

and of the conditions and restrictions therein contained, that the same are in conformity with Section 471, General Code, under authority of which this lease is executed, and with other statutory enactments relating to leases of this kind.

I am accordingly approving this lease as to legality and form, as is evidenced by my approval endorsed upon the lease and upon the duplicate and triplicate copies thereof, all of which are herewith returned.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

2741.

CONSERVATION COMMISSIONER—SECTION 1450 G. C. INTERPRETED—WHERE AUTOMOBILE DECLARED FORFEITED TO STATE—DISPOSITION—WORDS “OR OTHER DEVICE” HAVE GENERAL IMPORT—MEAN PROPERTY OF TYPE SIMILAR TO THAT PARTICULARLY DESCRIBED—AUTOMOBILE USED TO UNLAWFULLY KILL RING-NECK PHEASANTS OUT OF SEASON—PROPERTY STATUS—STATUTE OF LIMITATIONS—JUDGMENT.

SYLLABUS:

1. *The words “or other device”, as the same appear in Section 1450, General Code, being words of general import, must be construed as to include within their meaning, only property of a type similar to that particularly described in this section.*

2. *An automobile used in the unlawful killing of ring-neck pheasants out of season, can not be considered as property included within the meaning of the words “or other device,” as used in Section 1450 of the General Code, so as to subject such property to forfeiture upon a person’s plea of guilty to the use thereof in the unlawful killing of game out of season.*

3. *Where a person fails, within the time prescribed by statute, to avail himself of the remedy provided by law for a review of an erroneous judgment rendered by a court of competent jurisdiction, such judgment has all the force and effect of a legal judgment and is binding upon all the parties affected thereby.*

4. *The Conservation Commissioner may, under the provisions of Section 1450 of the General Code, dispose of an automobile which has, by the terms of a judgment rendered by a court of competent jurisdiction, been declared forfeited to the State.*

COLUMBUS, OHIO, July 21, 1938.

HON. L. WOODDELL, *Conservation Commissioner, Columbus, Ohio.*

DEAR SIR: Acknowledgment is made of your recent communication wherein you request my opinion regarding the following:

"In a recent trial and conviction before a Justice of the Peace, for violation of the fish and game laws of Ohio; namely, shooting and killing ring-neck pheasants from an automobile, to which charges the defendant plead guilty and has paid both fine and costs. In addition to this fine and costs the automobile from which these birds were shot was declared a public nuisance and declared forfeited by the Justice of the Peace, under Section 1450, General Code of Ohio.

Upon defendant's plea of guilty, no further court action for this confiscation seems to be necessary, but in order to be certain of being within the law, I respectfully request your opinion in this important matter."

Section 1450 referred to in your communication provides in part as follows:

"Any gun, net, seine, trap or other device used in the unlawful taking, catching or killing of a bird, fish, game or fur-bearing animal is a public nuisance. Each protector or other police officer shall seize and safely keep such property, including the illegal results thereof, and unless otherwise ordered by the conservation commissioner shall institute, within five days, proceedings in a proper court of the county for its forfeiture as provided by law. * * * If the owner or person unlawfully using such property at the time of its seizure is arrested, pleads guilty and confesses that the property at the time of the seizure was being used by him in violation of law, no proceeding of forfeiture shall be instituted, but the court in imposing sentence shall order the property so seized forfeited to the state, to be disposed of thereafter as the conservation commissioner may direct."

It is quite evident that under the provisions above cited, any gun, net, seine, trap or other device used in the unlawful taking, catching or killing of birds, fish, game or fur-bearing animals being declared by statute a public nuisance, shall upon a person's plea of guilty to the unlawful use of such property, be ordered by the court forfeited to the State to be disposed of as the Conservation Commissioner may direct.

However, in considering the subject matter of your inquiry, the first question which arises and which of necessity must be answered in order that the proper conclusion may be reached herein, is whether or not an automobile used in the unlawful killing of ring-neck pheasants may be considered as property coming within the meaning of the language "or other device" employed in Section 1450, supra, so as to render such property subject to forfeiture by the Court upon a person's plea of guilty to the unlawful use of such property in the killing of game out of season.

In determining this particular question, consideration must first be given to the fact that the statute here under consideration, being one that deals with the forfeiture of property, must under well recognized principles of law, be construed strictly. The rule of statutory construction in this regard as stated in 37 O. J., Section 425 at pages 752, 753 is as follows:

"Forfeitures are not favored by the law, and statutes providing for a forfeiture are subject to a rule of strict construction. Whatever may be the nature or kind of forfeiture, it is not to be carried, by construction, beyond the clear expression of the statute creating it. * * *"

In determining the question as to whether or not the words "or other device", as those words appear in Section 1450, supra, are broad enough to include within their meaning, property such as an automobile used in the unlawful killing of game, reliance must again be placed on well recognized rules of statutory construction regarding the construction that should be given to words of general import used in a statute following the enumeration of particular things designated by specific words. The rule of construction applicable to statutes such as the one here under consideration as stated in Lewis' Sutherland Statutory Construction, Second Edition, Vol. 2 at page 815 is as follows:

"It is a principle of statutory construction everywhere recognized and acted upon, not only with respect to penal statutes but to those affecting only civil rights and duties, that where words particularly designating specific acts or things are fol-

lowed by or associated with words of general import, comprehensively designating acts or things, the latter are generally to be regarded as comprehending only matters of the same kind or class as those particularly stated. They are to be deemed to have been used, not in the broad sense which they might bear if standing alone, but as related to the words of more definite and particular meaning with which they are associated."

It is quite apparent that in applying the foregoing rule of construction to the provisions of Section 1450, *supra*, the conclusion is rendered inescapable that the words "or other device" as therein employed, must be construed as including only that type of property similar to a gun, net, seine or trap as therein particularly described. It is, therefore, clear to my mind that an automobile used in the unlawful killing of game out of season, not being property of a type similar to that specifically described in Section 1450, *supra*, would not be properly subject to forfeiture.

Having so concluded, consideration is now given the question as to the authority of the Conservation Commissioner to dispose of an automobile which has come into his possession by virtue of a judgment of the Justice of the Peace, whereby said automobile was declared forfeited to the State upon a person's plea of guilty to the use of said property in the unlawful killing of ring-necked pheasants out of season.

It can not be questioned that a judgment rendered by a Justice of the Peace of competent jurisdiction is as conclusive upon the parties as is a judgment rendered by a Court of Common Pleas or any other superior court of record, 37 O. J. page 840. However, it is fundamental that before a judgment of a Justice of the Peace, or any other court, is binding upon the parties in any action, the court rendering such judgment must have had, in the first instance, jurisdiction both of the parties and of the subject matter involved in the proceedings. It is quite clear, as a matter of law, that a judgment rendered by a court not having jurisdiction either of the parties to or the subject matter of an action, is not merely voidable but void *ab initio*. This principle of the law as stated in 23 O. J., Section 526 at page 836 is as follows:

"A judgment which a court did not have jurisdiction to render is not binding or conclusive. * * *"

However, the situation here under consideration is one which clearly discloses that the Court in rendering the judgment heretofore referred to and which by the terms thereof declared as forfeited to the State an automobile used in the unlawful killing of game, had jurisdiction both of the party to the proceeding and of the subject matter therein in-

volved and could under such jurisdiction, determine the question as to whether or not the automobile, used in the unlawful killing of ring-neck pheasants, was property of a type similar to that particularly described in Section 1450, supra, so as to bring such property within the meaning of the words "or other device" as therein contained.

That the Justice of the Peace in the instant case had jurisdiction is definitely established by referring to the provisions of Section 1448 of the General Code, which after providing that a Justice of the Peace, Mayor or Police Judge shall have final jurisdiction within his county in prosecutions for violations of any provision of the laws relating to the protection, preservation or propagation of birds, fish, game and fur-bearing animals, then proceed to confer further jurisdiction on such magistrates in matters relating to condemnation and forfeiture proceedings in the following language:

"* * * and shall have like jurisdiction in a proceeding for the condemnation or forfeiture of property used in the violation of any such law."

Thus having concluded that the Justice of the Peace in the case here under consideration had jurisdiction to hear and determine the issue therein involved, consideration is now directed to the effect of the judgment rendered and to the authority of the Conservation Commissioner to dispose of the automobile which has come into his possession by reason of the terms of said judgment. It is quite apparent that in view of the express provisions of Section 1448 referred to supra, conferring upon magistrates final jurisdiction in matters involving prosecution of fish and game law violations, that the judgment rendered by the Justice of the Peace in the instant case, being the outgrowth of an erroneous interpretation of the provisions of Section 1450, supra, is not void, but merely voidable and would, therefore, be valid until reversed or set aside by a court of superior jurisdiction. (23 O. J. Section 520.)

It is significant to note that upon authorities too numerous to cite, that it has long been established that a voidable judgment is only subject to be voided by direct attack and that unless and until a voidable judgment is annulled by a court of competent jurisdiction in a proceeding specifically provided for that purpose, such a judgment has all the force and effect of a legal judgment and is, therefore, binding upon all parties affected thereby.

Since the accused in the instant case did not, within the time prescribed by statute, avail himself of the remedy provided by law for a review of the judgment rendered against him, and since such judgment is not subject to collateral attack, (23 O. J. Section 966,) it is quite evi-

dent that the Conservation Commissioner, being lawfully in possession of the automobile in question, may order the same disposed of in the manner in which he may direct.

It is, therefore, my opinion in specific answer to your question that: (1) The words "or other device," as the same appear in Section 1450, General Code, being words of general import, must be construed as to include within their meaning, only property of a type similar to that particularly described in this section. (2) An automobile used in the unlawful killing of ring-neck pheasants out of season, can not be considered as property included within the meaning of the words "or other device," as used in Section 1450 of the General Code, so as to subject such property to forfeiture upon a person's plea of guilty to the use thereof in the unlawful killing of game out of season. (3) Where a person fails, within the time prescribed by statute, to avail himself of the remedy provided by law for a review of an erroneous judgment rendered by a court of competent jurisdiction, such judgment has all the force and effect of a legal judgment and is binding upon all the parties affected thereby. (4) The Conservation Commissioner may, under the provisions of Section 1450 of the General Code, dispose of an automobile which has, by the terms of a judgment rendered by a court of competent jurisdiction, been declared forfeited to the State.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

2742.

APPROVAL—NOTES OF VILLAGE OF FAIRPORT, LAKE COUNTY, OHIO, \$6,000.00, DATED MAY 1, 1938.

COLUMBUS, OHIO, July 21, 1938

The Industrial Commission of Ohio, Columbus, Ohio.

GENTLEMEN :

RE: Notes of Village of Fairport, Lake County, Ohio,
\$6,000.00.

I have examined the transcript of proceedings relative to the above notes purchased by you. These notes comprise all of an issue of street improvement notes dated May 1, 1938, bearing interest at the rate of 4½% per annum.