

2. Subject considered with reference to the general principles which define the limits of equitable jurisdiction.—Where an equitable remedy is sought for the purpose of enforcing a contract of service, there is always a preliminary question to be settled, viz., whether the court, having regard merely to the operation of the general principles which define the circumstances under which a remedy of this description is granted, and leaving out of account the special considerations which will be dealt with in the following sections, should entertain jurisdiction of the suit. A discussion of the subject, therefore, may be appropriately commenced with a statement of the effect of the cases in which the rights of the parties have been determined with reference to those general principles.

In this point of view it is clear that an application for equitable relief must fail, if the allegations in the plaintiff's bill disclose one or more of the following predicaments.

(a) That no action at law can be maintained upon the contract which it is sought to enforce<sup>1</sup>.

<sup>1</sup> In *De Francesco v. Barnum* (1889) 59 L.J. Ch. 151, 43 Ch. D. 165, 62 L.T. 40, 38 W.R. 187, 54 J.P. 420, Chitty, J., on the ground that no action could be maintained against an infant on his covenant in a deed of apprenticeship, (*Gylbert v. Fletcher*, [1629] Cro. Car. 179), held that, apart from any question whether the contract was for his benefit or not, an infant apprentice could not be enjoined from violating a covenant to the effect that he could neither contract professional engagements nor accept such unless with the full written permission of his master. "The right to an injunction," said the learned judge, "depends upon the legal right to sue, and if there is no legal right to sue, which appears to be the result of the authority which I have cited, there can be no right to an injunction." This statement was approved by Fry, L.J., in the subsequent trial of the action for damages. See 45 Ch. D. 165.

The principle that "before the court can act in the exercise of its peculiar jurisdiction to enforce specific performance of an agreement, it must be satisfied that there is not a reasonable ground for contending that the agreement is illegal or against the policy of the law," was also recognized in *Johnson v. Shrewsbury & Birmingham Ry. Co.* (1853) 3 DeG. M. & G. 914. One of the clauses of the agreement there under discussion provided that the plaintiffs were at all times during the term of the contract to run and work all the trains of the railway company, and to provide for the purposes of the contract a sufficient number of efficient foremen, mechanics, engine drivers, firemen, etc. On the ground that the effect of this provision was to devolve the traffic business of the company upon persons whom the Legislature had not intrusted with it, and on whom it had not attached the same responsibility as it had attached upon the company, two of the Lords Justices (Turner and Kay) entertained doubts as to its legality. But the decision of the court proceeded upon another ground stated *post* (§ 3, note 1, *post*).