

granted to restrain the defendant, an operatic singer, from violating an agreement not to sing elsewhere than at the plaintiff's theatre during the period covered by her contract with him. As the basis of this conclusion, he adopted categorically the position, that the court might interfere to prevent the violation of the negative stipulation, although it could not enforce the specific performance of the entire contract, and rejected the contention of the defendant's counsel, that a court "ought not to grant an injunction except in cases connected with specific performance, or where, the injunction being to compel a party to forbear from committing an act (and not to perform an act), that injunction will complete the whole of the agreement remaining unexecuted"⁷.

than the Haymarket; and the ground on which Lord Eldon assumed that jurisdiction was the subject of some discussion at the Bar. It was truly said for the defendants that that was a case of partnership; and it was said, moreover, that Lord Cottenham was mistaken in the case of *Dietrichsen v. Cabburn* (1846) 2 Phill. 52, when he said that Lord Eldon had not decided *Morris v. Colman*, 18 Ves. 437, on the ground of there being a partnership. I agree that the observations which fell from Lord Eldon in the subsequent case of *Clarke v. Price*, 2 Wils. 157, show that he did mainly decide it on the ground of partnership; but he did not decide it exclusively on that ground." He expressed his disapproval of the interpretation put upon this case by Vice-Chancellor Shadwell in *Kemble v. Kean* (see last section). He stated that *Clarke v. Price* (1820) 2 Wils. 157, was not really a case in point, as the contract there under review did not contain any negative stipulation, a circumstance which was clearly fatal to the claim of the plaintiff to the assistance of the court (see, however, section 8, *post*). Finally he expressed the opinion that both *Kemble v. Kean* and *Kimberley v. Jennings* (see note 1, *supra*), had been wrongfully decided.

⁷ The following additional extract from the judgment in this important case may with advantage be quoted: "At an early stage of the argument I adverted to the familiar cases of attorneys' clerks, and surgeons' and apothecaries' apprentices, and the like, in which this court has constantly interfered, simply to prevent the violation of negative covenants; but it was said that in such cases the court only acted on the principle that the clerk or apprentice had received all the benefits, and that the prohibition operated upon a concluded contract, and that, therefore, the injunction fell within one of the exceptional cases. I do not, however, apprehend that the jurisdiction of the court depends upon any such principle; it is obvious that in those cases the negative covenant does not come into operation until the servitude is ended, and, therefore, that the injunction cannot be required or applied for before that period. The present is a mixed case, consisting not of two correlative acts to be done, one by the plaintiff and the other by the defendants which state of facts may have and in some cases has introduced a very important difference,—but of an act to be done by J. Wagner alone, to which is superadded a negative stipulation on her part to abstain from the commission of any act which will