

11. Same subject. American doctrine.—(a) *Generally*—The theory of which, as stated in the preceding section, Kekewich, J., seems to be the sole exponent in England has taken firm root in the United States. In a large number of cases it has been held that, where the assistance of equity is sought to restrain an employé from entering into engagements with a third person, an injunction should be granted or refused, according as the stipulated services do, or do not belong to a category indicated by such descriptive phraseology as this: “unique”¹; “special, unique, and extraordinary”²; “unique, individual, and peculiar”³; “individual and peculiar, because of their special merit or unique character”⁴; “requiring and presupposing a special knowledge, skill, and ability in the employé”⁵. The effect of the decisions rendered with reference to this doctrine is stated below⁶.

negative agreement of the defendant, or of his abstaining from the contemplated act, it is not, I conceive, material whether the right be at law, or under an agreement which cannot be otherwise brought under the jurisdiction of a court of equity.” Lord Cottenham in *Dietrichsen v. Cabburn* (1846) 2 Phill. Ch. 52 (58).

“If there is a negative covenant, the court has no discretion to exercise. If the parties for valuable consideration, with their eyes open, contract that a particular thing shall not be done, all that a court of equity has to do is to say by way of injunction that the thing shall not be done.” Lord Cairns, in *Doherty v. Alman* (1876) 3 App. C. 720.

¹ *Philadelphia Ball Club v. Lajoie* (1902) 202 Pa. 210.

² *Bronk v. Riley* (1888) 50 Hun. 489; *Strobridge Lith. Co. v. Crane* (1890) 58 Hun. 611 (memo.), 35 N.Y.S.R. 473, 12 N.Y. Supp. 898; *Hoyt v. Fuller* (N.Y. Super. Ct. 1892), 19 N.Y. Supp. 962, 47 N.Y.S.R. 504; *Rogers Mfg. Co. v. Rogers* (1890) 58 Conn. 356.

All the courts which have used this particular combination of words seem to have derived it from the following passage in 4 Pomeroy Eq. Jurispr., § 1343: “Where a contract stipulates for special, unique, or extraordinary, personal services or acts, or for such services or acts to be rendered or done by a party having special unique and extraordinary qualifications, . . . the remedy at law of damages for its breach might be wholly inadequate, since no amount of money recovered by the plaintiff might enable him to obtain the same or the same kind of services or acts elsewhere, or by employing any other person.”

³ *Jacquard Jewelry Co. v. O'Brien* (1897) 70 Mo. App. 432.

⁴ *Burney v. Ryle* (1893) 91 Ga. 707.

⁵ Pomeroy, Spec. Perf. (2nd Ed.) § 24, adopted in *Universal Talking-Mach. Co. v. English* (1891) 34 Misc. 342, 69 N.Y. Supp. 813; *Philadelphia Ball Co. v. Lajoie* (1902) 202 Pa. 210.

⁶ (a) *Injunction granted*.—In *Hayes v. Willio* (1871) 11 Abb. (N.Y.) Pr. N.S. 167, where an actor was enjoined from violating a stipulation not