

## The Legal News.

Vol. II. NOVEMBER 29, 1879. No. 48.

### JUDICIAL PRECEDENCE.

In a despatch from Sir M. E. Hicks Beach to the Governor General, of date 3rd November, 1879, the suggestion of the Canadian Government respecting precedence of the Judges of the Supreme and other Courts, is adopted. The following is the despatch :

"MY LORD,—

"I have received your despatches Nos. 152 and 153 of the 26th May last, transmitting Reports of the Privy Council expressing the views of your Government respecting the question of precedence of Naval Officers in the Dominion, and on the subject of Salutes, and of the precedence to be given to the Lieutenant Governors of the Provinces within their respective Provinces, and at the seat of Government of the Dominion.

"I have transmitted copies of these Reports to the Lords Commissioners of the Admiralty and I am still in communication with their Lordships on the subject of them, but I will not any longer delay conveying to you my approval of the suggestion made by your Government, that the Chief Judges of the several Superior Courts of Common Law and Equity in the different Provinces of the Dominion, should take rank and precedence (in accordance with the dates of their respective Commissions) immediately after the Chief Justice of the Supreme Court of Canada, and that the Puisne Judges of the Supreme Court should take rank and precedence (in accordance with the dates of their respective commissions) immediately before the Puisne Judges of the several Provincial Courts, in lieu of the rank and precedence assigned to the Judges of the Supreme Court by my despatch of the 31st October, 1878."

### DELAY FOR FILING PLEAS.

A singular exception to the general rule governing delays is to be found in Art. 137 of the Code of Procedure. Art. 24 says that delays continue to run upon Sundays and

holidays, and under this, it has been held that a notice of motion may be served on Saturday for the Monday following, notwithstanding the rule of practice which existed before the introduction of the Code. The same rule applies to other delays, but in Art. 137 an exception is established with reference to the three days allowed to file pleas after demand. The French version says, "si le plaidoyer n'est pas produit avant l'expiration du troisième jour juridique," the prothonotary may grant the plaintiff a certificate of foreclosure. The English version is still more positive : "If the pleas are not filed within the three next following juridical days," &c., showing that the foreclosure cannot be granted until three juridical days have elapsed. In the Consol. Stat. L. C., cap. 83, s. 13, the English text is "third juridical day" like the French.

It is difficult to assign any satisfactory reason for this exception, which, nevertheless, seems to be clearly established. The pleas, it is true, are an important step in the case, but the defendant knows from the time he appears that the pleas are to be prepared, and if the time be found too short, it may be extended on application to the Court. In Art. 1070, applying to the Circuit Court, the delay is three days, not three juridical days. The Codifiers, therefore, appear to have retained the old rule, in the second paragraph of Art. 137, without remarking its exceptional nature.

The point, it may be observed, came under the notice of the Superior Court, Jetté, J., in the case of *Burroughs v. Berthelot*, on the 30th December last. The Court in that case set aside as premature the foreclosure which had been granted before the expiration of three juridical days, but no costs were allowed.

### THE Q. C. APPOINTMENTS.

A prolix discussion has been going on in the Toronto papers with reference to the precise effect of the judgment of the Supreme Court in the Ritchie case. It is contended that the decision does not interfere with the right of Provincial Governments, under the authority of local legislative acts, to confer on counsel the title of Q. C., valid within the limits of the Province, and that such local Queen's Counsel may even be accorded precedence in local