

linseed meal, linseed oil cake, cotton seed meal, cotton seed cake, pea meal, coconut meal," etc.

It will be observed that the Legislature when it amended Section 1144 in 1915 added the provision that "feed stuffs" in general shall be held to include all feeds used for live stock and poultry. This indicates that the Legislature, by enumerating the various articles in Section 1144 of the General Code did not do so to amplify upon the meaning of feed stuffs used for live stock and poultry, but rather intended to enlarge the scope of this legislation to include not only all feeds used for live stock and poultry but also all articles of commerce enumerated in the section. This leads me to conclude that any feed stuffs which are articles of commerce such as are enumerated in Section 1144 are included within its provisions even though the feeds are not used for live stock and poultry. Therefore, if the feeds used for the feeding of dogs are articles of commerce such as are enumerated in Section 1144, persons manufacturing, selling or offering for sale, such feed stuffs within this state, must comply with the provisions of Section 1141 to 1149-1 of the General Code.

In specific answer to your inquiry, I am of the opinion :

1. "Feed stuffs" used for the the feeding of rabbits and pigeons come within the meaning of feed stuffs as used in Section 1144 of the General Code.

2. "Feed stuffs" used for the feeding of dogs are not included within the meaning of feed stuffs used for live stock in Section 1144 of the General Code. However, if feeds used for the feeding of dogs are articles of commerce such as are enumerated in Section 1144 of the General Code, persons manufacturing, selling or offering for sale, such feed stuffs within this state, must comply with the provisions of Sections 1141 to 1149-1 of the General Code.

Respectfully,

GILBERT BETTMAN,
Attorney General.

2124.

CLAIM—FOR LOSS OR INJURY TO ANIMALS—CLAIMANT AND WITNESSES NEED NOT PERSONALLY APPEAR BEFORE TOWNSHIP TRUSTEES, BUT MAY FILE AFFIDAVITS—EXCEPTION—DOG WARDEN UNAUTHORIZED TO ADMINISTER OATHS.

SYLLABUS:

1. *A person who has properly filed a claim supported by affidavit, for loss or injury to horses, sheep, cattle, swine, mules and goats, injured or killed, is not required under the provisions of Section 5840, et seq., General Code, to appear in person and testify at a hearing upon such claim before the township trustees, and statements as to the nature of the loss or injury complained of may be supported by affidavits rather than the oral testimony of at least two freeholders who viewed the results of the killing or injury, which affidavits may be made before any officer authorized to administer oaths. However, the township trustees may require parol testimony of the claimants and other witnesses if they so desire.*

2. *A dog warden has no authority to administer oaths.*

COLUMBUS, OHIO, July 22, 1930.

HON. C. LUTHER SWAIM, *Prosecuting Attorney, Wilmington, Ohio.*

DEAR SIR:—I am in receipt of your letter which, omitting the portions of statutes quoted by you, reads as follows :

"An opinion is respectfully requested of your office as to the meaning of Sections 5844 and 5845, General Code, relative to the taking of testimony by township trustees in the matter of claims for animals injured or killed by dogs. The practice is so varied in the several counties of the state at the present time that a state-wide ruling by your office is greatly desired on the questions raised below.

It would seem that the witnesses are not required to personally appear before the trustees as long as the oath is taken before some person required to administer oaths, and that it is only in case additional evidence is required that a personal appearance is required before the trustees. Do these sections require the claimant to appear in person before the trustees with the two freeholder witnesses, or may these persons appear before a notary public or other person allowed by law to administer oaths, and then to file such claims so sworn to, with the trustees?

Also, does a dog warden have the power to administer oaths to the claimant and to the two freeholder witnesses?"

Section 5840 of the General Code provides in part as follows:

"Any owner of horses, sheep, cattle, swine, mules and goats which have been injured or killed by a dog not belonging to him or harbored on his premises, in order to be entitled to enter a claim for damages must notify a county commissioner in person or by registered mail within forty-eight hours after such loss or injury has been discovered, and such commissioner shall immediately notify the dog warden or other enforcing officer of such loss or injury, whose duty it shall be to have the facts of such loss or injury investigated at once. The owner of such horses * * * may present to the township trustees of the township in which such loss or injury occurred, * * * a detailed statement of such loss or injury done supported by his affidavit that it is a true account of such loss or injury. * * * Such statements of the nature and amount of the loss or injury complained of shall be supported by the testimony of at least two freeholders who viewed the results of the killing or injury and who can testify thereto."

You will note from a reading of this section that the owner of the animals injured or killed need only to file a detailed statement of his loss or injury supported by his affidavit and he is not required to appear personally before the township trustees. The filing of a statement supported by affidavit is sufficient.

As to whether or not the two freeholders who viewed the results of the killing or injury may file affidavits rather than appear personally before the township trustees, requires a determination as to what is meant by the language "such statements of the nature and amount of the loss or injury complained of shall be supported by the testimony of at least two freeholders who viewed the results of the killing or injury and who can testify thereto." A proper construction of this language resolves itself to an understanding of the meaning of the word "testimony" as used by the legislature in the foregoing sentence. While technically the term "testimony" is accurately used to designate a particular kind or species of evidence, viz., that which comes to the tribunals through living witnesses speaking under oath in the presence of the tribunal, nevertheless, in general use it has a broader definition so as to include any solemn declaration or affirmation made to establish or prove some fact, and it is generally understood to include not only oral evidence but also affidavits and depositions.

There is a general rule of statutory construction that words in common use, also

having a technical sense, will, in acts intended for general operation and not dealing specially with the subject to which such words in their technical sense apply, be understood primarily in their popular sense unless they are defined in the act or a contrary intention is otherwise manifest. Sutherland Statutory Construction, Vol. 2, page 753. Applying this rule of construction to the language under consideration, the term "testimony," as used therein, should be construed to include affidavits, since this section is not of such a nature in which the term should be given a technical construction.

Attention is also directed to Section 11521 of the General Code, which appears in Title 4 of the Code under the heading "Procedure in Common Pleas Court," in Chapter 3 under "Evidence," and under the subhead "Modes of taking testimony," which section provides:

"The testimony of witnesses may be taken:

1. By affidavit.
2. By deposition.
3. By oral examination."

While this section has no application in construing the statute under consideration, attention is directed to it for the reason that if testimony in the courts of Ohio may be taken by affidavit, then a stricter rule for the taking of testimony under the provisions of Section 5840 of the General Code should not be required. It will be noted that Section 5843 of the General Code provides that township trustees shall receive any other information that will enable them to determine the value of the animals killed or injured, and Section 5843 of the General Code, relating to registered stock, authorizes the trustees to receive affidavits or any other evidence bearing on the subject that will assist them in determining the true value of the animals killed or injured. These sections authorize the township trustees to obtain additional evidence if they desire it with reference to the claims filed.

It will be noted from a reading of Sections 5844 and 5846, General Code, that the hearing before the township trustees is merely a preliminary determination of the amount to be allowed upon each claim. Final determination rests with the county commissioners, who have authority to hear additional testimony and receive additional affidavits, and also have the benefit of the investigation made by a dog warden, as provided in Section 5840, General Code; and thus each case may be thoroughly investigated without the necessity of having the claimant and his witnesses appear personally before the township trustees in every case.

I am inclined to the view that it was not the intention of the legislature to require the claimant and his witnesses to appear personally before the township trustees unless the trustees in their judgment deem it necessary.

Coming now to a consideration of your second inquiry as to whether or not a dog warden has authority to administer oaths, it is a general rule that an officer has only such authority to administer oaths or affirmations as is specifically conferred upon him by statute. Section 5652-70, General Code, provides the powers and duties of a dog warden. This section does not confer authority upon a dog warden to administer oaths nor do the statutes which authorize certain officers to administer oaths confer any such authority upon dog wardens. Therefore, since the statutes of Ohio do not confer authority upon a dog warden to administer oaths, he does not have such power.

In specific answer to your inquiries, I am of the opinion:

1. A person who has properly filed a claim supported by affidavit, for loss or injury to horses, sheep, cattle, swine, mules and goats, injured or killed, is not re-

quired under the provisions of Sections 5840, et seq., General Code, to appear in person and testify at a hearing upon such claim before the township trustees, and statements as to the nature of the loss or injury complained of may be supported by affidavits rather than the oral testimony of at least two freeholders who viewed the results of the killing or injury, which affidavits may be made before any officer authorized to administer oaths. However, the township trustees may require parol testimony of the claimants and other witnesses if they so desire.

2. A dog warden has no authority to administer oaths.

Respectfully,

GILBERT BETTMAN,
Attorney General.

2125.

PROBATE COURT—WHEN DATE OF PRESUMPTION OF DEATH ON
ACCOUNT OF SEVEN YEAR ABSENCE MUST BE FIXED.

SYLLABUS:

Where property rights will depend upon an accurate determination of the date when the presumption of death arose, it is the mandatory duty of the Probate Court, under Section 10636-4, General Code, to fix such date.

COLUMBUS, OHIO, July 22, 1930.

HON. JAY R. POLLOCK, *Prosecuting Attorney, Defiance, Ohio.*

DEAR SIR:—Acknowledgment is made of your communication which reads:

"I am asking you to interpret a part of Section 10636-4, which reads in part as follows: 'and the court may determine in such decree the date when such presumption arose.'

Question: Is it or is it not obligatory upon the court to fix the date when the presumption of death arose, and if so how should he be guided in fixing the date of such presumption?"

The section to which you refer in your letter is a part of a group of sections which relate to proceedings in the case of presumption of death on account of an absence of seven years or more. Said section, 10636-4, reads:

"If satisfied, upon such hearing, or upon the report of such master, that the legal presumption of death is made out, the court shall so decree; and the court may determine in such decree the date when such presumption arose; and shall forthwith cause to be published for three consecutive weeks, in the manner provided in Section 10636-1 of this act (G. C. §§10636-1 to 10636-14 a notice requiring the presumed decedent, if alive, to produce in court satisfactory evidence of his continuance in life; such evidence to be produced within twelve weeks from the date of the last publication of the notice in the case of an original application for the grant of letters, and within four weeks from such date in the case of an application for ancillary letters."

It will be observed that after such a proceeding is instituted, if the court is satisfied that the legal presumption of death is made out, he *shall* so decree. In other