Appeal reversed the decision of the learned judge, asserting the right of the employer to enjoin the employé, (see § 8, *ante*), but did not make any comment upon this explanation of the decisions referred to by him. The precise scope of his remarks is not entirely clear. But if they are to be construed as embodying the theory that the special quality of the services to be rendered is a determinative element, in the sense that the jurisdiction of courts of equity is dependent upon its presence, his view is not borne out by the authorities. In the first place, a theory which would attach to this element a differentiating effect of this description is quite inconsistent with the rationale of later cases in which the court has enjoined or refused to enjoin the breach of negative stipulations in contracts for services which did not demand any special capacity[2]. In the second place it is to be observed that, neither in the decision particularly mentioned by Kekewich, J., nor in any other, has any language been used which can fairly be interpreted as indicative of an adoption of his view. All the judgments of the courts have been rendered with reference solely to the consideration, that the given contract did, or did not, embrace a negative stipulation, express or implied[3].

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artist, having special knowledge, special powers, or special abilities, which he or she has engaged to give up and use for the benefit of the employer. That is the foundation of such cases as *Lumley* v. *Wagner*. It is because the defendant in a case of that kind is an artist who cannot easily be replaced that such an action is brought." In another place (p. 423) he approved the decision in *Montague* v. *Flockton* (§ 8, *ante*), on the ground that "an actor is also an artist a man with special powers, special abilities."

[2] In *Lanner* v. *Palace Theatre* (1893) 9 Times L.R. 162, 165, a teacher of ballet-dancing was held by Chitty, J., to be entitled to enjoin two of her pupils from violating a negative stipulation (see § 2, note 5, and § 6, note 8, *ante*).

In *De Francesco* v. *Barnum* (1890) 43 Ch. D. 165, 45 Ch. D. 430, an injunction in a similar case was refused by the same judge, but simply on the ground that the contract was unfair. See § 2, note 5, *ante*.

[3] The very general language in which Chitty, J., in the cases cited in last note, summed up the effect of the authorities has already been stated. See § 6, *ante*.

The following remarks as to the extent of the jurisdiction of courts of equity with regard to the enforcement of negative stipulations are also extremely significant in the present connection, although the contracts involved did not relate to service.

"If the bill states a right or title in the plaintiff to the benefit of the