tice. Accordingly, they who always insist upon the full measure of their legal rights and take legal proceedings to obtain the same when such rights work injury to others are to be roundly condemned. Hence Gaius says. "It often happens that a person is bound according to the civil law, yet it is unjust that he should be condemned," and Paulus declares: ". . . . this pertains to equity, with regard to which pernicious errors are frequently made under the authority of the science of law."

Persecutors often appeal to written laws, as did the Roman emperors in their attacks upon the Christians. But from the natural law itself their injustice was patent. Even in our day in certain places persecutors defend their inquity by appealing to the written law. But it is absolutely cruel to assert freedom and the authority of law in those circumstances when what are called laws are actually the reverse of law and as such offend natural justice. It is not justice that is wrought by laws, but laws themselves should be formulated according to justice. Justice should not be measured by laws, but laws themselves should be adapted to justice and right.

LUMLEY v. WAGNER

Lumley v. Wagner is a case where, there being an executory contract in part positive and in part negative, the positive part being such as the Court is unable to enforce specifically, but will interfere in respect of the negative part by means of an injunction. Here the defendant entered into a contract with the plaintiff to sing at his theatre, and not to sing at any other; and Lord St. Leonard granted an injunction restraining the defendant from singing at any other theatre than the plaintiff's, though the specific performance of the positive part would have certainly been beyond the Court's power.

A contract of hire and service is not one of those contracts of which the Court will decree specific performance. You cannot directly compel me to serve you. Can you do so indirectly by obtaining an injunction to prevent me from breaking that negative but unexpressed term in the contract that I am not to enter the service of anybody else? No, you can not. This seems well settled, that a merely implied negative term in a contract which is substantially positive can not be enforced by injunction. In Whitwood Chemical Co. v. Hardnan (1891) 2 Ch. 416, Lindley L. J. said that he looked upon Lumley v. Wagner as an anomaly not to be extended. In that case the manager of a manufacturing company had agreed that during a specified term he would give all his time to the business. It was held by the Court of Appeal that the company could have an injunction to prevent him giving part of his time to a rival company.

We seem to arrive at this principle: that you can not indirectly by means of an injunction enforce the specific performance of an agreement which is of such a kind that specific performance of it would not be directly decreed; but if you can separate from this positive agreement an express negative agreement that the defendant will not do certain specific things, then you may have an injunction to restrain a breach of that negative agreement.

Accordingly, Fry on Specific Performance at page 402 states: "the position of that branch of the law on which Lumley v. Wagner is the leading authority can hardly be said to be very satisfactory. It may, it is conceived, be concluded that the principle of this case will not be extended: that negative stipulations will not be implied except in cases

where the Courts have already done so: and that even the presence of an express negative stipulation will not be found a sufficient ground for jurisdiction unless the contract is of a kind of which specific performance can be granted. In other words, it is probable that the Court will hereafter, except so far as it may be found by existing authorities, consider whether the contract in respect of which the injunction is sought is or is not of a kind fit for specific performance; that, if it be, the Court will tend to restrain acts inconsistent with it, whether there be negative words or not: that if it be not of a kind fit for specific performance, no injunction will be granted, even though negative words may be present."

This seems to be the conclusion of Hallett J., (i.e., that he is bound by existing authorities) in his decision of Marco Productions Ltd. v. Pegolo (1945) 1 KB 111. Here was a contract for personal services. The defendant agreed to act for the plaintiff company for a certain period of fixed terms. The contract contained a negative covenant stating that defendant would not act elsewhere without consent of the plaintiff during the period of engagement. In breach of that covenant the defendant acted in another locality. This was an action by the plaintiffs for an injunction restraining the breach of that covenant. Following Lumley v. Wagner, the injunction was granted, for as Hallett J. said: "The agreement to perform for the plaintiff, and during that time not to perform for anyone else is in effect one contract. The affirmative covenant by the defendant and the negative stipulations on the part to abstain from the commission of any act which will break in upon their affirmative covenant, are covenants which are ancillary and concurrent, and operate with each other."

Professor Stevens has pointed out (*) that there are three strong reasons against the direct enforcement of contracts of service; firstly, the impossibility of continual supervision by the Court; secondly, the invidiousness of keeping persons tied to each other in business relations when the tie has become odious, and thirdly, and chiefly, the undesirability of turning a contract of service into a status of servitude.

However, in Lumley v. Wagner these objections are more apparent than real. For instance, regarding the status of servitude, Miss Wagner might, without in any way contravening the injunction, have obtained other employment, quite outside the singing profession, at a salary which might keep her in ordinary comfort, though not in accordance with her usual standard of luxury.

(*) See 6 Cornell Law Quarterly, 244.

* * * * *

IN RE WAIT

The dispute in In Re Wait as to whether goods, which were a definite part of a definite whole, should be called specific goods raised a double question. Were they specific or ascertained within the meaning of the Sale of Goods Act Section 52 or did the circumstances of the case create equitable rights such as a lien or assignment of the goods?

There was a contract for delivery by A to B of 1000 tons of Western White Wheat. B entered into a sub-contract with C for 500 tons out of this shipment. B became bankrupt. The trustees in bankruptcy claimed the 1000 ton shipment to pay the creditors.

C claims specific performance of the sub-contract under S 52 of the Sale of Goods Act which permits the granting of specific performance "in any action for breach of a contract to deliver 'specific' or 'ascertained'