

## THE LATE SIR JOHN ROLT.—CONTRACTS IMPOSSIBLE OF PERFORMANCE.

In Nova Scotia, the 17th section of the Act of 1870, introducing the ballot, abolishes the public meeting held by the sheriff on nomination day, but he is to attend at the Court-house or other place prescribed, between 11 a.m. and 2 p.m., for the purpose of receiving the names of the candidates, and he shall exclude all persons not having business in connection with the election.

In Ontario and Nova Scotia, in case of a general election, the polling must be simultaneous throughout the whole Province.

In New Brunswick it is not so; the sheriff or the presiding officer for the county or city selects such time within the writ as he deems most suitable for the convenience of the electors within his county.

As under the Dominion Act, with the exceptions pointed out, the elections are to be held under the laws which were in force on the 1st of July, 1867. The reforms introduced into Nova Scotia by the Act of 1870, of the ballot and the abolition of the hustings on nomination day, will not be applicable.

## THE LATE SIR JOHN ROLT.

The career of the late Sir J. Rolt, who died in June last, strikingly vindicates the truth of the aphorism that the Law is always just to those who are just to her. Sir John had no advantages, and he owed his fortune and eminence to his high character, his untiring assiduity, and his excellent parts. Sir John was not a genius, unless we accept the dictum of a famous character who said, 'Genius is only another name for industry.' What Sir John achieved any one endowed with good ability, an iron constitution, zeal and integrity may, without presumption, hope to accomplish.

Sir John Rolt was born in Calcutta in 1804. He was sent to England with his mother, and soon after his father failed in business. This rendered it impossible to give the boy an education, and he was apprenticed to a linendraper. His next employment was secretary to an institution, an appointment which he continued to hold even after he had become a clerk in the office of Messrs. Pritchard & Sons, the well-known proctors of Doctors' Commons. In those days the Benchers of the Inns of Court were not so strict as they are now, and Mr. Rolt was permitted to keep his terms without resigning his post in Doctors' Commons. Probably, had he gone among the proctors in earlier youth, he would have become one of them, and would have contented himself with money-making till 1858 and a pension after the Probate Act. But at his age the doors of that branch of the profession were shut against him, and so he betook himself to Lincoln's Inn. He was not called to the bar until 1837, when he was in his thirty-third year. He obtained an excellent business as a junior, and in eleven years he received silk from Lord Lyndhurst. In 1837 he entered Parliament

for the Western Division of Gloucestershire—his maternal grandfather was a Gloucestershire yeoman—and continued to represent that county until 1867. He was a consistent and valued supporter of the Conservative party, and in 1866 became Attorney-General. In 1867 he succeeded Sir James Knight Bruce as one of the Lord Justices of Appeal. The highest expectations were formed of his judicial career, but unhappily he was very soon after his appointment attacked with paralytic symptoms, and had to resign. In surveying his career, we cannot, while admiring his honorable ambition and his indefatigable ardor, refrain from doubting whether he really took the course calculated to ensure genuine happiness to himself or his family in this world. There are games which are not worth the candle, and Sir John has himself been heard to say that no success, however great, could compensate him for what he had undergone. We are all, perhaps, too apt to look at the crowning glory of a man's life, without sufficiently considering whether fortune has not been bought at too high a price.

## CONTRACTS IMPOSSIBLE OF PERFORMANCE.

A new case of importance confirms a rule which, however, has been far from invariably assented to. *Robinson v. Davison* excited some interest when it was first heard at the assizes, and in its form in the Court of Exchequer (24 L. T. Rep. N. S. 755) it loses none of that interest for lawyers. It will be remembered that the defendant was the husband of the famous Arabella Goddard, and he undertook that she should perform at a particular concert. She was unable to do so owing to illness. Could damages be recovered for the breach of contract? The Court of Exchequer said, No.

It was argued in *Thorburn v. Whitacre* (2 Lord Raym. 1164) that there are three descriptions of impossibility that would excuse a contractor—legal impossibility, as a promise to murder a man; natural impossibility, as a promise to do a thing in its nature impossible; and thirdly, that which is classed as "*impossibilitas facti*," "where, though the thing was possible in nature, yet man could not do it, as to touch the heavens, or to go to Rome in a day." All must agree with Chief Justice Holt that these may be reduced to two—impossibilities in law, and natural impossibility. Without discussing all the cases relating to impossible contracts, which will be found collected in a note to Mr. Benjamin's work on the Sale of Personal Property, p. 428, we will confine ourselves to the effect of illness.

One of the leading cases on this subject reveals one of the delightful differences of judicial opinion with which we are familiar. In *Hall v. Wright* (1 L. T. Rep. N. S. 230) a plea to an action for breach of a contract to marry was that before breach the defendant became afflicted with dangerous bodily illness, and