

*Teed* and *Grant*, contra, contended that it might not be necessary to count the individual ballots as they might be able to prove on a recount that all the ballots cast were illegal.

*Held*, (TUCK, C.J., dissenting) that the mandamus should go, and that the County Court Judge should hear secondary evidence as to the lost ballots.

TUCK, J.]

[July 2.

EX PARTE DUNCAN.

*Habeas corpus—Infants—Right of father to custody of.*

This was an application by Mr. Duncan to obtain the custody of his two children, the elder being two years and seven months old, and the younger eleven months old and still unweaned. The husband relied on his common law rights and the wife relied on ch. iii., Acts, 1885, N.B., which enacts as follows: "Whenever any application shall be made to any Court or Judge whatever, under this Act or any other law whatever, for the custody or control of any infant or infants it shall be the duty of any Court or Judge before whom the said application shall be heard, to take into consideration the interests of such infant or infants in deciding between the claim of the parents of such infant or infants.

The difficulty between Mr. and Mrs. Duncan was purely a religious one, the father having the children brought up in the Protestant faith, and the mother wishing them educated as Roman Catholics. The parents separated.

The application was refused on the ground that the best interests of children of such tender years demanded the mother's care where the mother was, as in this case, eminently respectable.

*McLatchey* and *Macrae* in support of the application.

*Mott* and *Currey*, Q.C., contra.

ST. JOHN COUNTY COURT.

WELLS, CO. J.]

[June 9.

*St. John County Court—Jurisdiction.*

The St. John County Court has no jurisdiction in an action of debt when the sum demanded is within the jurisdiction of the City Court of St. John, and the defendant has a residence within the city; and his temporary absence does not affect the question.

*Chapman*, for plaintiff.

*Carleton*, for defendant.