services to which it can properly be deemed applicable are those which are wholly or principally concerned with the exercise of the intellectual faculties[8]. But there is manifestly no satisfactory ground upon which this method of classification can be sustained. The damage arising from the desertion of such an employé as a highly skilful dancer or acrobat may well be, and, as a matter of fact, frequently is, as irreparable as the damage caused by the abandonment of their contracts by authors, artists, or actors[9]. The preferable conception is that the appropriate criterion for determining the category to which the services belong is supplied by the answer to the question, "whether a substitute for the employé can readily be obtained, and whether such substitute will substantially answer the purpose of the contract . . . since where a proper substitute can readily be secured, and the service demands no exclusive individuality, the

[8] *Fredericks* v. *Mayer* (1857) 13 How. Pr. 566, 571; *Butler* v. *Galletti* (1861) 21 How. Pr. 466; *Daly* v. *Smith* (1874) 38 N.Y. Super. Ct. 158, 49 How. Pr. 000; *Burney* v. *Ryle* (1893) 91 Ga. 701.

[9] In *Metropolitan Exch. Co.* v. *Ward* (1890) 9 N.Y. Supp. 779, 24 Abb. N.C. 393, the court said: "Between an actor of great histrionic ability and a professional base-ball player, of peculiar fitness and skill to fill a particular position, no substantial distinction in applying the rule laid down in the cases cited can be made. Each is sought for his particular and peculiar fitness, each performs in public for compensation, and each possesses for the manager a means of attracting an audience. The refusal of either to perform according to contract must result in loss to the manager, which is increased in cases where such services are rendered to a rival."

The power of the court to grant injunctions against base-ball players was also asserted in *Philadelphia Ball Club* v. *Lajoie* (1902) 202 Pa. 210, 51 Atl. 973; *Metropolitan Exhibition Co.* v. *Ward* (Sup. Ct.) (1890) 24 Abb. N. Cas. 393, 9 N.Y. Supp. 779.

In *Cort* v. *Lassard* (1887) 18 Or. 221, where an acrobat was concerned, the court repudiated the criterion suggested in *Fredericks* v. *Mayer* and *Butler* v. *Galletti*, *supra*.

The doctrine that cases in which the services are intellectual constitute merely one class among several in which equitable interference is proper is also distinctly embodied in the following passage: "Where a contract stipulates for special, unique or extraordinary personal services or acts, or where the services to be rendered are purely intellectual, or are peculiar and individual in their character, the court will grant an injunction in aid of a specific performance. But where the services are material or mechanical, or are not peculiar or individual, the party will be left to his action for damages." *Wm. Rogers Mfg. Co.* v. *Rogers* (1890) 58 Conn. 356 (364).

In *Jacquard Jewelry Co.* v. *O'Brien* (1897) 70 Mo. App. 432, the court observed that the doctrine is applicable both to services of an intellectual character, and to those of a mechanical nature which require special skill.