriage-road from his house to the main street, when he had another way equally available, and in daily use; and, although the obstructed way added somewhat to the beauty of the premises. The court held the injury to be a mere fancy. (Sargent vs. George, 56 Vermont, 627.)

A threatened nuisance may also be enjoined, but the evidence must be clear enough to satisfy the court that the act complained of will inevitably result in a nuisance, and the reason is as forcible, and in some respects more so, where the creation of an unquestionable nuisance should be restrained as well as an existing one. The threatened injury must be real, not trifling and temporary, and the court will proceed with more caution than in an existing nuisance, especially where public convenience will be increased by the act complained of. (Croker vs. Birge, 54 Am. Dec., 347, Rosser vs. Randolph, 31 Am. Dec., 712.)

The instances where the injunction has been granted to abate nuisances are almost numberless and to attempt to mention all of them here would be futile. Where there is no adequate remedy at law any act which injures one's property rights, by rendering it unhealthy as a
place of abode or by reason of noise, disagreeable odors, or other circumstances making it impossible to enjoy a person's property, will be sufficient grounds for granting the injunction. (Robinson vs. Baugh, 31 Mich., 290, Marson vs. French, 48 Am. Rep., 272.)

The long continued carrying on of a business, or doing of any act, will prevent a subsequent writ issuing to stop the enjoyment of the privilege thus established by long usage. And too, the party complaining of the nuisance must be guilty of no laches or delay in applying for the remedy. Upon this subject see High on Inj., Secs. 485 to 543, inclusive.)

The Use of the Interlocutory Injunction to Restrain the Violation of Contracts.

While the remedy for the past breach of a contract can only be had in a court of law, equity will enforce a specific covenant or protect the complainant's contract rights. Courts of equity will grant the remedy of the injunction in all cases where it will compel specific performance, in fact it may be said to be a negative specific performance. And, as in cases of specific performance, there must be no doubt as to the contract, and the complainant's rights must be clearly
If a contract is negative in its stipulations, or if the affirmative stipulations imply negative stipulations, the relief of the injunction may be sought. The adequacy of the legal remedy in each particular case is the test, both in this country and England, as to whether an injunction will be granted or not. In England the courts have been much more liberal in applying this test than in America, and have more freely used the injunction to prevent the violation of contracts. While the tendency of American courts has been to limit rather than to enlarge the jurisdiction in cases of this kind.

One of the most frequent uses of the restraining writ is to prevent the violation of restrictive covenants in deeds, leases and agreements, which limit the use of property in a specified manner, or which prescribes the use of land in a particular way, and by so doing creates an equitable right which attaches to the land. It matters not whether the breach of covenant arises between the original parties to the agreement or between subsequent purchasers or assignees with notice. And the covenants need not be of the kind which technically run with the land. (Seward vs. Winters, 4 Sandf. Ch. 587.)
The complainant must be guilty of no delay in seeking to restrain a breach of the covenants. (Same vs. Same, 6 Ves., 104.) The amount of damages suffered by the injured party is immaterial. In a note to Leech vs. Schweder, L. R. 9 Ch., 463, Sir. G. Jessel, M. R., speaking of the injunction as a remedy for the breach of restrictive covenants, says: "It is clearly established by authority that there is sufficient grounds to justify the court interfering if there has been a breach of the covenant. It is not for the court, but the plaintiffs to estimate the amount of damages inflicted upon them. The moment the court finds that there has been a breach of covenant, that is an injury and the court has no right to measure it, and no right to refuse to the plaintiff the specific performance of his contract, although his remedy is that which I have described."

There is another restrictive covenant, which equity will enforce by means of an injunction, and that is where one has agreed to refrain from engaging in any trade within certain limits, as in Richardson vs. Peacock, 28 N. J. Eq., 151. The complainant, in this case, had bought out the poultry business of the defendant, who
agreed that he would not ship any poultry to the cities of New York or Washington. A valuable consideration was paid. The fixtures were worth but little, so that nearly the whole amount was paid for this covenant. Soon after this, the defendant began to buy and ship poultry in violation of this agreement. During the proceedings the defendant proved that he was acting as the agent of other parties, but the court held that it was such a violation of the spirit of the covenant as to warrant an injunction. (Barret vs. Blagrave, 5 Ves. 555.) And where any negative agreement has been entered into, as not to build on a certain lot, or not to run a train past a certain station without stopping, the court has interfered.

Often times where personal services, of a peculiar value, are contracted for, as where a singer or actor of note agrees to perform at a certain place at a specified time, and it is plain that an injured party could have no remedy at law in a case of this kind, because there is no criterion by which the damages can be estimated. In cases of this kind, it is a well established doctrine that a court of equity will not compel affirmative specific performance, because the ser-
vices are of such a nature that the court can not do so by the ordinary processes of the court.

In England, however, although formerly the rule was different, the courts hold that such contracts may be enforced by negative methods. Thus, in Lumley vs. Wagner, 1 De G., M. & G., 604, a prima donna had agreed to sing three months in a certain place, and to sing nowhere else, she afterwards sought to repudiate the contract. The court held that she could be restrained from singing elsewhere. In the course of his opinion, Lord St. Leonard said that, "The agreement to sing for the plaintiff during three months at his theatre and during that time not to sing for anybody else, is not a correlative contract; it is, in effect, one contract and though, beyond all doubt, this court could not interfere to enforce the specific performance of the whole of this contract, yet in all sound construction, and according to the true spirit of the agreement, the engagement to perform for three months must necessarily exclude the right to perform at the same time at another theatre." And this doctrine has been affirmed and further extended in Montague vs. Flockton, L. R., 16 Eq., 189.)
The American courts, as a rule, either entirely reject the doctrine of Lumley vs. Wagner, or only partially accept it. In Gallagher vs. Fayette Co. R. R. Co., 38 Pa. St., 102, a defendant who had contracted with the complainant, to build a railroad depot upon his grounds, and had afterwards purchased other grounds for that purpose, was not restrained from building on any other lot, although the complainant brought suit for this purpose.