

may be noticed the rule, that the court will usually refrain from interference, where it is expressly provided that a certain sum shall be paid as liquidated damages, if the contract is violated ¹².

See also *Mapleson v. Del Puente*, cited in the next note. The court there referred to the unreported case of *Mapleson v. Lablache* (1883) in the Superior Court of New York, where an injunction *pendente lite*, restraining defendant from singing for others, in violation of her contract to sing for the plaintiff, was denied, as the complaint did not aver that plaintiff would suffer irreparable injury from defendant's refusal to sing for him, nor that he could not easily have procured an artist competent to fill defendant's place.

In *De Pol v. Schlike* (1867) 7 Rob. (N.Y.) 280, a temporary injunction restraining a danseuse from violating a covenant not to render her services to persons other than the plaintiff, was dissolved, for the reason that there was nothing to show that such a remedy was necessary to prevent irreparable damage to the plaintiffs.

¹² In *Hahn v. Concordia Soc.* (1875) 42 Md. 460, an actor's contract, by which he agreed not to give his services elsewhere without the permission of the employer, contained a stipulation to the effect that, if he should break his engagement, he was to pay to the company a fine of \$200 and then provided that "this sum was already forfeited by any violation of the contract, and required no particular legal proceedings for its execution." The court refused to enjoin the defendant from performing at another theatre, saying: "Having by their own contract, made presumably with full knowledge of the means and ability of the defendant, and having fixed by their own estimate the extent of injury they would suffer from a non-observance of this condition, and having indicated as clearly as if so stated in terms, that the only form in which they could seek redress and recover the stipulated penalty or forfeiture, was a court of law the complainants are precluded from now resorting to a court of equity for relief by way of injunction, on the ground that a violation of this part of the contract would result in irreparable damage and injury to them."

In *Mapleson v. Del Puente* (1883) 13 Abb. N.C. 144, defendant agreed to sing for plaintiff, in theatres and concerts, between specified dates, a certain number of times in each week, and not to sing "in public or private concerts," during his engagement, without plaintiff's permission; and in case of failure to fulfil his contract, he agreed to pay to plaintiff, "for damages and expenses, the fixed penalty of fifteen thousand francs." In an action for specific performance, and to enjoin defendant from singing for another manager, and on motion to continue *pendente lite* a temporary injunction before granted, wherein it appeared that defendant, by written notice of his refusal to fulfil his engagement, had given plaintiff ample time to secure a substitute, and that plaintiff had done so, and that defendant had tendered the amount of the "fixed penalty" in open court, it was held that the motion should be denied, and the injunction should be dissolved. The court said: "There is no evidence that plaintiff is exposed to irreparable injury by reason of defendant's failure to sing for him. His theatre is now engaged in the performance of operas, in which the place which would have been filled by the defendant is filled by another artist. . . . I am disposed to regard the sum as 'liquidated damages'; and if that be so, the defendant having tendered the amount to the plaintiff in open court, he has complied with that obligation of the contract. This tender also is important as to the question of the inability of the defendant to pay damages to the plaintiff if a judgment for damages were rendered against him."