to the jurisdiction of the juvenile court in prosecutions for failure to provide necessary care and support for minors under eighteen years of age. Provision is there made for suspension of sentence upon conviction of failure to support minors under eighteen years of age, upon such conditions as the court may see fit to impose including the giving of a bond similar to that provided for in Section 13010, supra.

The question of the application of the proceeds of such bond upon forfeiture was passed upon by this department in an opinion dated March 24, 1927, addressed to the Hon. Wm. B. James, Prosecuting Attorney, Bowling Green, Ohio, in which it was held that:

> "Where as a condition of suspension of sentence imposed upon a parent convicted of failing to support a minor child in violation of section 1655, General Code, a juvenile judge, under authority of Section 1666, General Code, requires such parent to give a bond to the state of Ohio, conditioned upon his complying with the court's order with reference to payments for the support of the minor involved, such bond is for the benefit of the minor child and the political sub-division or taxing district which would suffer the burden of maintaining such child and upon default by the parent and collection of the bond the funds should be used for the maintenance and support of the child."

For the reasons stated, I am of the opinion that where a parent, convicted of failure to provide his or her minor children with the necessary or proper home, care, food or clothing in violation of Section 13008, General Code, after conviction and before sentence, enters into a bond with the State of Ohio, conditioned as provided by Section 13010, General Code, and the conditions of said bond are broken and the same is forfeited, the proceeds collected under such forfeiture should be used to provide the necessary and proper home, care, food and clothing for such children, and should be expended under the court's direction, by the trustee appointed by the court under the provisions of Section 13010, supra.

Respectfully,
EDWARD C. TURNER,
Attorney General.

480.

AUTOMOBILE—RIGHT TO SEARCH WITHOUT WARRANT.

SYLLABUS:

In the absence of facts upon which to base a reasonable belief that the law is being violated, no officer has the right to stop persons driving automobiles, or to search automobiles without a warrant. Where an officer has reasonable grounds to believe and does believe that liquor is being transported in violation of law, and that before a warrant could be secured the automobile would be beyond the reach of the officer with its load of illegal liquor, such officer has the right to search such automobile without warrant.

COLUMBUS, OHIO, May 12, 1927.

HON. B. F. MCDONALD, *Prohibition Commissioner, Columbus, Ohio.*

DEAR MR. MCDONALD:—I am in receipt of your letter of May 7th, requesting an answer to the following question which you submit:

"Has an inspector of the prohibition department the right under the law of Ohio to search without a warrant an automobile, where he has reasonable grounds to believe that liquor is being transported in violation of law."

The answer to this question is to be found in the second and third branches of the syllabus in the case of Houck vs. State, 106 O. S. 195, in which case the Supreme Court of Ohio made the following holdings:

"(2) 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 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.

(3) A search under such circumstances is not unreasonable and therefore does not transgress Section 14, Article I of the Ohio Constitution."

However, that the layman may understand the law thus promulgated, it should be pointed out that the automobile in this case was one parked on the streets of Lebanon. The marshal of Lebanon had been informed that a week or two previous, on a Saturday evening, Houck had been bootlegging in Lebanon, and the marshall had seen Houck on his former visit under apparently suspicious circumstances. The marshall observed the car and upon examination discovered the whisky. He thereupon notified the sheriff of the county, awaited Houck's return and arrested him upon charges of possessing and transporting whiskey.

As is said by Chief Justice Marshall in the opinion in the above case:

"This is not a new question in Ohio and presents no great difficulty. The case of Ballard vs. State, 43 O. S. 340, is not parallel in its facts, but does involve a similar principle. From the syllabus of that case we quote:

'Under the proper construction of these Sections (7129 R. S., now 13492 G. C.,) a marshal of a municipal corporation is authorized without warrant to arrest a person found on the public streets of the corporation carrying concealed weapons contrary to law, although he has no previous knowledge of the fact, if he acts bona fide, and upon such information as induces an honest belief that the person arrested is in the act of violating the law.'"

Again we must have resort to the facts in the case. The marshal attempted to arrest Ballard for carrying concealed weapons contrary to law. In making the arrest the marshal acted on information and belief and not from actual personal knowledge of the facts. This information, which proved to be true, was based upon such statements of facts and from such sources as would warrant a prudent man in acting. Judge Johnson, in the course of the opinion in the Ballard case, said:

"Under these circumstances, we think the officer was in the performance of official duty. This does not authorize such an arrest without warrant on a mere venture, without knowledge or reliable information, though in fact, as afterwards discovered, concealed weapons were found."

Section 1 of the Bill of Rights of the Ohio Constitution provides:

"All men are, by nature, free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing and protecting property, and seeking and obtaining happiness and safety."

Section 14 of the Bill of Rights provides:

"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."

In the case of Morgan vs. Nolte, 37 O. S. 23, the Supreme Court of Ohio, in the first branch of the syllabus, said:

"The only limitations to the creation of offenses by the General Assembly are the guarantees contained in the Bill of Rights."

Section 6212-24 of the General Code, provides in part:

"It shall be the duty of the commissioner, deputy and inspectors diligently to enforce laws of the state having to do with the prohibition of the liquor traffic, and exercise all powers herein conferred, * * * "

Section 6212-27 of the General Code, provides in part:

" * * * * * * * * * * * *

In the performance of the duties imposed upon them by law, the commissioner, deputy and inspectors, may at all reasonable hours enter into, or upon all the buildings, places or things, excepting such buildings, places or things or parts thereof as are used exclusively for bona fide private residence purposes; and no place shall be regarded as a bona fide private residence under the laws prohibiting the liquor traffic, wherein liquors are possessed which have been illegally manufactured or obtained. * * * * * * * * * * * *"

Section 6212-28 of the General Code, provides in part:

"Said commissioner, deputy and inspectors may arrest without warrant any person found by them violating the law relating to the liquor traffic * * *."

In the case of Rasey, et al., vs. Ciccolino, 18 C. C. (N. S.) 331, it was held:

"1. A police officer is not authorized to arrest a person passing peaceably along a highway without a warrant on a mere venture, without any knowledge or reliable information, though in fact, as afterwards discovered, concealed weapons were found on the person so arrested.

2. A police officer has no authority to search a person passing peaceably along a highway of a municipality until he has placed such person under arrest and the circumstances must be such as to give reasonable and probable grounds to justify such arrest."

In the case of Hartenstein vs. State, 24 N. P. (N. S.) 124, Judge Snediker of the Montgomery County Common Pleas Court held:

> "Where police officers, acting in good faith and upon bona fide information, stop an automobile and arrest its occupants, and upon removal of a burlap sack in the bottom of the machine find jugs of whiskey concealed thereunder, both the arrest and the seizure of the liquor is legal, notwithstanding the officers were not armed with a search warrant."

The Fourth Amendment to the Constitution of the United States is similar in substance in respect of search and seizures to Section 14 of the Bill of Rights of the Ohio Constitution.

In the case of Carroll vs. United States, 267 U. S. 132, the headnotes read, in part, as follows:

> "2. 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.
>
> 3. 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.
>
> * * * * * * * * * *
>
> 6. Probable cause held to exist where prohibition officers, while patrolling a highway much used in illegal transportation of liquor, stop and search an automobile upon the faith of information previously obtained by them that the car and its occupants, identified by the officers, were engaged in the illegal business of bootlegging."

The facts upon which the eighth branch of the headnotes of this case are based are significant and tend to show that surrounding circumstances may be persuasive in leading officers to a reasonable belief:

> "8. The court notices judicially that Grand Rapids is about 152 miles from Detroit and that Detroit and its neighborhood along the Detroit River, which is the international boundary, is one of the active centers for introducing illegally into this country spirituous liquors for distribution into the interior."

But the following quotation from the dissenting opinion of Mr. Justice McReynolds, concurred in by Mr. Justice Sutherland, is apposite also in our present discussion:

> "The damnable character of the 'bootlegger's' business should not close our eyes to the mischief which will surely follow any attempt to destroy it by unwarranted methods. 'To press forward to a great principle by breaking through every other great principle that stands in the way of its establishment; * * * in short, to procure an eminent good by means that are unlawful, is as little consonant to private morality as to public justice.' Sir William Scott, The Le Louis, 2 Dodson, 210, 257."

For the sake of further illustration, I shall refer to cases in two lower Federal courts.

In the case of Lambert vs. United States, 282 Fed. 413, the Circuit Court of Appeals for the Ninth District held that there was no violation of the Fourth Amendment prohibiting unreasonable search or seizure without a warrant where the actions of one whose automobile on the street is seized and searched for liquor by prohibition officers justify them in believing that he is at the time transporting liquor in violation of the national prohibition act. In this case the officers had acted upon the information of a man who had seen the defendant put a bottle of whiskey into his car and who had noticed that defendant had in his car a big box which afterwards was found to contain whiskey, and who had noticed that defendant had stopped his automobile in front of a questionable place, into which place he had gone before his arrest.

In the case of United States vs. Vatune, 292 Fed. 497, the United States District Court held:

> "To justify a government agent in making an arrest or search and seizure without a warrant, he must have such knowledge from employment of his own senses or from information actually imparted to him by another as to cause him honestly and in good faith, acting with reasonable discretion, to entertain the belief or suspicion that the law is being violated."

In the course of the opinion in this case, the court said:

> "It will be conceded, of course, that an officer has no right to assume that an apparently innocent and unoffending person is actually engaged in a violation of the law. Therefore, such officer would not be acting reasonably—would be acting 'unreasonably'—were he to subject apparently innocent and unoffending persons to search or their effects to seizure. Having no reason to believe in their guilt, it would be unreasonable to act as if they were in fact guilty. Therefore, to justify an arrest—an invasion of the rights of a person or a search and seizure; an invasion of the rights of property— of an individual, sufficient to avoid the protective provisions of the Fourth Amendment, the officer must be in possession of such knowledge, from the employment of his own senses, or from information actually imparted to him by another as to cause him honestly and in good faith, acting with reasonable discretion, to entertain the belief or suspicion that the law is being violated."

At another point in the opinion the court said:

> "In these days of widespread violation of the law, due to large temptations, big profits and unrestrained appetites, together with facile employment of the automobile in the aid of successful consummation thereof, an officer ought not to be censured nor society penalized by a meticulous refusal to support a prosecution, if the officer, even in the absence of a warrant, and even with respect to a mere misdemeanor, acting upon the appearances, determines that the law may be maintained only by the 'immediate apprehension' of the offender, providing, always, of course, that the officer act in good faith and upon reasonable grounds of suspicion."

Summarizing then: While your question, as asked, is to be answered in the affirmative, yet proper caution requires that it should be qualified with the state-

ment that there should exist the fact or honest belief on the part of the officer that before a warrant could be secured, the automobile would be beyond the reach of the officer with its load of illegal liquor.

It should further be pointed out most emphatically that, in the absence of facts upon which to base a reasonable belief that the law is being violated, no officer has the right to stop persons driving automobiles or to search such automobiles without a warrant. In the words of Chief Justice Taft, who wrote the prevailing opinion sustaining the conviction in the Carroll case, supra:

> "It would be intolerable and unreasonable if a prohibition agent were authorized to stop every automobile on the chance of finding liquor and thus subject all persons lawfully using the highways to the inconvenience and indignity of such a search."

Respectfully,
EDWARD C. TURNER,
Attorney General.

481.

FOXES—WHEN THEY ARE MAINTAINED AND CONFINED—SUBJECT TO TAXATION.

SYLLABUS:

Silver foxes reared, maintained and confined are the personal property of their owner and as such come within the statutory definition of property subject to taxation, and should be listed for taxation.

COLUMBUS, OHIO, May 12, 1927.

HON. W. M. MCKENZIE, *Prosecuting Attorney, Chillicothe, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication which reads:

> "The county auditor has requested me to write you relative to the question of taxing silver foxes. In this county we have what is known as the Scioto Valley Silver Fox Ranch. On this ranch there are a large number of these foxes and they have not been listed for taxation, the owner of the ranch claiming, I am informed, that they are wild animals and under the law he is not required to list them for taxation. Most of the foxes are raised on this ranch by him and are sold, as I am informed, in pairs. I understand that they receive from $1500.00 to $2000.00 per pair.
>
> Kindly inform me whether or not these foxes should be returned for taxation purposes."

In wild animals one may acquire a qualified or special property by occupancy alone; for it is enough to catch and keep so that the creature cannot escape and regain its natural liberty. Almost all the elementary writers agree, however, that the animal must have been brought within the power of the pursuer before the right of ownership can vest in him. After the animal once becomes deprived of its natural liberty, by the aid of nets or snares or otherwise, and so is brought within the pursuer's power or control, he is considered its lawful owner in the qualified or special sense. Animals