

THE LATE SIR FREDERICK POLLOCK—SPECIFIC PERFORMANCE IN CASES OF HARDSHIP.

the illustrations, are tempted 'in silence and at night,' to exclaim that all is vanity. But, unless we are grossly mistaken, Sir Frederick Pollock was an exception to what we may call the rule of humanity. What is there which man can desire that he had not? What is there which man desires to be free from that was not absent from him? Does a man love length of years? He lived four score years and seven. Does a man desire health? He never knew what sickness meant. Does a man desire riches? He had more than enough to satisfy the reasonable wants of his temperate spirit, and to provide for all who had natural claims upon him. Does a man desire success in his particular calling in life? He had success, uniform and perfect. Does a man desire the good opinion of his fellow-man? Who ever bore ill will to his benevolent disposition, or ever breathed a suspicion of his integrity. Does a man long for sons and daughters to respect and love him and to perpetuate his name? Sir Frederick has been heard to say that not one of his numerous progeny ever did an act to cause him a moment's uneasiness.

Then, if these things be so, how can we mourn that at last the acute intellect and the sound body have sunk in sleep? When the first Lord Hardwicke knew that death was approaching he acknowledged readily that he could not complain of death, for in life he had been fortunate above all men; and this is precisely the feeling with which we regard the career and the death of Sir Frederick Pollock.

It is difficult, if not impossible, to draw a distinction between what he owed to the original bounty of nature and what he owed to himself. How far a man can fight against and defeat evil instincts, how far he can neglect the use and blunt the edge of the bright impulses of nature is not taught us by any philosophy. But this we may say, that Sir Frederick Pollock cherished and developed all the gifts which a bounteous Providence had bestowed upon him. If he had talent, he enlarged its limits and increased its wealth by assiduous toil. If he had physical health, he was careful by temperance and regularity of life to preserve and improve it. If he had opportunities, he grasped them quickly and retained them. If he had an honest, a truthful, and an upright nature, he never suffered even a temptation to advance against these bulwarks of integrity.

And he was happy also when he had turned his back on Westminster Hall, its fatigues and its glories. At one time amusing himself with photography, at another reverting to his old and favourite study of mathematics, at another instituting a novel research into the authorship of the letters of Junius, he preserved to the last his intellectual activity. The political controversies of the day, the Continental problems of war and peace, the Transatlantic war, all these things were studied and discussed by him with juvenile ardour.

In his pleasant home at Hatton he exercised a generous and a wide hospitality, and was at all times ready to converse with old and young with equal sympathy and kindness. Anecdotes of days long gone by, his own early life, the social and political scenes in which his boyhood, youth and manhood were passed, all these were told and painted with consummate skill and with rare accuracy. That strange faculty for the recollection of dates—not in years only, but in months and in days—which was so curiously exhibited by him in the *Princess Olive's Case* in the Probate Court, frequently displayed itself in familiar talk even in the latest years of his life. But we must here stay our hand. We have said enough to show that in our judgment, if Sir Frederick Pollock was excellent as a lawyer, he was yet more excellent as a man.—*Law Journal*.

SPECIFIC PERFORMANCE IN CASES OF HARDSHIP.

Hilton v. Tipper, V C. S., 16 W. R. 888.

The present case is noticeable as a somewhat broad assertion of the jurisdiction of courts of equity, under Lord Cairns' Act (21 & 22 Vict. c. 27), to order the payment of damages as an alternative to decreeing specific execution of contracts, in every case where justice will be satisfied by doing so. The Court, in the first instance, assumed the jurisdiction to decree specific execution of contracts, for the reason, according to Lord Redesdale, in *Harnett v. Yielding*, 2 Sch. & Lef. 554, that damages at law will not always put the plaintiff in as good a position as if the contract were specifically performed. Where that is so, said Lord Redesdale, the Court will interfere, and decree specific performance. It will not be decreed, however, his lordship added, in effect, against a person who is not competent to execute the contract. The Court, therefore, will not interfere where a party is called upon to do an act which he is not lawfully competent to perform, or which it is impossible for him to perform. Thus the Court will not decree specific performance of a contract to convey land, where the contracting party has a bad title, unless on terms of the party seeking performance of the contract accepting such title as the contracting party can give. These rules depend on general principles of equity and fairness, and partly, no doubt, on the rule that the Court will not make a decree which it cannot compel performance of. When a party contracts to sell, he contracts impliedly to give a good title; but, if he has not a good title to give, how can he be compelled to give that which he has not got, and cannot get? And now that the Court can decree specific performance or give damages at its option, it is probable that the Court will be loth to decree specific performances, except strictly in accordance with the rule of Lord Redesdale referred to above. For there can be no doubt that, prior to the Act,