

The Forum.

A CAUSERIE OF THE LAW.

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In the recent case of *The People of the State of New York v. The Buffalo Fish Company (Limited)* the New York Court of Appeals was called upon to decide whether the Act of the State legislature for the protection of Birds, Fish and Wild Animals, etc., (ch. 488, Laws of 1892) applied to fish *possessed* during the close season, although *taken* from waters outside the State. The *Albany Law Journal* states that the question had been the subject of controversy for a long time from the fact that people were in the habit of importing fish from Canada in ice during the close season. The question was decided in the negative by a majority of the Court. O'Brien, J., in delivering the opinion of the majority says:

"We all agree that our statute does not forbid a person to 'catch or kill' fish of any kind in Manitoba, but it is said that when one brings the fish so caught or killed into this State, the penalties of our statute attach to him at once. With all respect, I am constrained to say that this is not a reasonable or tolerable interpretation of a penal statute. What it means, and all it means, is to forbid any person to catch, kill or be possessed of the fish described from the waters of this State. The word 'possessed' obviously refers to those fish, the catching or killing of which is forbidden, that is to say, fish in the waters of this State, and not those procured in any foreign country. It is simply a perversion of the statute to hold that the mere possession by any person within this State of the fish described in the statute, during the close season, is a violation of it, without regard to the place where they were procured, or to the manner obtained."

Since the object of the legislature was undoubtedly to preserve the fish in the waters of New York State, and not to tie up piscatorial enterprise in the waters of the whole American continent, this opinion strikes us as being an eminently sane one.

* * * Just why 'conventio,' the generic term of the Roman Law for agreements between persons to do or abstain from doing a particular thing (Dig. II., 14, 1), should have been restricted in early English law to denote only that species of contracts which were evidenced by writing under seal, is not easy to determine. Probably the solution of the question lies in the fact that he