

annual migration when they pass over certain parts of Canada and the United States, as indeed the terms of the said Convention prove. Actually, if we refer to the Convention itself, we may read in the preamble as follows:

"Whereas certain species of birds pass in the course of their annual migrations, certain parts of Canada and the United States, and whereas a great number of these species have an important value from the point of view of food, or for the destruction of insects which harm the forests and fodder plants as well as farming crops both in Canada and in the United States, and that these species are in danger to be exterminated because of lack of adequate protection during the hatching season or while they go to their reproduction grounds or on coming back therefrom. . .".

Thus the regulations adopted by virtue of the above said Convention and the Canadian Act itself show very clearly that it concerns birds which are killed or captured within the limits determined by that law.

It is enough to read article 4 of the said Act in which it is enacted that the Governor-in-Council may establish such regulations as may be deemed suitable to protect the migratory birds which are considered as game birds, migratory insectivorous birds and migratory birds not considered as game birds which *stay* ("inhabit", according to the English text) in Canada during the total or part of the year.

Also it is enough to read Article VI of the Convention. Regulation No. 17 of the said Act which was cited by the prosecution, has no application to the present case. On the contrary, in this regulation there is no concern about importation which is the case in hand, but there is a specific prohibition to export these migratory birds from one province to the other and to the United States.

Article VI of the Convention itself is even clearer than our own Act. Here is what it says:

"The high contracting Powers agree to prohibit, save for scientific purposes or for propagation, the expedition, or the exportation of migratory birds or their eggs from one State or from one province to another, during the time of prohibition established by the State or the province. They also agree to prohibit international

traffic in these birds or in their eggs, captured, killed, taken or to expedite them at any time, contrary to the laws of the State or the province in which such birds or eggs have been captured, killed, taken or exported. Containers in which are packed migratory birds or parts thereof or eggs of such migratory birds, transported or offered for transport, from the Dominion of Canada to the United States or from the United States to Canada, must bear the name and address of the exporter and a complete description of the contents, written on the outside of the container".

Now in our case it concerns a bird imported from France, a dead bird which was stuffed, as the evidence of the prosecution and the defence shows.

If the claim of the prosecution were to be maintained, it would have been necessary to come to the conclusion among other things, that a woman from Europe, for instance, coming to Canada in an outfit comprising in her dress one of those birds or a part of one of them, as defined in subparas. (c) and (d) of article 3 of the Act, could be arrested on her arrival in Canada, charged with unlawful possession of a migratory bird and sentenced for the offence, even if she proved that the bird was not killed, captured or taken in Canada.

This Court is of the opinion that the Act does not want to say and does not say what the prosecution wishes it to say.

The Act of the Convention concerning migratory birds and the treaty itself are not laws respecting trade and commerce, have not been adopted to protect trade and commerce, but laws to protect game birds and they cannot be concerned with anything but harm which as a result of circumstances may be caused to game birds inhabiting our country and the United States.

Acting in the way he did, the defendant has probably violated the provisions of the Customs Act, by importing under the name of "pigeons" birds which were not that, but he has not violated the Convention respecting migratory birds.

Moreover, the charge to the effect that the defendant is said to have had in his possession without any lawful excuse a migratory bird which is not considered as a game bird, namely a "tern". Indeed the said Act and the Convention invoked by the prosecution, have provided legislation