

the exercise of equitable jurisdiction, a negative stipulation may be implied, whenever it is a reasonable inference from the terms of the affirmative portion of the agreement, that the parties contracted on the understanding, that the employé was not to render service to anyone except the employer. Such an inference might, it was held, be properly drawn, where the employé had bound himself to give his whole time to the employer, or to work exclusively for the employer, or to render certain definite services on specified premises³.

³ In *Montague v. Flockton* (1873) L.R. 16 Eq. 189, Malins, V.C., stated his conclusions and the reasons therefor in the following terms: "It appears to me, on the plainest ground, that an engagement to perform for nine months at Theatre A. is a contract not to perform at Theatre B., or at any other theatre whatever. How is a man to perform his duty to the proprietor of a theatre if, when he has engaged himself to perform for him, he is to go away any night that he may be wanted to another theatre? I must treat Mr. Flockton as if he were the greatest actor in the world, and as if wherever he went the public would run after him; and according to this, if a proprietor engages an actor to perform for him, he is not, because he is only wanted for three nights in the week, to be at liberty to go and perform at any other theatre during the other three nights, and thereby take away the advantage of the contract which he has entered into with his employer. That, in my opinion, is utterly inconsistent with the proper construction of the contract." The learned judge relied upon two other cases in which the same view, that an engagement to act at one theatre is an implied prohibition against acting at any other, had been taken, viz., *Webster v. Dillon* (1857) 3 Jur. N.S. 432 (a decision rendered by Page-Wood, V.C. (afterwards Lord Hatherley), upon the assumption that he was sustained by the authority of Lord St. Leonards, and *Peckter v. Montgomery* (1863) 33 Beav. 227, a decision by Lord Romilly, who construed a contract in which there was no negative stipulation, as importing an agreement on the part of the plaintiff to employ the defendant to act at a certain theatre, and on the part of the defendant to perform nowhere else without the plaintiff's consent, but refused to enforce the latter agreement on the ground that the plaintiff had kept the defendant idle for five months (see §3, note 7, ante).

See also *Jackson v. Astley* (1883) 1 C. & E. 181, where Pollock, B., observed, with regard to a contract to serve the plaintiff for a specified term, as the manager of his business, that, under appropriate circumstances, its breach might have been enjoined, although it contained no express negative covenants. But he declined under the circumstance to exercise his discretionary power.

In view of the explicit and categorical statement of Lord St. Leonards already referred to in the preceding note, it is difficult to understand how the theory as to the effect of *Lumley v. Wagner* which these cases embody can have originated. In *Montague v. Flockton*, *supra*, Malins, V.C., said that he relied chiefly upon the following passage of the Lord Chancellor's judgment: "In all sound construction, and according to the true spirit of the agreement, the engagement to perform for three months at one theatre must necessarily exclude the right to perform at the same time at another theatre." Another passage which has some bearing upon the point is that in which the Lord Chancellor observed that the