

outside the limits of Canada, and imported here afterwards, it would have been simple to state it in the Act or at least in the numerous regulations, which fully specify all the exceptions concerning the open seasons, the hunting instruments, prohibited captures, etc. But the legislator did not specify it, and the law which prohibits possession of them must apply even to birds killed outside the Canadian frontiers.

The statute law, moreover is made with that object in view; and the appellant refers the tribunal to *Corpus Juris*, vol. 27 p. 950, *verbo GAME*, para. (14) c, where it is stated:

"Game taken without the State. The statutory provisions which make it unlawful for any person to sell, offer for sale, or to have in his possession, certain game during the close season, extend to game taken without the State or country and imported into it, unless the language of the statute limits its application to game taken within the State. . .".

Furthermore, he mentioned the case of *Whitehead v. Smithers*, (*Law Times Reports*, vol. 37 N.S., p. 378), where the appeal Court, reversing the decision of a magistrate, declares:

"It is an offence for a person to have in his possession, during the prohibited period, a protected bird, whether such bird came from abroad or not".

The French law seems to us to have the same effect; see *Dalloz, Repertoire Pratique*, vol. 11, *verbo CHASSE-LOUVETERIE* (*Hunting-Wolf-hunting*), p. 369, sec. 1080:

"B. exotic game.

"In principle, game coming from a foreign country comes under the provisions of section 4 of the law of May 3rd, 1844, which establishes no exception in its favour (Colin, p. 217; Giraudeau, No. 423; Leblond, No. 64). When the law of 1844 was discussed in the Chamber of Deputies, the Chairman of Committee, Mr. Lenoble, formally declared this when answering Mr. Vatout".

To demonstrate to a certain extent the senselessness of section 6 if the restrictive interpretation which the plaintiff gives it was accepted, the defendant states as an example that a European lady coming to Canada, wearing a hat ornamented with such a bird or one of its parts, could be

arrested upon her disembarkation and brought before the Court for illegal possession of a migratory bird, even if she could prove that the bird had not been killed or captured in Canada. It seems, however, that if that European lady violated the law as interpreted by the appellant, she would nevertheless have a very valid excuse, as stated in section 6, as it is for that reason that the officer taking the risk of arresting her would have his labour for his pains.

On the other hand, however, it must be stated that if the defendant's interpretation was correct, a fisherman would then be allowed to navigate his boat at sea outside the three-mile limit, to kill and destroy freely all the protected migratory birds and come back and sell on the Canadian market what he had taken; if he was arrested, he could plead that section 6 does not apply outside the territory in which the law exercises its jurisdiction.

As the appellant maintains, he would have a still better reason than the accused in this case, since the fisherman could prove the bird had been killed outside the limits of Canada while in the present case, it is not even established that it was not killed in Canada; all we know is that it was imported from France.

If the viewpoint of the accused was adopted, the law, in my opinion, would be incomplete, its sanctions too often ineffective and its purpose illusory.

Regarding the second point brought up by the accused, to the effect that it is not a tern but a pigeon or a swallow which is involved, I must state that the proof made on appeal is much more satisfactory and more complete than that given to the judge of first instance; the latter certainly had reason, from the evidence given, to dismiss the charge.

At the hearing held on appeal, two well-known ornithologists affirmed that the bird seized and produced before the Court was a tern and not a swallow, as the witness of the Crown had declared in the first instance. In any case, if we refer to the dictionaries, we shall see, as was declared by the plaintiff's witnesses, that the sea swallows are web-footed birds belonging to the gull family; their real name is tern.

According to the encyclopaedists, that bird is very well known in France, where they are considered as migratory birds, as