But where the contract is held valid, as here, the policy of the English courts in requiring a high standard of accuracy in the information which is gathered and disseminated by a mercantile agency would be weakened by imposing upon the subscriber the burden of full indemnity, since the agency would lose an incentive for a high degree of care. The decision, therefore, would seem correct. Cf. 6 Aust. L. Jour. 272 (1932).

BENJAMIN ORDEW

Contracts—Offer and Acceptance—Silence as Acceptance—[Federal].—The defendant in Texas retained the plaintiff in New York to prosecute a claim on a contingent fee basis. The claim was for $144,000, and the fee was to be twenty-five per cent of the amount recovered. While that suit was pending the now defendant attempted a compromise through a local attorney and telegraphed plaintiff, "must know immediately what will be your fee in the event we accept settlement offered us. Answer quick." Plaintiff specified $12,500 immediately; defendant made no reply. Four months later the local attorney informed the plaintiff that the compromise had been effected (cash $50,000, securities $94,000, note $66,000), whereupon plaintiff had the pending suit dismissed. In defence of this suit for $12,500, it was asserted that since there was no reply to plaintiff's offer to receive that much in settlement, the offer was never accepted. Both sides moved for a directed verdict. Held, that plaintiff recover $12,500. Laredo National Bank v. Gordon, 61 F. (2d) 906 (C.C.A. 5th 1932), certiorari pending.

The majority of jurisdictions hold that the client must respond in damages for the dismissal without cause of the attorney employed for a specific purpose or period. New York dissents as to employment for a specific purpose and holds the attorney may recover only quantum meruit for his services. Martin v. Camp, 219 N.Y. 170, 114 N.E. 46, L.R.A. 1917 F, 402 (1916), and cases cited therein; Greenberg v. Remick & Co. 230 N.Y. 79, 129 N.E. 211 (1920). Orthodox notions of contract support the majority view, while the minority ruling rests on a matter of policy predicated upon the relation of the parties and the desire to avoid litigation by permitting compromises.

Whether the client has the "privilege" or only a "power" to dismiss the attorney without cause, there is no reason why the parties cannot mutually rescind the original contract, contingent upon a successful compromise, and agree upon a definite compensation for the attorney. The court in the principal case decided that the defendant's failure to reply to the plaintiff's telegram constituted the acceptance of an offer looking to such an agreement. Though generally mere silence will create no contractual obligation, "it is at least clear as a matter of law that silence and total inaction of the defendant may operate as assent to the formation of the contract." Williston, Contracts (1920), 168, § 91. See also Contracts Restatement (1932), § 72. It should be determined from the particular facts of each case whether it has so operated or not. There are several facts in this case which justify the court's holding. First, the fee set by the attorney was undoubtedly very fair, considering the amount obtained in the settlement and, deducing from that, what the plaintiff might have got had he prosecuted the suit to recovery. Second, the very terms of the telegram would seem to justify the plaintiff in believing, reasonably, that if defendant was not satisfied with the compensation specified he would object within a reasonable length of time. Contracts Restatement (1932), § 72c. Third, the attorney-client relation existing between the parties
would give rise to a certain reciprocal duty of fair dealing. Such duty might well include that of responding to plaintiff’s offer which defendant itself had requested. But see 33 Harv. L. Rev. 595 (1920) for criticism of “duty” notion. Lastly, it was the defendant and not the plaintiff who was desirous of terminating the original contract. In this connection it is significant that Texas follows the majority, Crye v. O’Neal and Alliday, 135 S.W. 253 (Tex. 1911), in holding that a client “breaks” the contract by unwarranted dismissal of the attorney. Hence, if the original contract was entered into in Texas, or the New York rule was not proved, it would seem that if the defendant did not accept the proposed new agreement by its silence, it was guilty of a breach of the old contract. The court might well be disposed in this situation to treat the silence as an acceptance of the plaintiff’s offer. Cf. Note, 46 Harv. L. Rev. 846 (1933).

EARL F. SIMMONS

Equity—Jurisdiction of Equity Court to Enjoin Enforcement of a Foreign Equity Decree—Prohibition—[Missouri].— X, a resident of Indiana, and an employee of the petitioning railroad company, was fatally injured in Indiana while in the line of his duty. The railroad company, an Indiana corporation, was operating in the states of Indiana and Missouri. X’s wife, who was also a resident of Indiana, as administratrix, sued the railroad company under the Federal Employers’ Liability Act in the circuit court of the city of St. Louis, Missouri. The railroad company obtained a permanent injunction in the circuit court of Clinton County, Indiana, restraining prosecution of the suit in the Missouri court. Nevertheless, the administratrix proceeded and recovered a verdict in her favor. The railroad company then moved that she be cited for contempt by the Indiana court. Whereupon, the administratrix obtained an order in the circuit court of the city of St. Louis restraining the railroad company from prosecuting the citation for contempt in the Indiana court. The railroad petitioned the Supreme Court of Missouri for a writ of prohibition against the circuit court of the city of St. Louis, prohibiting it from entertaining jurisdiction of the proceedings to enjoin the railroad from prosecuting the contempt proceedings in the Indiana circuit court. Held, the writ of prohibition should be granted. State ex rel. New York C. & St. L. R. Co. v. Nortoni, Circuit Judge, 55 S.W. (2d) 272 (Mo. 1932).

The court in its opinion relies on two propositions: first, that the Indiana court had jurisdiction to enjoin the administratrix from prosecuting the suit against the railroad in the Missouri court; second, that the Missouri court did not have jurisdiction to enjoin the railroad from further prosecution of the contempt proceedings.

The first proposition is clearly correct. On the facts of the case, there appears no reason why the general rule that a court of equity has the power to restrain a person within its jurisdiction from prosecuting a suit in another state should not apply. Fisher v. Pacific Mutual Life Ins. Co., 112 Miss. 30, 72 So. 846 (1916); Ex parte Crandall, 53 F. (2d) 969 (C.C.A. 7th 1931). Even where the court has been unwilling to assume jurisdiction, the power to grant such injunctions has been freely admitted. Ill. Life Ins. Co. v. Prentiss, 277 Ill. 383, 115 N.E. 554 (1917); Chicago, M. & St. P. Ry. Co. v. McGinley, 175 Wis. 565, 185 N.W. 218 (1921). Thus the court correctly considered that the right to prosecute in the Missouri court under the Federal Employers’ Liability Act was “qualified by the jurisdiction of a court of equity to restrain the bringing of a suit in a foreign jurisdiction provided the facts in the case warrant such action.”