

In my opinion also it is dangerous to devote too much attention to fathoming the motives of the Legislature. Where its mandates are expressed clearly it is the duty of the court to follow them regardless of the consequences. If an amendment to the language of the Act is necessary it should be made by the Legislature and not by the Court.

The judgment in *Regina v. Edgar*, 15 O.R. 142, is, in my opinion, not only well considered but unanswerable. It is exactly to the point, and I am prepared to follow it unhesitatingly.

Regina v. Brown, 16 C.R. 41, goes off largely on another point. The language used at the close thereof indicates an expression of opinion, "it seems to me that sec. 101 is directory only." In this latter case the court's attention was not squarely directed to the issue involved in the case before me.

I therefore quash the conviction and allow the appeal without costs. The prosecutor may have a certificate of protection if it be deemed necessary.

Province of New Brunswick.

SUPREME COURT.

En Banc.]

MILLIGAN v. CROCKET.

[Nov. 27, 1903.]

Cause called out of its turn on docket and jury empannelled in absence of defendant.

This cause stood forth on the docket of the St. John Circuit. The first cause having gone over to a later circuit, and the second and third causes having been passed over, but not struck off, for the reason that the attorneys were not prepared to go on at the moment, the plaintiff's counsel moved for trial in this cause in the absence of the defendant, his attorney and counsel. The jury was empannelled and the examination of one witness concluded before counsel for the defendant appeared. The latter asked for his right of challenge, which the trial Judge said he could not grant without the consent of the plaintiff, who refused it.

The Court granted a new trial on the ground that the cause was called out of its turn on the docket and the jury empannelled in the absence of the defendant, his attorney and counsel.

H. A. McKeown, Sol. Gen., for plaintiff. *O. S. Crocket*, for defendant.

En Banc.]

MACRAE v. BROWN

[Nov. 27, 1903.]

New trial on terms—Appeal as to costs.

The jury on the writ de proprietate probanda in an action of replevin in the Northumberland County Court found for the defendant. On the trial