(*f*) That, at the time of the institution of the suit, the plaintiff is already in default as regards the performance of the contract on his side, or is in such a position that he will probably be unable to perform it, if the defendant carries out his agreement[f].

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of the season might be given by the plaintiff. *Duff* v. *Russell* (1891) 14 N.Y. Supp. 134. This decision was affirmed by the Supreme Court without an opinion in 16 N.Y. Supp. 958, and by the Court of Appeals in 133 N.Y. 678. The lower court seems to have based its conclusion in the notion, that such a contract should be placed in a different class from those by which the right of terminating the employment by a specified notice is vested in the employer alone. Yet in another New York case, decided about the same time, it was expressly held that a contract between an actress and the owner of a theatre, by which she gives him the exclusive right to her services, with the option in him alone to terminate the contract at any time, is not unconscionable. *Hoyt* v. *Fullen* (1892) 19 N.Y. Supp. 962.

[e] Where an author who has undertaken to write tales for a magazine for a year, ceases writing and enter into engagements elsewhere in violation of the stipulations of his contract, the mere fact that the employer has, upon the abandonment of the contract by the author, procured the services of another writer to wind up the work properly, is not such a breach of the contract as will disable him from obtaining relief on the ground that he does not come into court with clean hands. *Stiff* v. *Cassell* (1856) 2 Jur. N.S. 348.

In *Duff* v. *Russell* (1891) 14 N.Y. Supp. 134, the court rejected the contention of the defendant, a well-known opera singer, that she was justified in breaking her contract with the plaintiff because the plaintiff had refused to substitute a more healthful costume for the tights in which the defendant had appeared in a certain opera, and which she objected to wear on the ground of danger to her health. The conclusion arrived at by the court, after an examination of all the facts, was that the plaintiff had not "so unreasonably insisted upon his rights under the contract to the detriment of the health of the defendant that, in equity and good conscience, she was justified in breaking off her engagement."

A mere general allegation, without any particulars, that the intention of a theatrical manager in entering into a contract with an actress was to prevent her from appearing on the stage, and thus injure her professional standing, is no defense to a suit for an injunction to restrain her from violating her covenant not to appear in any other theatre but that of her employer. *Daly* v. *Smith* (1874) 38 N.Y. Super. Ct. 158, 49 How. Pr. 150.

[f] In *Fechter* v. *Montgomery* (1863) 33 Beav. 22, an injunction to restrain an actor from entering into another engagement was refused on the ground that the employer had not allowed him such opportunities for the display of his talents as it must be supposed were contemplated by him when he made the contract, and were his inducement in making it.

In *Daly* v. *Smith* (1874) 49 How. Pr. 150, 38 N.Y. Super. Ct. 158, the court, distinguishing the above case held that the fact of the plaintiff's not having allowed the defendant, an actress, sufficient opportunities for displaying her talents during a previous engagement did not preclude the plaintiff from obtaining an injunction to restrain her from breaking her contract. The fact that the season had been closed before the time expected, thus depriving her of a prospective benefit, was also held not to be