RECENT ENGLISH DECISIONS.

Court of Appeal, Exchequer Division.

BOWEN v. HALL.

An action lies for maliciously procuring a breach of contract to give exclusive personal service for a time certain, provided damage accrues; and to sustain such an action it is not necessary that the employer and the employed should stand in the strict relation of master and servant.

Lumley v. *Gye*, 2 E. & B. 216, discussed and followed.

THE plaintiff, Edward Bowen, was a brickmaker, carrying on business at the Cattershall Fire-Clay and Brick Works, Brett's Lane, in the parish of Kingswinford, Staffordshire. The defendant, John Hall, carried on business as a manufacturer of glazed fire-clay baths and glazed fire-bricks, under the style of John Hall & Co., at a certain fire-brick works near Stourbridge, and the defendant Fletcher acted as his foreman. The defendant Pearson was a master glazed bath and glazed brickmaker residing at Kingswinford. On the 18th of June 1877, the defendant Pearson entered into a written agreement with the plaintiff, the material parts of which were as follows:

"I, George Pearson, of Stamber Mill, near Stourbridge, hereby agree and undertake, for the consideration of the prices below named, to find the whole labor for the whole manufacture, in a workmanlike manner, of best quality white glazed bricks and baths (with exception of hooping the baths and preparing the clay mass) in such quantities as you require, and when you require, and delivery anywhere they may be required on the above premises, the said quality to be quite equal to sample supplied and marked, * * * and the said prices to be subject to the standard prices of the trade for the manufacture of the same." (Then followed the prices of bricks and baths.) "I also agree to find body and glaze for baths at 2*d.* each. I also agree to load carefully into trucks, when required, bricks at 1*s.* 6*d.* per 1000, baths, packed, loaded and fixed into trucks at 6*d.* each, also to do any day-work, when required, at 5*s.* per day of nine hours. I also agree not to engage myself to anyone else for a term of five years.

"Terms of payment: Fifty per cent. of the cost of making to be paid when the goods are in the kiln, and the remainder to be paid when the goods are delivered on the bank.

"I, Edward Bowen, do hereby agree to the foregoing conditions, also to supply clay for the manufacture of the said goods in a proper state, also to find all materials (with the exception of body and glaze) and tools, and not to engage anyone else for the same work for a term of five years.

"EDWARD BOWEN,
"GEORGE PEARSON."

Under this contract, Pearson, who was a skilled workman in the manufacture of white glazed bricks and baths, did work for the plaintiff. Pearson's wife, who had from childhood been brought up in the same work as her husband, was under a contract with the defendant Hall to do work similar to that which her husband was doing for the plaintiff. Pearson was accustomed at meal-times to visit his wife at Hall's works, and occasionally he assisted her in her work during those visits, and also after business hours. There was evidence that the defendant Fletcher had suggested to Pearson he should enter into a contract in his wife's name with Hall, who was aware of his visits, inasmuch as he received several letters of remonstrance from the plaintiff upon the subject.

The plaintiff brought his action claiming damages against Hall and Fletcher for enticing away and detaining Pearson from the plaintiff's employment, and for harboring him, and also for an injunction restraining Pearson from working for Hall and Fletcher, and restraining Hall and Fletcher from employing Pearson. The action was tried before MANISTY, J., who directed a verdict for the defendants Hall and Fletcher.

The plaintiff obtained a rule *nisi* for a new trial against all the defendants, on the ground that there was evidence against Hall and Fletcher.

The rule was made absolute by the Queen's Bench Division (COCKBURN, C. J., and BOWEN, J.; MANISTY, J., dissenting) against Hall and Fletcher, but discharged as against Pearson.

The defendants Hall and Fletcher appealed.

The plaintiff also appealed against so much of the rule as was discharged as against Pearson.

Jelf, Q. C. (*Boddam* with him), for the defendants Hall and Fletcher.—The contract between Pearson and the plaintiff was not one of personal service. It did not bind Pearson himself to

work at all. It did not constitute Pearson a servant to the plaintiff, and therefore *Lumley* v. *Gye*, 2 E. & B. 216, did not apply. Pearson was a mere contractor. The judgment of Mr. Justice MANISTY was right, and there was no evidence against either Hall or Fletcher for any actionable wrong.

A. T. Lawrence, for the defendant Pearson.—There was no evidence at the trial that Hall had engaged Pearson, who was in no way bound to continue working at Hall's manufactory. This is not a case in which equity could grant an injunction. The contract was one for which damages would be sufficient remedy. I adopt as my argument the judgment of Mr. Justice COLERIDGE (the dissenting judge) in *Lumley* v. *Gye*.

Matthews, Q. C. (*Anstie* with him), was called upon to confine his argument to questions of law only.—The case is within the law of master and servant: *Ex parte Gordon*, 3 W. R. 568. I desire to adopt as my argument the judgments of the majority of the court in *Lumley* v. *Gye*.

BRETT, L. J.—In this case we were of opinion at the hearing that the contract was one for personal service, though not one which established strictly for all purposes the relation of master and servant between the plaintiff and Pearson. We were of opinion that there was evidence to justify a finding that Pearson had been induced by the defendants to break his contract of service, that he had broken it, and had thereby in fact caused some injury to the plaintiff, We were of opinion that the act of the defendants was done with knowledge of the contract between the plaintiff and Pearson, was done in order to obtain an advantage for one of the defendants at the expense of the plaintiff, was done from a wrong motive, and would, therefore, justify a finding that it was done, in that sense, maliciously. There remained, nevertheless, the question whether there was any evidence to be left to a jury against the defendants Hall and Fletcher, it being objected that Pearson was not a servant of the plaintiff. The case was accurately within the authority of the case of *Lumley* v. *Gye*. If that case was rightly decided, the objection in this case failed.

The only question then, which we took time to consider, was whether the decision of the majority of the judges in that case

should be supported in a court of error. That case was so elaborately discussed by the learned judges who took part in it, that little more can be said about it than whether, after careful consideration, one agrees rather with the judgments of the majority, or with the most careful, learned, and able judgment of Mr. Justice COLERIDGE. The decision of the majority will be seen, on a careful consideration of their judgments, to have been founded upon two chains of reasoning. First, that wherever a man does an act, which, in law, and in fact, is a wrongful act, and such an act as may, as a natural and probable consequence of it, produce injury to another, and which, in the particular case, does produce such an injury, an action in the case will lie. This is the proposition to be deduced from the case of *Ashby* v. *White*, 1 Sm. Lead. Cas. 264. If these conditions are satisfied, the action does not the less lie because the natural and probable consequence of the act complained of is an act done by a third person; or because such act, so done by the third person, is a breach of duty or contract by him, or an act illegal on his part, or an act otherwise imposing an actionable liability on him. It has been said that the law implies that the act of the third party, being one which he has free will and power to do or not to do, is his own wilful act, and therefore is not the natural or probable result of the defendant's act. In many cases that may be so, but if the law is so to imply in every case, it will be an implication contrary to manifest truth and fact. It has been said that if the act of the third person is a breach of duty or contract, or is an act which it is illegal for him to do, the law will not recognise that it is a natural or probable consequence of the defendant's act. Again, if that were so held in all cases, the law would in some refuse to recognise what is manifestly true in fact. If the judgment of Lord ELLENBOROUGH in *Vicors* v. *Wilcocks*, 2 Sm. Lead. Cas. 553, requires this doctrine for its support, it is, in our opinion, wrong. We are of opinion that the propositions deduced above from *Ashby* v. *White* are correct. If they be applied to such a case as *Lumley* v. *Gye*, the question is whether all the conditions are by such a case fulfilled. The first is that the act of the defendant, which is complained of, must be an act wrongful in law and in fact. Merely to persuade a person to break his contract may not be wrongful in law or fact, as in the second case put by Mr. Justice COLERIDGE at p. 247. But if the persuasion be used for the indirect purpose of injuring the plaintiff, or of benefiting the

defendant at the expense of the plaintiff, it is a malicious act, which is in law and in fact a wrong act, and therefore a wrongful act, and therefore an actionable act if injury issue from it.

We think that it cannot be doubted that a malicious act such as above described is a wrongful act in law and in fact. The act complained of in such a case as *Lumley* v. *Gye*, and which is complained of in the present case, is therefore, because malicious, wrongful. That act is a persuasion by the defendant of a third person to break a contract existing between such third person and the plaintiff. It cannot be maintained that it is not a natural and probable consequence of that act of persuasion that the third person will break his contract. It is not only the natural and probable consequence, but by the terms of the proposition, which involves the success of the persuasion, it is the actual consequence. Unless there be some technical doctrine to oblige one to say so, it seems impossible to say correctly in point of fact that the breach of contract is too remote a consequence of the act of the defendant. The technical objections alluded to above have been suggested as the consequences of the judgment in *Vicars* v. *Wilcocks*. But that judgment, when so used or relied on, seems to us to be disapproved in the opinions given in the House of Lords in *Lynch* v. *Knight*, 9 H. L. C. 577, and seems to us, when so used, to be unreasonable. In the case of *Lumley* v. *Gye*, and in the present case, the third condition is fulfilled, namely, that the act of the defendant caused an injury to the plaintiff, unless again it can be said correctly that the injury is too remote from the cause. But that raises again the same question as has been just discussed. It is not too remote if the injury is the natural and probable consequence of the alleged cause. That is stated in all the opinions in *Knight* v. *Lynch*. The injury is in such a case, in law as well as in fact, a natural and probable consequence of the cause, because it is, in fact, the consequence of the cause, and there is no technical rule against the truth being recognised. It follows that in *Lumley* v. *Gye*, and in the present case, all the conditions necessary to maintain an action on the case are fulfilled.

Another chain of reasoning was relied on by the majority in *Lumley* v. *Gye*, and powerfully combated by Mr. Justice COLERIDGE. It was said that the contract in question was within the principle of the Statute of Laborers—that is to say, that the same evil was produced by the same means, and that as the statute made

such means, when employed in the case of master and servant strictly so called wrongful, the common law ought to treat similar means employed with regard to parties standing in a similar relation as also wrongful. If, in order to support *Lumley* v. *Gye*, it had been necessary to adopt this proposition, we should have much doubted, to say the least. The reasoning of Mr. Justice COLERIDGE upon the second head of his judgment seems to us to be as nearly as possible, if not quite conclusive. But we think it is not necessary to base the case upon this latter proposition. We think the case is better supported upon the first and larger doctrine. And we are, therefore, of opinion that the judgment of the Queen's Bench Division was correct, and that the principal appeal must be dismissed.

Lord SELBORNE, C.—There was also a cross-appeal by the plaintiff against the defendant Pearson, who succeeded before the Queen's Bench Division in getting the rule for a new trial discharged or refused as against himself, while it was made absolute as to the other defendants.

Pearson was the workman who, having a special knowledge or skill in the glazing of bricks, which gave a peculiar and exceptional value to his services, contracted with the plaintiff to work for him exclusively, if required so to do, during a certain period of time (the plaintiff being reciprocally bound to employ no other person in the same kind of work during the same period), and was afterwards induced by the other defendants to break that contract. The relief asked against him in the action was injunction; an *interim* injunction was granted before the trial, and the case went down for trial against all the defendants at the same time, and upon the same issues of fact. The effect of leaving the verdict to stand in Pearson's favor would be to entitle him to judgment in the action; which cannot be right if his contract with the plaintiff was broken in the manner alleged; and if, upon the evidence given at the trial, that question of fact could properly be now determined in Pearson's favor, it is impossible, upon the same evidence, it could be right to order a new trial as against the other defendants.

We think, therefore, that the plaintiff's appeal must be allowed, and that there ought to be a new trial as to all the defendants. But as, when the proper time comes to give final judgment, the

consequences of a verdict for the plaintiff will not necessarily be the same as to Pearson and as to the other defendants, we think that the judge at the trial ought to give such directions to the jury as will enable the court, if the plaintiff should succeed, to deal with the particular case of this defendant as may be just. For this purpose they ought to be directed in the event of a verdict for the plaintiff to find specially the amount of damages which they think ought to be awarded against Pearson, 1, in the event of the court thinking his case a proper one both for an injunction and damages and 2, in the event of the court thinking it a proper one for damages only, and not also for an injunction. See Lord Cairn's Act (21 & 22 Vict. c. 27), sect. 2, and the Judicature Act 1873 (36 & 37 Vict. c. 66), sect. 2, sub-section 6, and sect. 76.

The cases of *Hills* v. *Croll*, 2 Phill. 60, and 1 DeG. M. & G. 626 n; *Dietrichsen* v. *Cabbun*, 2 Phill. 52; and *Lumley* v. *Wagner*, 1 De G. M. & G. 604, 627; and the authorities in equity as to covenants in restraint of trade, within certain limits of time or place, may possibly require to be considered before the case as to Pearson, in the event of a verdict being found against him, is finally disposed of.

Lord COLERIDGE, C. J.—In this case as far as regards the defendant Hall, I am sorry to be obliged to differ from the Lord Chancellor and from my brother BRETT. The facts are undisputed; and I understand that all the members of the court are agreed that the relation of master and servant did not, in the strict sense of the word, exist between the plaintiff and the workman whom the defendant induced to break his contract. That being so, the point is neatly raised whether the opinion of the majority of the judges, or the opinion of the dissentient judge, in the case of *Lumley* v. *Gye* should prevail in a court which is not bound by the decision in that case. I am of opinion that as we are not bound by it we ought to overrule it.

I believe, if it is not admitted, at least it is the fact, that *Lumley* v. *Gye* stands alone. Cases more or less analogous to it are, no doubt, cited in the judgments of the judges, relied upon as authorities by the majority, but in my opinion, distinguished successfully by the dissentient judge. Since its decision I cannot find that its authority has ever been so acknowledged as to be followed

in any decided case which has found its way into the reports. From its nature it cannot be a very common form of action, and though, no doubt, it is quite fair to say that this may reasonably account for the bareness of the reports, it ought also in fairness to take away any weight from the circumstance that the case of *Lumley* v. *Gye* has stood so many years in the books without being in terms questioned or overruled. No favorable observations have been made upon it; and, at least in some text-books, where it is treated as an authority, it is so treated with the qualification of a *semble*. Further, it has certainly not obtained the unanimous assent of the profession. The three judges who decided it, and my two colleagues here are, no doubt, lawyers entitled to the highest respect; but there have been great lawyers who are well known to have thought that it was wrongly decided. I may mention in particular Mr. Justice WILLES, no doubt the counsel who argued unsuccessfully in the case, but one of the greatest jurists of his day and his time.

This state of things I conceive leaves me free to express here what has always been my own opinion—namely, that an action does not and ought not to lie against a third person for maliciously and injuriously enticing and procuring another to break a contract, in a case where the relation of master and servant in the strict sense does not exist. I do not propose to state at length my reasons for this opinion. I could only recite the cases and re-state the arguments of Sir JOHN COLERIDGE in *Lumley* v. *Gye*. I agree with my brother BRETT that the conflicting views are stated, as well as they can be stated, by the judges who respectively entertained them in that case; and that there is really no more to be said about it. The question is, with which view do you agree; and I have said, I differ from the majority.

Only one independent observation occurs to me to make. It is, I believe, admitted that if a man maliciously endeavors to persuade another to break a contract, but fails in his endeavor, the malicious motive is not in itself a cause of action. It is, I believe, also admitted, except by Sir WILLIAM ERLE, whom, I think, no one has ever followed, that if a man endeavors to persuade another to break his contract, and succeeds in his endeavor, yet if he does this without what the law calls malice, the damage which results, however great, is not in itself a cause of action; I mean, of course, a cause of action against him. But if the damage, which is not in

itself actionable, be joined to a motive which is not in itself actionable, the two together form a cause of action.

This seems a strange conclusion, but I am reminded of the analogies of libel and conspiracy, in both which it is said tha malice makes that same thing actionable, which without it would not be so. I venture to think that in this there is a fallacy. In the instance of libel there is not even an apparent parallel, except in cases of *prima facie* privilege. A statement in itself defamatory, made deliberately and intentionally, is, I apprehend, a ground of action, however pure and even exalted may be the motive of him who makes it. The case of privilege is an exception to the general law. A statement which is defamatory and untrue, and which may do irreparable damage, is yet protected under certain conditions, on the ground that it is better for the general good that individuals should occasionally suffer than that freedom of communication between persons in certain relations should be in any way impeded. But the freedom of communication which it is desired to protect is honest and tender freedom. It is not expedient that liberty should be made the "cloak of maliciousness;" and in such a case the general law applies. It is not, I think, accurate to say that the malice makes the statement actionable. Deliberate and intentional defamation is always actionable; and the law implies that a man means what he does; save that under peculiar and exceptional circumstances the law will not make the implication which it makes in all others. So, too, in conspiracy. The gist of the civil action, as of the criminal offence, is the act of conspiracy by two or more minds to bring about certain ends by certain means. It is true that each separate conspirator might not, in some instances, be actionable, nor indictable, for attempting to do or even for doing with the utmost malice what he becomes actionable or indictable for conspiring to do with others. But here, too, I conceive that from the act of conspiring to bring about the unlawful end, or to use the unlawful means, the law implies that malice which is necessary in law to ground the action or support the indictment. If, therefore, the suggested analogies be accurately looked at, I think, with all deference, they turn out to be no analogies at all. I do not know, except in the case of *Lumley* v. *Gye*, that it has ever been held that the same person for doing the same thing under the same circumstances with the same results, is actionable or not actionable according to whether his inward motive was selfish or

unselfish in what he did. I think the inquiries to which this view of the law would lead are dangerous and inexpedient inquiries for courts of justice; judges are not very fit for them; and juries are very unfit. I think, therefore, that *Lumley* v. *Gye* should be overruled, and that this action as against the defendant Hall is not maintainable. As to the other defendant, Pearson, I agree with the rest of the court.

Principal appeal dismissed; plaintiff's appeal allowed.

That an action at law will lie by a person against any one who knowingly entices away his servant, minor child, or apprentice, or wrongfully prevents him from performing his duty during the existence of that relation, is abundantly settled in the American law: *Walker* v. *Cronin*, 107 Mass. 555; *Bixby* v. *Dunlap*, 56 N. H. 456; *Plummer* v. *Webb*, 4 Mason 380; *Stowe* v. *Heywood*, 7 Allen 118; *Sherwood* v. *Hall*, 3 Sumn. 127; *Ames* v. *Union Railway Co.*, 117 Mass. 541; *Noice* v. *Brown*, 39 N. J. Law 569; *Woodward* v. *Washburn*, 3 Denio 369; *Jeter* v. *Blocker*, 43 Ga. 331. And if the defendant has wrongfully entered the plaintiff's premises to entice away his servants, it seems that trespass *quare clausum* will lie, and the loss of the service may be shown in aggravation of damages: *Haight* v. *Badgeley*, 15 Barb. 499 (1853.) And there appears to be the same difference of opinion in America as in England, whether, in order to sustain an action, it is necessary that the relation of master and servant, strictly speaking, should exist, or whether the action lies, whenever and wherever the person enticed away is under contract or duty to render personal services to the plaintiff. See *Haskins*, v. *Royster*, 70 N. C. 601 (1874); *Hewett* v. *Ontario*, 44 N. C. Q. B. 287; and *Burgess* v. *Carpenter*, 2 Rich. (S. C.) 7, for both views of the subject. But, of course, it is essential that the servant or apprentice be under an existing contract, duty or relation with or to the master, to remain in his employment, which contract or duty the defendant has induced the servant to violate; for it is clear no action lies against one for merely inducing a servant to leave his employer at the end of his present contract with him, even though the latter desired and intended to re-employ him: *Boston Glass Manufactory* v. *Binney*, 4 Pick. 425; *Nichol* v. *Martyn*, 2 Esp. 732. And for a similar reason, the servant must have been at the time in the actual service or employment of the plaintiff, either at will, or otherwise. If he has already wrongfully left that service, without the defendant's influence, and then for the first time is employed by the defendant, the latter is not liable for "enticing him away," whether liable or not in any other form of action if he continues to employ him after notice. See *Butterfield* v. *Ashley*, 2 Gray 254; *Caughey* v. *Smith*, 47 N. Y. 250; *Sargent* v. *Mathewson*, 38 N. H. 54; *Everett* v. *Sherfey*, 1 Iowa 356. But the remedy by action at law for damages may often be inadequate, since irreparable damage may be done by fraudulently enticing away an employer's skilled workmen at an important period in his business, by which his whole works may be suddenly stopped or greatly embarrassed in their operation; such labor may not be readily supplied from other quarters, and therefore courts of equity have power in such cases, and do forbid by injunction a party from employing another's workmen or servants who are under positive contracts to remain a stated time with

their employer, and also forbid the servant from leaving and going into the service of another; or in other words they have power in such cases to indirectly compel a specific performance of a contract for personal service, as well as of other contracts, especially wherever, though the remedy at law is plain, it is clearly not *adequate*. It must be admitted there has been some difference of opinion whether courts of equity could enjoin a servant from violating his contract in such cases, or whether the master should be left to his remedy at law; and still more, perhaps, whether such injunction, even if granted against the servant, could also include the second employer, and restrain him also from employing the servant, since he at least was under no contract relation with the first employer. The leading case on that side apparently is that of *Kemble* v. *Kean*, 6 Sim. 333, before Vice Chancellor SHADWELL, in 1829. In that case, the defendant Kean, the actor, had in writing agreed to act at the plaintiff's theatre for twenty-four nights, at a salary of 50*l*. for each night, and not to perform at any other theatre in London during his engagement with the plaintiffs; but notwithstanding, he did engage to act at Drury Lane Theatre, before his contract was fulfilled with the plaintiff. The Lord Chancellor (LYNDHURST) granted an injunction *ex parte*, which upon a full hearing was dissolved by the Vice Chancellor. This was followed, in 1836, by *Kimberley* v. *Jennings*, 6 Sim. 340, before the same judge. There, the plaintiffs, merchants at Birmingham, had employed the defendant, for the term of six years, as clerk, traveller and bookkeeper, and he had agreed to remain in their employ, and not to "work for, or be otherwise engaged or employed by any other person during that time, without their written consent;" but notwithstanding, he had left the plaintiffs' service, and commenced business on his own account; and the bill prayed for an injunction, but it was refused. Similar views were apparently sanctioned in this country, in *Sanquirico* v. *Benedetti*, 1 Barb. 315; and *Haight* v. *Badgeley*, 15 Id. 499; *Fredricks* v. *Mayer*, 13 How. Pr. 566; 1 Bosw. 267; *Butler* v. *Galletti*, 21 How. Pr. 465; *Burton* v. *Marshall*, 4 Gill. 487. In the former, the defendant, an opera singer, had contracted with the plaintiff to sing in operas and concerts throughout the United States and Canada, and that he would not make similar engagements with any other persons. EDWARDS, J., in equity, held that no injunction would lie to prevent such engagements, or to compel a specific performance, citing and approving *Kemble* v. *Kean*, 6 Sim. 333. *Hamblin* v. *Dinneford*, 2 Edw. Ch. 528, in 1835, had previously announced and acted upon the same doctrine, apparently on its own authority, and in ignorance of the similar case of *Kemble* v. *Kean*. The case of *De Rivafinoli* v. *Corsetti*, 4 Paige 264, sometimes cited on the same side, seems more properly not to be really in support thereof, since although the decision was adverse to the plaintiff on other grounds, yet Chancellor WALWORTH says: "Upon the merits of the case, I suppose it must be conceded that the complainant is entitled to a specific performance of this contract, as the law appears to have been long since settled that a bird that can sing and will not sing, must be made to sing." This was in 1833, several years before *Kemble* v. *Kean* was published, though not until after it was decided. A similar remark may be made of *De Pol* v. *Sohlke*, 7 Robertson 280, in which, while admitting the general right to an injunction in such cases, it was denied in that case, on the sole ground that the plaintiffs did not then have, and would not at present have, any establishment in active operation, which could be injured by the violation of the contract. *Clarke* v. *Price*, 2 Wils. Ch. 157 (1819), is sometimes

cited as sustaining the same proposition. In that case the defendant had contracted to write and prepare reports of cases decided in the Court of Exchequer, for the plaintiffs to publish, and subsequently he contracted to furnish reports in the same court for another publisher. An injunction to restrain him was refused; but apparently on the ground, 1. That although he had agreed positively to report for the plaintiffs, he had not agreed not to report for any other party, and he might therefore do both; and 2. Because the plaintiffs had not agreed to print and publish the reports for the defendant, but were at liberty to relinquish the undertaking should they deem it advisable; and as it was "quite clear there is no mutuality in this agreement," the injunction was refused.

But the preponderance of modern authority, and the analogies of the law, seem to be decidedly in favor of the equity jurisdiction in such cases. The leading case in England is *Lumley* v. *Wagner*, 5 De Gex and Smale 485, affirmed on appeal in 1 De Gex, Mac., and Gord. 604, and 13 Eng. Law and Eq. R. 252 (1852). There the defendant, Johanna Wagner, had engaged to sing at the plaintiff's theatre for three months, and not at any other for that period; but having subsequently contracted to do so, a bill was filed against her and the second employer, asking simply for an injunction against her singing at his theatre, but not asking for any specific performance of the plaintiff's contract, and Vice Chancellor PARKER granted the injunction, which, on appeal, was sustained in an elaborate opinion by Lord ST. LEONARDS, and *Kemble* v. *Kean* was disapproved of. And *Webster* v. *Dillon*, 3 Jur. N. S. 432; 5 Weekly Rep. 867 (1857), follows *Lumley v. Wagner*.

The same question arose a few years later in Massachusetts. One Cook had a written contract with the Taunton Copper Manufacturing Company to work for them, as a skilled workman, at an annual salary of $1000, for the period of five years. During that time the New Bedford Copper Company was organized, and by the offer of a larger salary induced Cook to leave his employer and contract with them, and he actually did so; but upon a bill filed by the Taunton Company against both Cook and the New Bedford Company, after an elaborate argument, an injunction was granted against Cook, forbidding him to violate his contract with the plaintiffs, and also restraining the New Bedford Company from employing him. See 24 Boston Law Rep. 547 (1862).

This subject was very carefully examined by FREEDMAN, J., in the late case of *Daly* v. *Smith*, before the Superior Court of New York city, 49 How. Pr. 150; 6 Jones & Spencer 158 (1874); and the authorities carefully and discriminately classified, and an injunction was granted restraining an actress from violating her agreement to play at the plaintiff's theatre for a stated period; and the case is in full accord with *Lumley* v. *Wagner*, and the *Taunton Copper Manf. Co.* v. *Cook*. And see also *Hayes* v. *Willo*, 11 Abb. Pr. (N. S.) 167.

Some of the older cases first cited seem to have denied the injunction forbidding the violation of a contract, unless the contract could be specifically and affirmatively enforced in equity; but according to modern equity practice, this objection is not now insuperable. See *Singer Sewing Machine Co.* v. *Union Buttonhole Company*, 1 Holmes 253, in which the subject is very thoroughly examined by LOWELL, J. And the analogies of the law certainly seem to lead to the same conclusion. Why will an injunction be granted against communicating to another the secrets of the plaintiff's business, contrary to the defendant's contract, or duty not to do so, as held in *Morison* v. *Moat*, 9 Hare 241; 9 Eng. Law and Eq. Rep. 182.