682.

INSPECTORS—CORN BORER—RIGHT TO SEARCH MOTOR VEHICLES WITHOUT WARRANT—CONDITIONS NOTED.

SYLLABUS:

Under the provisions of Section 1140-13 of the General Code, the duly authorized agents of the Department of Agriculture, in the enforcement of quarantine regulations, may search automobiles along the highway, without a search warrant, which they know, or have reasonable ground to believe, and do believe, to be carrying any agricultural or horticultural product, or any other materials of any character whatsoever, capable of carrying the European corn borer in any living state of its development.

COLUMBUS, OHIO, July 27, 1929.

HON. PERRY L. GREEN, *Director of Agriculture, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your letter of recent date which is as follows:

> "The season for the establishment of the quarantine lines on account of the European corn borer is rapidly approaching. Because of the difficulty that has been encountered in the past in the searching of vehicles for corn, I am asking for an opinion as to whether Section 2 of the Corn Borer Act, Section 1140-13 of the General Code, authorizes the inspectors to unlock and open locked compartments in motor vehicles without a search warrant. Last year a considerable number of people refused to permit such search without a search warrant. It seems to me that this clearly grants the necessary authority. We would like an official opinion."

Section 1140-13 of the General Code, is part of an act passed by the Legislature for the purpose of protecting the agricultural and horticultural crops of the State of Ohio from the ravages of the European corn borer. Section 1140-13 of the General Code, provides as follows:

> "The department of agriculture is authorized to promulgate quarantines and quarantine restrictions covering areas within the state affected by said pest and areas within the state adjacent thereto, and may adopt, issue and enforce rules and regulations supplemental to such quarantines for the control of this pest. Under such quarantines, the department of agriculture or its authorized agents may prohibit and prevent the movement within the state without inspection, or the shipment or transportation within the state, of any agricultural or horticultural product, or any other material of any character whatsoever, capable of carrying this pest in any living state of its development; and, in the enforcement of such quarantine, may intercept, stop, and detain for official inspection any person, car, vessel, boat, truck, automobile, aircraft, wagon, or other vehicles or carriers whether air, land or water, or any container believed or known to be carrying the said insect in any living state of its development or any such material, in violation of said quarantines or of the rules or regulations issued supplemental thereto, and may seize, possess, and destroy any agricultural or horticultural product or other material of any character whatsoever, moved, shipped, or transported in violation of such quarantines or the rules and regulations supplemental thereto."

The language used in this section is clear and unambiguous, and requires no

statutory construction, and from a reading of this section, it appears that the Department of Agriculture or its authorized agents, in the enforcement of a quarantine to protect the agricultural and horticultural crops of Ohio from the ravages of the corn borer, may stop and search without a search warrant any person, car, vessel, automobile, etc., that the officer knows or believes to be carrying the corn borer in a living state. However, your inquiry presents the question as to whether or not the provisions of Section 1140-13, of the General Code, contravenes the provisions of Section 14 of Article I of the Ohio Constitution. Section 14, Article I of the Ohio Constitution provides as follows:

> "The right of the people to be secure in their persons, houses, papers and possessions against unreasonable searches and seizures shall not be violated; and no warrant shall issue, but upon probable cause, supported by oath or affirmation, particularly describing the place to be searched and the person and things to be seized."

It is well known that the existence of the corn crops of the State of Ohio depends, to a great extent, upon the suppression and destruction of the corn borer. To prevent the destruction of the crops not infected by these pests, it is necessary to prevent the corn borer from being introduced into non-infected areas. This can best be accomplished by a strict inspection of all vehicles and other conveyances which are apt to carry the corn borer in its living state of development. The Legislature has seen fit to clothe the Department of Agriculture, and its duly authorized agent, with this power. This discretion rests with the Legislature.

Numerous courts in various states have held that the destruction of infested crops without previous adequate compensation under statutory authority was not taking private property for public purposes nor the taking of such property without due process of law, but was a competent exercise of the police power of the State. See Annotation 12 A. L. R., 1136.

The Supreme Court of Ohio, in the case of *William Kroplin* vs. *Charles V. Truax, Director of Agriculture,* No. 21344, decided February 6, 1929, in considering the validity of the Riggs Law, embodied in Sections 1121-1 to 1121-25 of the General Code of Ohio, which provides for the inspection and testing of cattle for bovine tuberculosis and for the destruction of diseased animals, used the following language in its opinion:

> "After consideration of the record and the adjudicated cases, we hold that the statute is constitutional, and that no property right of the plaintiff in error is violated thereby. *Statutes of this nature, providing even drastic measures for the elimination of disease, whether in human beings, crops, stock, or cattle, are in general authorized under the police power.*" (Italics the writer's.)

It is well established, as a general proposition of law, that reasonable regulations enacted to prevent the infection of trees, orchards and crops are within the police power of the State, Annotation 12 A. L. R. 1136.

It is possible, in view of these authorities, that the courts would sustain the validity of much more drastic measures than those provided in Section 1140-13 of the General Code, for the inspection of automobiles along the highways, for the purpose of eliminating disease in crops. However, the Legislature saw fit to authorize the Department of Agriculture or its duly authorized agents to inspect persons, cars, vessels, automobiles, etc., only in cases where the officer knows, or believes such conveyance to be carrying the corn borer in a living state. Statutes authorizing search of automobiles without a search warrant under similar circumstances have been held,

generally, as not violating the provisions of the State and Federal Constitutions pertaining to search and seizure.

The Supreme Court of Ohio, in the case of *Houck* vs. *State,* 106 O. S., page 199, in the opinion of the court, said as follows:

> "The constitution does not forbid all searches and seizures, but, on the contrary, the inhibition is only against unreasonable searches and seizures."

The Supreme Court of Ohio, in the case of *Houck* vs. *The State of Ohio,* supra, in passing upon the validity of Section 6212-43, of the General Code, which section provided in substance, that when any officer of the law discovered any person in the act of transporting, in violation of law, intoxicating liquor in an automobile, etc., it should be his duty to seize any and all intoxicating liquor found therein being transported contrary to law, held in the second and third branches of the syllabus, as follows:

> "A search of an automobile by an officer and a seizure by him of intoxicating liquors then being possessed and transported in violation of law, without a search warrant, is authorized, though the officer has no previous knowledge of such violation, provided he acts in good faith and upon such information as induces the honest belief that the person in charge of the automobile is in the act of violating the law.
>
> A search and seizure under such circumstances is not unreasonable and therefore does not transgress Section 14, Article I of the Ohio Constitution."

The fourth amendment of the Constitution of the United States is similar in substance in respect to search and seizure to Section 14 of Article I of the Ohio Constitution, and the Supreme Court of the United States, in the case of *Carroll* vs. *United States,* 267 United States 132, held in the second and third branches of the headnotes, as follows:

> "The Fourth Amendment denounces only such searches or seizures as are unreasonable and it is to be construed in the light of what was deemed an unreasonable search and seizure when it was adopted, and in a manner which will conserve public interests as well as the interests and rights of individual citizens.
>
> Search without a warrant, of an automobile, and seizure therein of liquor subject to seizure and destruction under the prohibition act, do not violate the amendment if made upon probable cause, i. e., upon the belief, reasonably arising out of circumstances known to the officer, that the vehicle contains such contraband liquor."

In view of the authorities cited herein, it appears to me that Section 1140-13, of the General Code, is a valid enactment by the Legislature, and does not contravene the provisions of Section 14, Article I, of the Ohio Constitution.

Your specific inquiry is as to the right to unlock and open lock compartments in motor vehicles without a search warrant. The right of search being conceded, it necessarily follows that all steps necessary to accomplish that end may legally be taken. This does not mean that the inspectors can arbitrarily unlock all lock compartments irrespective of whether such compartments could possibly be used as the place of concealment for the transportation of agricultural or horticultural products or other materials capable of carrying the corn borer. On the other hand, the right exists to unlock such compartments as may reasonably be believed to carry such

material. This is a matter for the judgment of the inspector in the first instance and that judgment must be exercised in good faith and with no other motive in view than a legitimate search for articles capable of carrying the pest.

In specific answer to your inquiry, I am of the opinion that under the provisions of Section 1140-13 of the General Code, the duly authorized agents of the Department of Agriculture in the enforcement of quarantine regulations, may search automobiles along the highway, without a search warrant, which they know, or have reasonable ground to believe, and do believe, to be carrying any agricultural or horticultural product or any other materials of any character whatsoever, capable of carrying the European corn borer in any living state of its development.

Respectfully,
GILBERT BETTMAN,
Attorney General.

683.

DISAPPROVAL, ABSTRACT OF TITLE TO LAND OF CLEVELAND, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY IN CITY OF CINCINNATI, HAMILTON COUNTY, OHIO.

COLUMBUS, OHIO, July 27, 1929.

HON. RICHARD T. WISDA, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—There has been submitted to this department for examination and approval an abstract of a certain parcel of land situated in the City of Cincinnati, Hamilton County, Ohio, and being the easterly seventy-five feet off of lots 7, 8, 9, 10 and 11, as numbered and delineated on the plat of Theophilus French's subdivision in the then village of Carthage, as recorded in Plat Book 3, p. 51, of the Hamilton County, Ohio, records.

An examination of the abstract of title submitted shows that the property here in question is owned of record by the Cleveland, Cincinnati, Chicago and St. Louis Railway Company, but that the record title of said company to this property is subject to the following exceptions:

1. The abstract shows that on and prior to May 1, 1869, said lots No. 7, 8, 9, 10 and 11 of Theophilus French's Subdivision in the then village of Carthage, Hamilton County, Ohio, were owned and held in fee simple title by said Theophilus French. On said date, to-wit, May 1, 1869, said Theophilus French, his wife joining with him in the deed, conveyed said lots above referred to to one John Dean. It appears that shortly after this conveyance said John Dean died, and thereafter on May 1, 1871, said Theophilus French, together with his wife, conveyed these same lots, together with Lot 12 in said subdivision to Thomas F. Brown and George S. Brown. There is nothing in the abstract to show how the title to the lots here in question came back to Theophilus French after his conveyance of the same to John Dean, nor is there anything in the abstract to show how the title of said John Dean or his heirs to these lots was extinguished.

It is quite probable that the Cleveland, Cincinnati, Chicago and St. Louis Railway Company and its predecessors in title have owned and held said lots in adverse possession and in such manner that the heirs of said John Dean have long since been barred by the statute of limitations from asserting any right, title or interest claimed