

reason for this exceptional departure from common-law principles fails, and the parties should be left to their ordinary remedies"¹⁰.

By the adoption of this criterion the main doctrine is limited to this extent, that the fact that a defaulting employé possesses special knowledge will not entitle his employer to an injunction, unless it is affirmatively shown by the employer that such skill cannot be supplied by others¹¹.

In some of the cases under this head that phase of "irreparability" which is referred to the conception of the impossibility of estimating with reasonable precision the damage which the breach of contract will produce, is adverted to as one of the grounds of the equitable jurisdiction exercised.¹² As that impossibility is predicable in almost every instance in which the services are special and unique, it will ordinarily constitute merely a cumulative reason for issuing an injunction. But it has been held that, if the services are not of that character, the fact that the damages cannot be computed upon any accurate footing will not of itself justify such relief¹³.

(c) *Doctrine applicable, whether the contract does or does not embrace a negative stipulation.*—In what appear to be the

¹⁰ *Strobridge Lithographing Co. v. Crane* (1890) 12 N.Y. Supp. 898 (court refused to issue an injunction against a somewhat talented young lithographic sketcher).

"One who has engaged a great actor can procure no substitute, if the actor breaks his engagement and performed elsewhere; while if a salesman leaves his employer it will be easy to supply his place." *Bronk v. Riley* (1888) 50 Hun. 489.

The impossibility or extreme difficulty of procuring substitutes for persons of unique talents is also adverted to in *Duff v. Russell* (1891) 28 Jones & Sp. 80, 14 N.Y. Supp. 134; *Cort v. Lassard & Lucifer* (1889) 18 Or. 221; *Philadelphia Ball Club v. Lajoie* (1902) 202 Pa. 210, (citing *Pomeroy*, Spec. Perf. p. 31); *Burney v. Ryle* (1893) 91 Ga. 701 (citing *Beach* Mod. Eq. Jurispr., § 772); *Edwards v. Fitzgerald* (N.Y. Sup. Ct. 1895) 9 Nat. Corp. Rep. 455.

¹¹ *Universal Talking Mach. Co. v. English* (1901) 69 N.Y. Supp. 813, 34 Misc. Rep. 342, the court declined to the breach of his contract by a man employed to develop and perfect improved processes for recording and reproducing sound.

¹² See, for example, *Fredericks v. Mayer* (1857) 13 How. Pr. 566; *Burney v. Ryle* (1893) 91 Ga. 703.

¹³ Such was the situation in *Kessler v. Chappelle* (1902) 73 App. D. 447, 77 N.Y. Supp. 285 (see note 16, *infra*).