

that court, it is important to note that, although the broad theory, that an affirmative agreement to perform certain services for a specified person or on specified premises during a stated period always involves by implication a negative stipulation not to perform similar services for any other person during that period, was emphatically repudiated, Lindley, L.J., expressed his concurrence with the remarks of Lord Selborne in a somewhat earlier case, to the effect that "the principle (applied in *Lumley v. Wagner*) does not depend upon whether you have an actual negative clause, if you can say that the parties were contracting in the sense that one should not do this, or the other,—some specific thing upon which you can put your finger"⁵. As the English

specific performance of contracts for personal service, and the question is, whether there is anything in this case which takes it out of that principle. I cannot see that there is." Referring to *Montague v. Flockton*, upon which reliance had been placed, he added: "I cannot read the decision of Malins, V.C., without seeing that he was under the impression that Lord St. Leonards in *Lumley v. Wagner* would have granted the injunction, even if the negative clause had not been in the contract. This was a mistake. Lord St. Leonards was very clear and explicit on that subject." Kay, L.J., said: "What strikes me in this case is that, if the court could possibly interfere in the way in which the learned judge has interfered, by injunction, I do not see any contract of hiring and service in which it ought not also to interfere. To take the most simple and ordinary case, of a man's domestic servant, his butler (which was one of the cases put by way of illustration in one of the judgments referred to), who has contracted to give the whole of his time to his master's service. Could it be possibly argued that an injunction could be obtained to prevent his serving some one else during that engagement? Yet if a negative is to be implied. I do not see any case whatever in which it could be more clearly implied than in a case of that kind. We must tread with very great caution such a path as that which this application invites us to pursue; and, as I think this case goes very far beyond any other case which has been decided with consideration up to this time, I certainly am very strongly disinclined to support this decision; I am all the more disinclined to support it, because one cannot help seeing that the mode in which this injunction is granted is really the only mode in which the court could possibly have granted such an injunction. The court has implied a negative in the contract to give the whole of his time, and has therefore granted an injunction to prevent his giving any of his time to any other purpose. It is not really wanted, *bond fide*, for that purpose, but it is wanted to prevent him from setting up a rival business which he has not contracted not to do."

⁵ This statement is intended to express the essence of a passage in Lord Selborne's judgment in *Wolverhampton & W. R. Co. v. London & N. W. R. Co.* (1873) L.R. 16 Eq. 433 (440). After referring to the case of *Lumley v. Wagner*, he proceeded thus: "It was sought in that case to enlarge the jurisdiction on a highly artificial and technical ground, and to extend to it an ordinary case of hiring and service, which is not properly a case of specific performance; the technical distinction being made