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FEDERAL BIRD LAWS
UPHELD BY COURTS

Any doubts entertained by sportsmen as to the constitutionality of Federal restrictions on the hunting of migratory birds have been answered, says the U. S. Biological Survey in commenting on a recent decision in Federal court at Savannah, Ga. The Survey administers the regulations adopted under the act of Congress giving effect to the treaty for the protection of birds migrating between this country and Canada.

Overruling a demurrer to an indictment for hunting mourning doves over a baited area, Federal Judge William H. Barrett, says the Bureau, has upheld the power of the Secretary of Agriculture to regulate hunting methods. Judge Barrett's decision, following by only a few days a similar decision by Judge H. Church Ford at Lexington, Ky., sustaining the Secretary's power to limit open seasons, led Survey officials to express the opinion that these two decisions effectively answer all constitutional objections to this year's hunting regulations.

"The principal question presented in this case," said Judge Barrett in the Savannah decision, "is: Has Congress the right to delegate to the Secretary of Agriculture the authority to make penal the shooting of doves over a baited field when neither the treaty between the United States and Great Britain nor the Act of Congress creates such a penalty." The defendants argued that the regulations represented an unconstitutional grant of legislative power.

The rule to be followed is well established, the judge pointed out and quoted from the recent Schechter NRA case as follows: "So long as a policy is laid down and a standard established by a statute, no unconstitutional delegation of legislative power is involved in leaving to selected instrumentalities the making of subordinate rules within prescribed limits and the determination of facts to which the policy as declared by the legislature is to apply."

In providing for the conservation of migratory birds, Congress, in delegating power to the Secretary of Agriculture, "surely", said Judge Barrett "lays down 'its policies and establishes its standards', namely the policy that there shall be no hunting of migratory birds except as may be permitted by the Secretary of Agriculture. The standard is that the means of hunting shall be 'compatible with the terms of the Convention'."

"It seems clear to me," the judge declared, "that this delegation is well within the prescribed rule."

The decision was handed down on September 5.