

## The Legal News.

Vol. XIII. OCTOBER 4, 1890. No. 40.

The September Term of the Court of Queen's Bench, at Montreal, commenced with 96 appeals on the list. This was a slight increase on the September list of last year, when the number was 87. That the list has remained pretty nearly a fixed quantity for some years, is apparent from the following:—

Sept. 1882.....107	Sept. 1886.....109
“ 1883.....106	“ 1887..... 89
“ 1884..... 84	“ 1888..... 84
“ 1885..... 93	“ 1889..... 87

Considerable progress was made during the twelve days of the September Term, the Court rising with 31 *délibérés*, besides two cases in which judgment was rendered a few days after the hearing.

The trial of Birchall, for the murder of young Benwell, which terminated at Woodstock on Monday last in the conviction of the prisoner, seems to be one of those cases where circumstantial evidence is as convincing as the most direct testimony. Birchall was traced, in company with the deceased, to the scene of the crime, and it was proved that he had come away alone. Before the identification of the body, he was busy carrying out his scheme to defraud the deceased's father, and thus disclosed the motive of the crime very clearly. The cutting out of the marks on the clothing of the deceased, was an operation which showed great coolness, and was nearly successful in destroying the chance of identification; but the act turned strongly against the accused, (who alone had an interest in preventing the identification) when the finding of a cigar holder inscribed with Benwell's name, in the snow, ten days later, put the police upon the right track. The chain of evidence was so complete, that the ingenuity of Birchall's counsel was unable to make any impression upon it, and the jury, like every one else who has followed the developments of the trial, had no hesitation in coming to the conclusion that the accused

was guilty. He himself preserved a discreet silence as to his movements on the day of the murder, it being impossible to offer any explanation, of which the falsity would not have been immediately apparent.

On the subject of dog law, the *Law Journal* (London) has the following:—"It was a Scottish judge who remarked that every dog was entitled at common law to at least one worry. This *dictum* may have been considered witty at the time, assuming that its flavor was appreciated, but when the joke is handed down by one generation of judges to another, as a rule of law modified (so far as cattle are concerned) by statute, we think it is time to protest. The true principle on which the liability of the owner of a domestic animal for mischief done by such animal is ascertainable, may be shortly stated. Domestic animals are presumed to have inherited or acquired, good manners, and to be thoroughly under the control of their owners and keepers. This presumption is not always justified by the facts. Whenever, in case of injury by a domestic animal, it can be proved (1) that the animal is, in fact, of a fierce or mischievous disposition, and (2) that such fact was known to the animal's owner or keeper at the time of the alleged injury, the cause of action against the owner is complete. The gist of the action is the *scienter*. It is not unlawful to keep a mischievous horse or dog; but one who keeps it with knowledge of its mischievous propensities, keeps it at his peril, and is liable for the consequences of its misbehavior. The fact that it has kicked, or bitten, or gored, or attempted to kick, or bite, or gore, some person or animal (not cattle) on a previous occasion, is some evidence of a vicious disposition, but it is not conclusive. But a plaintiff's inability to prove a particular act indicative of ferocity, is by no means fatal to his case. An animal may have earned an evil reputation by reason of its mischievous propensities, although the plaintiff is not in a position to call witnesses to prove any overt act before the one by which he has been injured. If the owner is proved to have had notice of his animal's reputation, and the plaintiff is proved to have been wantonly attacked and injured, there is a *prima*