

(b) That the contract is lacking in mutuality<sup>2</sup>. As a servant cannot be compelled to perform his duties against his will, this consideration is of itself sufficient to prevent a servant from obtaining from a court of equity a decree requiring his master to retain him in the employment<sup>3</sup>. See § 3, *post*.

(c) That the contract is not reasonably certain and definite in its terms<sup>4</sup>.

In *Fredericks v. Mayer* (1857) 13 How. Pr. 566, Aff'd. 1 Bosw. 227, Hoffman, J., refused to grant an injunction *pendente lite* to restrain the alleged breach of a stipulation not to perform in any theatre but that of the plaintiff, the ground assigned being that the rights of the plaintiff and the co-defendant of the actor to his services were equal.

<sup>2</sup> In *Philadelphia Ball Club v. Lajoie* (1902) 210, where the contract was for the exclusive services of a professional base-ball player, the court thus replied to the argument of counsel that the reservation by the plaintiff of a right to terminate the contract upon ten days' notice destroyed the mutuality of the remedy. "The defendant has the possibility of enforcing all the rights for which he stipulated in the agreement, which is all that he can reasonably ask; furthermore, owing to the peculiar nature and circumstances of the business, the reservation upon the part of the plaintiff to terminate upon short notice, does not make the whole contract inequitable."

<sup>3</sup> In *Johnson v. Shrewsbury, etc., R. Co.* (1853) 3 De G. M. & G. 914, Knight Bruce, L.J. (p. 927), thus distinguished the situation in the case before him from that presented in *Lumley v. Wagner* (§ 6, *post*): "There all, the obligations on the part of the plaintiff could have been satisfied by the payment of money, but not so those of the defendant. Here the parties are reversed. Here all the obligations of the defendants can be satisfied by paying money; but not so the obligations of the plaintiffs, who come here for the purpose in effect of compelling the defendants, by a prohibitory or mandatory injunction, to do or abstain from doing certain acts, while the correlative acts are such as the plaintiffs could not be compelled to do."

The text is also supported by *Pickering v. Bishop* (1843) 2 Y. & C. C. 266; *Millican v. Sullivan* (1888) 4 Times L.R. 203.

<sup>4</sup> In *Mapleson v. Bentham* (1871) 20 W.R. 176, one of the grounds on which Wickens, V.C., refused to enjoin an opera singer from breaking his contract to sing during the whole London season, and nowhere else in Great Britain "*pendant l'année 1871*," without the consent of his employer, was, that it was uncertain whether the restrictive clause applied to the period between the close of the season and the end of the year. This point was not adverted to by the Court of Appeal in its affirming judgment; (see p. 177 of the report).

A contract for the services of a baseball player for one year at a fixed salary for that year, and reserving an option on the services of such employé for the following year at a salary of not less than a certain sum, but not providing any fixed salary or definite terms and conditions for the second year, was held to be, as to the second year, so far lacking in definiteness that the employé would not be restrained by an injunction *pendente lite* from making another contract for the second year.