

damage, as a result of the defendant's renunciation of his obligations, will justify the issuance of an injunction.

(A) That the time for commencing the performance of the contract has not yet arrived, when the application for relief is made⁹. But in this instance also it is submitted that no general rule can be laid down. If at the time when the suit is brought the defendant has absolutely repudiated the contract, or has placed himself in such a position that he will be unable to carry it out, it is difficult to see why the legal right, which under such circumstances may be asserted in an action for damages¹⁰, should not be an appropriate subject for the protection of a court of equity.

(i) That the defendant's breach of the contract will not cause any irreparable injury to the plaintiff¹¹. Under this head

⁹ In *De Riverfinoli v. Corsetti* (1833) 4 Paige Ch. 264, Walworth, Ch., thus stated his conclusions with regard to application for the assistance of the court in enforcing the contract of an operatic singer, who, as was alleged, was about to leave New York: "From the terms of the agreement as stated in the bill, it is evident that there can be no breach thereof until the 1st of November next, when the engagement of the defendant was to commence. Even when that time arrives, the complainant will not be entitled to the defendant's services until he shall have paid or tendered to him a half month's salary in advance. A specific performance cannot be decreed upon the present bill, because at the time it was filed the complainant had no right of action against the defendant, either at law or in equity. And I believe this court has never yet gone so far as to sustain a bill *quia timet*, because the complainant apprehended that the defendant might not be willing to perform an engagement for personal services, and where, from the peculiar nature of those services, they could not be performed until a future day. The writ of *ne exeat* is in the nature of equitable bail; and to entitle the complainant to such bail, there must be a present debt or duty, or some existing right to relief against the defendant or his property, either at law or in equity. The writ in this case, therefore, was prematurely granted; and the rule to discharge it must be made absolute."

¹⁰ *Hookster v. De La Tour* (1853) 2 El. & Bl. 678. The principle embodied in this decision was apparently not considered by the judge who decided the New York case just cited. Otherwise he would scarcely have laid it down without qualification that there could be no breach of the defendant's contract until the arrival of the time when the actual performance of the contract was to begin. But it is to be observed that the principle referred to had not been clearly defined and established at the date when the New York case was decided.

¹¹ In *Mapleson v. Bentham* (1871) 20 Weekl. Rep. 176, involving a contract the effect of which has been stated in note 4, *supra*, one of the grounds upon which the Court of Chancery and the Court of Appeal based their refusal to grant an injunction or an interlocutory application was, that there was no evidence of any irreparable injury likely to result to the plaintiff.