

the plaintiff's claim and costs, but deducted from Hinch's claim against Smart, and that in the event of the plaintiff electing to sell the equity of redemption and the sale not realizing enough to pay the claims of Hinch and Bonter and their taxed costs, they should recover against the plaintiff such costs as remain unpaid.

Reference to the Master. Costs of the reference and further directions reserved.

*O'Connor and Jacob*, for plaintiff. *Parker and A. H. S. Murray*, for defendants.

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Richards, J.A.] RE PROVENCHER ELECTION. [Jan. 8, 1912.

*Dominion Controverted Elections Act*, ss. 19, 87—*Preliminary objections—Time for filing—Application to enlarge time after lapse of time fixed by statute—Practice.*

*Held*, 1. The filing of preliminary objections to an election petition under the Dominion Controverted Elections Act, is only an interlocutory proceeding as distinguished from the filing of the petition itself and the bringing on of the trial; and, if the objections are not filed within the five days allowed by section 19 of the Act, the time for filing may be extended under section 87, although the application is not made until after the lapse of the five days.

*Alexander v. McAllister*, 34 N.B.R. 163; *Re Bothwell Election*, 9 P.R. 485; *Re Burrard Election*, 32 C.L.J. 638; *Wheeler v. Gibbs*, 3 S.C.R. 374, and *Stratton v. Burnham*, 41 S.C.R. 410, followed. *Re Glengarry Election*, 14 S.C.R. 453; *In re North Perth Election*, 18 O.L.R. 661; *Re Lisgar Election*, 20 S.C.R. 1, and *Re Burrard Election*, 31 S.C.R. 459, distinguished. *McDougall v. Davin*, 2 Terr. L.R. 417, not followed.

2. If the respondent files his preliminary objections after the five days without first applying for an extension of the time, he runs the risk of an order being made to remove them from the file; but, if the respondent applies for the extension after the petitioner moves to strike out the objections because filed too late, and the Judge thinks he should have allowed the extension if applied for in time, the proper course is to order that, upon payment of the costs of the petitioner's motion, the objections do not stand as properly filed. *Eaton v. Storer*, 22 Ch. D. 91, followed.

*Blackwood*, for petitioners. *H. V. Hudson*, for respondent.