The opinion has recently been expressed by a very eminent judge that *Lumley* v. *Wagner* is "rather an anomaly to be followed in cases like it, but an anomaly which it would be very dangerous to extend"[8]. But its authority still remains unimpugned in England, so far as regards the actual decision; and it has been followed more than once where the effect of similar contracts was in question[9].

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break in upon her affirmative covenant—the one being ancillary to, concurrent and operating together with the other. 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 at one theatre must necessarily exclude the right to perform at the same time at another theatre. It was clearly intended that J. Wagner was to exert her vocal abilities to the utmost to aid the theatre to which she agreed to attach herself. I am of the opinion, that if she had attempted, even in the absence of any negative stipulation, to perform at another theatre, she would have broken the spirit and true meaning of the contract as much as she would now do with reference to the contract into which she has actually entered. Wherever this court has not proper jurisdiction to enforce specific performance, it operates to bind men's consciences, as far as they can be bound, to a true and literal performance of their agreements; and it will not suffer them to depart from their contracts at their pleasure, leaving the party with whom they have contracted to the mere chance of any damages which a jury may give. . . . It was objected that the operation of the injunction in the present case was mischievous, excluding the defendant J. Wagner from performing at any other theatre while this court had no power to compel her to perform at Her Majesty's Theatre. It is true, that I have not the means of compelling her to sing, but she has no cause of complaint, if I compel her to abstain from the commission of an act which she has bound herself not to do, and thus possibly cause her to fulfill her engagement."

[8] Lindley, L.J., in *Whitwood Chemical Co.* v. *Hardman* (1891) 2 Ch. 416 (428).

[9] In *Stiff* v. *Cassell* (1856) 2 Jur. N.S. 348, it was held that a *primâ facie* case was made out for enforcing by injunction an agreement of an author employed to compose tales for a weekly newspaper, that he would write only for publications of a specified class within the period covered by the contract.

That a stipulation by an actor not to act at any other theatre than that of his employer, without permission, may be enforced by injuncion, was held in *Grimston* v. *Cunningham* (1894) 1 Q.B. 125.

See also the two cases reported under the caption, *Lanner* v. *Palace Theatre* (1893) 9 Times L.R. 162. The facts are stated in § 1, note 5, *supra*.

In *Donnell* v. *Bennett* (1883) 22 L.R. Ch. Div. 835 (a case relating to the sale of chattels), Fry, J., after referring to certain earlier decisions, remarked: "They appear to me to shew that in cases of this description