down and reinstate it in a reasonable time, and with the least inconvenience." And from the remarks of Chief Justice Bartol in Glenn v. Davis, 35 Md. 210, it may be readily inferred that the opinion of this court was the same. The allegations of the bill of complaint were sufficient to give a court of equity jurisdiction, and they justified the preliminary injunction. The complainant has not proved the precise title to the wall which he alleged, although he has proved a title to a portion of it, and an interest in the other portion by way of easement. For the reasons which we have stated, we approve of the dissolution of the injunction, and to that extent the decree below will be affirmed. But the right to take down the wall is not absolute and unconditional; it is qualified in the manner which we have explained in a previous part of this opinion. The bank is bound to finish the division wall at its own expense, and to allow to Putzell's house the same right of support which it had in the old wall, and to indemnify him for the necessary expenses which he has incurred, and may incur, in protecting his property from the consequences of the removal of the old wall. For failure to do these things it would be liable to an action at law. But as a court of equity had jurisdiction of this case, although it could not give the precise relief prayed, it was proper, according to well-settled principles, to do complete justice between the parties, and thus avoid multiplication of suits in the future. It ought to have retained the bill for the purpose of settling and adjudicating any claim which may arise in favor of Putzell against the bank, in accordance with the principles which we have stated. We disapprove of that portion of the decree which dismisses the bill. Decree affirmed in part, and reversed in part, and cause remanded for further proceedings; the costs in this court to be equally divided between the parties.

BALTIMORE BASEBALL CLUB & EXHIBITION CO. OF BALTIMORE CITY v. PICKETT.

(Court of Appeals of Maryland. Jan. 12, 1894.)

CONTRACT FOR SKILLED LABOR—CONSTRUCTION—EVIDENCE OF CUSTOM—DAMAGES.

1. In an action against a baseball club for breach of a written contract of hiring, whereby plaintiff contracted with defendant "to play ball for the season of 1892 for $3,000," the defense was that plaintiff did not exercise that degree of skill required of professional baseball players in the league to which defendant belonged, and was discharged for inefficiency. *Held*, that plaintiff could be required to possess and exercise only the ordinary skill, knowledge, and efficiency possessed and exercised by other professional baseball players.

2. Evidence of the degree of skill required of players in the National League was immaterial and irrelevant, since defendant entered into the contract in November, 1891, and did not become a member of such league till January, 1892.

3. Evidence of a custom that all professional baseball clubs have the right, on 10 days' notice, to discharge a player who does not play satisfactorily, was inadmissible, since it would not only destroy the mutuality, but vary the terms, of the contract, which was for a definite term.

4. Plaintiff could recover the contract price, less such sums as were paid him by defendant, and also less such sums as he earned, or by the exercise of due diligence might have earned, in the line of his business, between the time of his discharge and the expiration of the contract.

Appeal from superior court of Baltimore city; Albert Ritchie, Judge.

Action by John T. Pickett against the Baltimore Baseball Club & Exhibition Company of Baltimore City for breach of contract of hiring. From a judgment for plaintiff, defendant appeals. Affirmed.

Argued before ROBINSON, C. J., and BRYAN, McSHERRY, FOWLER, BOYD, and BRISCOE, JJ.

E. N. Rich and W. S. Bryan, Jr., for appellant. John M. Gallagher, for appellee.

BRISCOE, J. This suit was brought for the alleged breach of a special contract of hiring. The contract was made and entered into by and between the Baltimore Baseball Club, of the city of Baltimore, party of the first part, and John T. Pickett, of the city of Chicago, party of the second part, and is in these words: That "the said party of the second part agrees to play ball for the party of the first part, for the season of 1892, for the sum of three thousand ($3,000) dollars, with five hundred dollars advanced on the contract, said sum of five hundred dollars ($500) to be considered part of the said three thousand ($3,000) dollars above stated; salary payable first and fifteenth of each month; services to commence on the 26th of March, 1892, and end on October 31st, 1892." The appellee, the plaintiff below, entered upon the services, and performed them until the 1st day of June, 1892, when he was discharged or released. He was paid the $500 advance money, and also four payments on account of his salary. The grounds set up for his discharge were want of skill and ability. The judgment was for the plaintiff, and the defendant has appealed. At the trial there were 10 exceptions reserved to the rejection by the court of evidence offered by the defendant, the third, ninth, and tenth of which were abandoned at the hearing. There were also exceptions to the granting of the first, fourth, and fifth prayers of the plaintiff, and to the rejection of the first, third, sixth, and eighth prayers of the defendant, and to the instruction on the part of the court. These exceptions form the basis of this appeal, and we will pass upon them in their regular order.

There were two defenses relied upon by the appellant: First. That the plaintiff did not exercise that degree of skill and efficien-

cy required of professional baseball players playing in the league or association to which the defendant belonged, and was discharged for inefficiency. Secondly. That there was a universal and well-known custom, observed by all professional baseball clubs, that the club shall have the right, on 10 days' notice, to release any player who does not come up to the requirements of his position, and play satisfactorily; that the defendant received the 10 days' notice, and was discharged.

It will be observed that the contract in this case was a special one, for a precise period, definite in its terms, and is simply an ordinary hiring under a special contract. It is entirely silent as to the degree of skill the plaintiff should possess in the business for which he was employed. In the words of the contract, "he was to play ball for the Baltimore Baseball Club, the party of the first part, for the season of 1892." Now, it is a well-settled rule that the standard of comparison or test of efficiency is that degree of skill, efficiency, and knowledge which is possessed by those of ordinary skill, competency, and standing in the particular trade or business for which they are employed; and, as the contract provided for no higher degree of skill than this, none could be required. The supreme court of Pennsylvania lays down the doctrine to be: "Where skill as well as care is required in performing the undertaking, if the party purport to have skill in the business, and he undertakes for hire, he is bound to the exercise of due and ordinary skill in the employment of his art or business about it, or, in other words, to perform it in a workmanlike manner. In cases of this sort he must be understood to have engaged to use a degree of diligence and attention and skill adequate to the performance of his undertaking. 'Ordinary skill' means that degree which men engaged in that particular art usually employ, not that which belongs to a few men only, of extraordinary endowments and capacities." Waugh v. Shunk, 20 Pa. St. 133. Also, Harmer v. Cornelius, 5 C. B. (N. S.) 236; Parker v. Platt, 74 Ill. 432. This doctrine was fairly submitted to the jury by the first prayer of the plaintiff and the fourth prayer of the defendant, by which they were, in substance, told that if they found that the plaintiff did not possess and exercise the skill, knowledge, and efficiency possessed and exercised by other professional baseball players of ordinary skill, knowledge, and efficiency, and that he was discharged for such reasons, then their verdict must be for the defendant. A large number of witnesses, who had been professional baseball players for six or ten years, and who had played with the plaintiff, testified that they considered him a good player, and that he played an average good game of ball.

We pass now to the second question in the case. The contention on the part of the appellant is that the contract was made subject to a usage or custom that the club had a right to cancel the contract and discharge the player, on giving 10 days' notice, when the player is deficient in his playing. The contract is entirely silent upon this subject, and it is not admitted that the player had the reciprocal right to abandon the club or to cancel the contract when he deemed it proper or right to do so. We have carefully examined the testimony, and find a failure of proof to establish any usage. The evidence was manifestly too vague and unmeaning to warrant, upon any principles, the submission of any proposition based upon it. The plaintiff testified "that he had been playing professional baseball for the past nine years; is familiar with the rules of the game, and had signed contracts for professional clubs; that he had never signed a contract with the ten days' clause; that he never even saw one, and knew of no custom by which a player could be discharged that way. That nothing was said about it when he signed." The authorities all hold that a usage, to be admissible, must be proved to be known to the parties, or be so general and well established that knowledge and adoption of it may be presumed, and it must be certain and uniform. Foley v. Mason, 6 Md. 51; Second Nat. Bank v. Western Nat. Bank, 51 Md. 128; Bank v. Graffin, 31 Md. 520; Patterson v. Crowther, 70 Md. 125, 16 Atl. 531. But, conceding that there was sufficient evidence of the custom and usage contended for by the appellant, we are clearly of the opinion that it was not admissible to vary the terms of this special contract. The contract, as we have said, is one for a definite term of service, and binding on both parties. To admit the usage would not only destroy its mutuality, but vary its terms. The supreme court of Rhode Island, in a similar case to the one now under consideration, held that "a local usage cannot be considered a part of a contract, when it contradicts that contract." Justices Durfee and Hail, in delivering the opinion of the court, say the contract and usage cannot stand together. Either the contract must prevail, and make void the usage, or the usage must prevail, and make void the contract. The contract described in this declaration is not a contract made with reference to the usage, but against it. The contract described is to labor for a year, but the usage terminates it at will. The contract is, by the very fact of its existence, a protest against the usage, for it ceases to be a special contract the moment that the usage is made part of it. A usage which annuls such a contract cannot be given in evidence without subverting the well-settled rule that usages inconsistent with a contract cannot be given in evidence to affect it. Sweet v. Jenkins, 1 R. I. 147. And to the same effect is the case of Peters v. Staveley, (court of queen's bench,) where Chief Justice Cockburn holds that, the contract being for one week certain, the custom, even if proved, could not

control it. 15 Law T. R. (N. S.) p. 275. Also, Smith v. Sheridan, (Sup.) 10 N. Y. Supp. 365. The same rule has been established by this court in a number of cases. Foley v. Mason, supra; Bank v. Graflin, supra; Fertilizer Co. v. White, 66 Md. 452, 7 Atl. 802; Patterson v. Crowther, 70 Md. 125, 16 Atl. 531; Bank v. Taliaferro, 72 Md. 165, 19 Atl. 364. It follows, then, from this view of the case, that there was no error by the court in granting the plaintiff's fourth and fifth prayers, which were to the effect that there was no evidence of any usage by which the plaintiff could be discharged before the end of the contract period without sufficient cause, and the exclusion from the jury of all evidence offered to show the existence of such a usage. The first prayer of the defendant, relative to the existence of the usage, was properly rejected. The third, sixth, and eighth prayers of the defendant were properly rejected for the reasons we have heretofore given. The first prayer granted on the part of the plaintiff was correct, and contained the law upon that branch of the case. We have examined all the exceptions, and discover no error of which the appellant has a right to complaint.

The first, second, fifth, sixth, and seventh exceptions to the admission of evidence are substantially the same, and present the question as to the degree of skill required of the plaintiff in the performance of his duty. The evidence was properly rejected because it tended to exact or to establish a higher degree of skill than that contemplated by the contract. The appellant was not a member of the National League at the time the contract was entered into, on November 14, 1891. It did not become such until January, 1892. This testimony was therefore immaterial and irrelevant.

The fourth exception was to the refusal of the court to allow the following question to be answered: "Can you tell whether or not there was any public complaint by the patrons of the manner in which Mr. Pickett filled his position?" It is unnecessary to pass upon the exception, as the witness afterwards substantially answered the question proposed, and defendant had the benefit of his answer.

The remaining exception was to the instruction of the court as to the measure of damages. This prayer instructed the jury that, if they found for the plaintiff, he was entitled to recover the contract price, less such sums as may have been paid to him, and also less such sums as he earned, or by the exercise of due diligence might have earned, in the line of his business, during the remainder of the period covered by the contract. We think this was unexceptionable, and is the law laid down by this court in Railroad Co. v. Slack, 45 Md. 161. Finding no error, and the whole case having been fairly submitted to the jury, the judgment will be affirmed.