

But a specification of a penalty, designed merely to secure a performance of the contract, and not intended as the price or equivalent to be paid for its non-performance, will not be construed as a provision for stipulated damages, nor prevent the court from granting relief¹³.

(j) That the applicant has an adequate legal remedy¹⁴.

3. General rule that equity will not specifically enforce contracts of service.—The general rule applicable to all classes of cases, except those reviewed in §§ 5-11, *post*, is, that a contract of service will not be specifically enforced, either directly by means of a decree directing the defendant to perform it, or by an injunction restraining him from violating it¹.

¹³ *M'Caull v. Braham* (1883) 16 Fed. 37. There a contract for the exclusive services of a singer in opera provided for "the forfeiture of a week's salary, or the termination of the engagement at the manager's option, without debarring him from enforcing the contract as he might see fit." That the clause respecting the forfeiture was in the nature of a penalty, and designed solely to secure the observance of the contract, was held to be manifest both from the general nature of the employment and the requirements of a manager of opera, and from the express language of the clause; because (1) the stipulation was not for the payment of a certain sum as liquidated damages, but only for the forfeiture of a week's salary; (2) it gave an option to the plaintiff, instead of such forfeiture, to annul the engagement; (3) it declared that such forfeiture should not debar the plaintiff from enforcing the fulfillment of this contract in such a manner as he should think fit, *i.e.*, by any available legal or equitable remedy.

¹⁴ In *Johnson v. Shrewsbury & Birmingham Ry. Co.* (1853) De G. M. & G. 914. This was one of the grounds assigned for refusing to enjoin the defendant from determining a contract, the provisions of which are stated in § 3. note 1, *post*.

See also *Bronk v. Riley* (1888) 50 Hun. 489, where the decision was partially based on a similar ground.

¹ For statements of the rule in general terms see *Whitwood Chemical Co.* (1891) 2 Ch. 416, L.J. (p. 426); *Robinson v. Heuer* (1898) 2 Ch. Div. 451 (456); *Rolfe v. Rolfe* (1846) 15 Sim. 88; *Chinnock v. Samsbury* (1861) 30 L.J. Ch. 409; *Webb v. England* (1860) 29 Beav. 44 (45); *Haight v. Badgeley* (1853) 15 Barb. 499; *Hamblin v. Dinneford* (1835) 2 Edw. Ch. 529; *Wm. Rogers Mfg. Co. v. Rogers* (1890) 58 Conn. 356.

(a) *Illustrative cases in which the applicant for relief was the employer.*—In *Rolfe v. Rolfe* (1846) 15 Sim. 88, it was declared by Shadwell, V.C., that the court certainly would not enforce a provision in a contract by the defendant who undertook to work as a tailor's cutter.

In *Radford v. Campbell* (1890) 6 Times L.R. 488, the Court of Appeal approved the decision of North, J., refusing an injunction to restrain a salaried professional football player from breaking an agreement to play