

Province of New Brunswick.

SUPREME COURT.

Full Bench.]

[Mich. Term, 1896.

McFARLANE v. FOSTER.

*Dominion elections—Preliminary objections—Procedure—Leave to file nunc pro tunc.*

This petition was against the return of Hon. Geo. E. Foster, and was filed by the petitioners on the 1st of August last. On Aug. 5th a copy of the preliminary objections was filed, and on the same day copies were served on the petitioners and their attorney. On Aug. 11th an additional copy was filed for the petitioners. No proceedings whatever were subsequently taken by either party till Oct. 23rd, when the counsel of petitioners applied to set aside the preliminary objections on the ground that two copies had not been filed on Aug. 5th,

For the respondent it was contended that the statute only required one copy to be filed and the other to be presented, which was done, and that if two copies were necessary it was a mere matter of procedure and could be filed after the expiration of five days mentioned in s. 12 of the Act.

*Held*, that this was a mere matter of procedure and did not go to the jurisdiction and could be waived or subsequently filed. The application of the petitioners was therefore dismissed and permission given to file if necessary nunc pro tunc.

*Pugsley, Q.C., and J. H. Barry, for the petitioners.*

*Currey, Q.C., and Powell, Q.C., for the respondent.*

Full Bench.]

[Dec. 12, 1896.

EX PARTE REID.

*Bastardy—Con. stat. N.B., c. 103—Trial.*

This was an application for a writ of prohibition to restrain the Judge of the County Court from proceeding with the trial of the applicant on a charge of bastardy. It appeared the child had been born before, but no information had been laid until after the June term of the County Court. At the October sitting of the County Court the case was entered for trial, when the Court was restrained by an order nisi for prohibition granted by a judge of this Court. The applicant relied upon s. 7, c. 103, Con. Stat of N.B., which enacts, "All informations or charges for bastardy . . . shall be tried at the term of the County Court for the county in which the information is laid next ensuing the delivery of the woman.

The Court divided equally. Rule nisi for prohibition discharged.

*A. J. Gregory, for applicant.*

*W. Vanwart, Q.C., contra.*