

NOTES

on Recent Cases

R. v. April

The Migratory Birds Convention Act—Meaning of Lawful Excuse under s. 6 of the Act—Appeal Upheld

When Henry April, plume vendor in Montreal, Que., imported stuffed terns from France as a source of plumage for milady's hat, he overstepped the law which provides that it is unlawful to buy, sell or possess any migratory bird or parts thereof. The resulting case is believed to be the first of its kind to be heard in Canada.

The common tern, a species resembling a pigeon in appearance, occurs regularly and naturally in the United States and Canada and is guarded with a close season throughout the year by The Migratory Birds Convention Act. Exhibits were seized by R.C.M.P. investigators from two women milliners who had purchased them from April.

Charged with Possession of Migratory Non-game Birds, s. 6 M.B.C. Act, April pleaded not guilty at Montreal on Aug. 28, 1946, before Hon. E. Tellier, Judge of the Sessions of the Peace. The prosecution was conducted by M. Gaboury, Montreal, while H. Kliger, advocate of Montreal, acted for the defence.

The Court reserved its decision until later, and on Oct. 22, 1946, handed down the following judgment:

The following charge was laid against the defendant:

"On or about the 22nd of May, 1946, Henry April, did have in his possession, without lawful excuse, migratory non-game birds, to wit: one (1) tern, contrary to s. 6 of The Migratory Birds Convention Act".

The evidence may be summarized as follows: The defendant is said to have imported from France in 1946, 156 birds, under the name of "pigeons".

These birds are said to have been sold to different merchants in Montreal, and when the members of the Federal police called at the premises of the defendant, he made a written statement (Exhibit 1) on the manner in which he disposed of the birds,

and at that moment he still had in his possession a bird which was seized and which is the ground of the present prosecution.

It is not necessary to say that the birds were dead and stuffed and that they were so imported from France, to be used as ornaments for hats and for other similar purposes.

The prosecution more specifically invokes the violation of article 6 of The Migratory Birds Convention Act. Article 6 of this Act, as amended in 1933, reads as follows:

"No person, without lawful excuse, the proof whereof shall lie on such person, shall buy, sell or have in his possession any migratory game bird, migratory insectivorous bird or migratory non-game bird, or the nest or eggs of any such bird or any part of any such bird, nest or egg during the time when the capturing, killing or taking of such bird, nest or egg is prohibited by this Act".

It ensues from this Article that the possession of the birds concerned is unlawful, if they were killed, captured or obtained during the period or term when the present Act expressly prohibits to capture, kill or take such birds.

However, the present Act cannot prohibit the capture or taking of birds beyond the territorial limits in which the said Act may exercise its jurisdiction.

Indeed regulations No. 1, 2, 3, 4, 5 and the following ones, adopted by virtue of the provisions of the said Act, do enact restrictions with respect to the capture and taking of different migratory birds.

This Court is of the opinion that article 6 and regulations 1, 2, 3, 4, 5 and the following ones, but more particularly No. 3 which is invoked by the prosecution in this case, must be read together. They complete each other and one of them is the corollary of the other.

The Migratory Birds Convention Act has been specifically passed for the protection of certain birds in the course of their