SELECTIONS.

BARON BRAMWELL'S OPINION OF TRIAL BY JURY.

The evidence given by Baron Bramwell before the Law Courts (Scotland) Commission as to trial by jury is worth attention. In answer to Mr. Shand's question, "In the majority of cases do you think that a trial before a jury or before a judge is to be preferred?" Baron Bramwell answers—"That is a very large question indeed. I think if I wanted the truth to be ascertained in that particular case, I should prefer an intelligent man who had been in the habit of exercising his faculties all his life on such questions to twelve men who had not been in the habit of exercising theirs, who might not be so intelligent men, who certainly have not been in the habit of exercising them together, farmers and others, who are very much fatigued from being taken and shut up in a hot court. If I wanted nothing but the truth in a particular case, I should prefer the verdict of the judge; and it seems to me impossible to doubt that he is the preferable tribunal. When I was first made a judge myself, I was very strongly in favour of trials being before a judge; but I am afraid that the jury is a crutch that I have been leaning on for so long a time that I have now got used to it, and I don't think I am as good a judge of the question as I was 18 years ago. Moreover, there is no doubt that trial by jury popularises the law. I remember a case before the House of Lords in which I was contending for a particular construction of a covenant, and my brother Willes was contending the other way, and the question put to me was, How was it possible that people should enter into so stringent a covenant as you contend for? I said, 'My lords, they will trust to that true court of equity, a jury, which, disregarding men's bargain and the law, will decide what is right in spite of all you say to them.' And it is so. I don't say that they do not regard the law, for I believe they do; but every man must feel that, although he may have the law on his side, he is in some peril if the justice of the case is not with him also. I think it would be difficult to discriminate between civil and criminal cases; and in criminal cases I think it is better that the judge should not be the man to find the prisoner guilty; but it is a very large question, and I feel some hesitation in offering an opinion about it."

In answer to a further question, "You have had no cause from your great experience to be dissatisfied with jury trials?" the learned baron answers—"No. There are cases in which juries go wrong; for instance, in an action against a railway company, they generally go wrong there; in actions for discharging a servant they generally go wrong; in actions by a tradesman against a gentleman in questions whether articles supplied were necessary to an infant or wife, they are sure to go wrong; in actions as to malicious prosecution, they are always wrong. You may say to them, 'The question is not whether the man is innocent, but whether there is absence of reasonable cause and malice, but in vain. They find for the innocent man."

In answer to Mr. Justice Willes' question—"And cases of running down?" Baron Bramwell replies—"There they generally find for the plaintiff, so much so, that a man who has run down another, if he is wise, will bring the action first. I remember one case particularly, in which the question was whether the man that recovered was free from blame, and there was blame in the other; and each recovered in the action where he was plaintiff."—*Law Times.*

ONTARIO REPORTS.

COMMON LAW CHAMBERS.

(Reported by Henry O'Brien, Esq., *Barrister-at-Law.)*

Davis v. Weller.

Staying proceedings until costs of former action paid.

An action was prosecuted to trial in name of a plaintiff, dead before the commencement of the suit, the attorney being ignorant of such fact, and the action having apparently been brought under a mistake of facts. The death of plaintiff being shewn at trial, the record was struck out by judge. An action was subsequently brought for same cause by the parties properly entitled to sue. *Held*, that this action was not vexatiously brought so as to entitle the defendant to stay proceedings in such second action until the costs of the first were paid.

[Chambers, October 16, 1869.]

An action was brought by Hosea B. Smith and William B. Smith, partners in trade, against the present defendant.

The defendant, Hosea B Smith, died between writ and declaration, and the suit was continued in the name of William B. Smith, as surviving partner.

The case was brought down to trial at the last Lindsay Assizes, but before the jury were sworn the defendant discovered that the plaintiff, William B. Smith, had been dead for some years. The judge thereupon declined to try the cause, and struck out the record.

The instructions for this action had been given by one William R. Smith, who had some connection with the firm, and who, as was contended on the part of the plaintiff in the proceedings hereafter referred to, had acted *bona fide*, though under a mistake as to the facts or as to the names in which the suit should be brought; though it was urged on the part of the defendant that he had attempted to personate William B. Smith, taking advantage of the similarity of the names.

An action was subsequently brought by the same attorney for the same cause of action as the former suit, in the name of the now plaintiff as the representative of the said Hosea B. Smith, as surviving partner of said firm. The defendant thereupon obtained a summons calling on the plaintiff to shew cause why all proceedings should not be stayed until the costs in the former