

of such State's Attorney to commence action on the bond and reduce the same to judgment and cause said judgment to be filed in the office of the Clerk of the District Court of such county, and to proceed to collect the same; and such certificate of the Governor shall be prima facie evidence of the amount of costs therein contained.

Approved, March 9, 1915.

PURE FOOD AND BEVERAGES

CHAPTER 200.

[S. B. No. 208—Porterfield.]

PURE FOOD AND BEVERAGES.

AN ACT to Prohibit the Adulteration and Misbranding of Foods and Beverages and the Selling of Adulterated and Unwholesome Foods and Beverages; Providing for the Labeling of Foods and Beverages; and Prescribing Penalty for Failure to Comply with the Provisions of this Act.

Be it Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. ADULTERATING AND MISBRANDING FOODS AND BEVERAGES.] It shall be unlawful for any person, either himself or while acting as agent or servant of any other person or corporation, to manufacture for sale, offer, or have for sale, to solicit orders for, to store or to deliver within the state any article of food or beverage which is unwholesome, misbranded, adulterated or insufficiently labeled within the meaning of this Act. The having in possession of such adulterated, unwholesome, misbranded or insufficiently labeled article or articles shall be deemed prima facie evidence of the violation thereof. For the purpose of this Act all confections, condiments, extracts, vinegars, or other substances used in the preparation or compounding of foods or food products and beverages shall be deemed articles of food.

§ 2. The office of Food Commissioner and State Chemist is hereby created, said office to be located at the Agricultural College at Fargo.

§ 3. WHAT CONSTITUTES ADULTERATION. IMPROPER LABELING.] Any article of food or beverage shall be considered as misbranded, unwholesome, adulterated or insufficiently labeled, as the case may be, within the meaning of this Act:

FIRST. If it contains any form of added mineral color, aniline dye or other coal tar dye, or if colored (and not in violation of clause six of this Section) with a harmless vegetable dye or color and the name thereof is not given on the label; *provided*, the Food

Commissioner may exempt from the provisions of this clause such dyes or colors as he deems proper for use in food products or beverages.

SECOND. If it contains any added formaldehyde, benzoic acid, sulphurous acid, boric acid, nitrous acid, salicylic acid, hydrofluoric acid, pyrolignous acid, copper, saccharin, dulcin, glucin, beta-naphthol, abrasol, oxides of nitrogen, or any salt or antiseptic compound derived from these products, or any other added ingredient of a deleterious or harmful nature in any quantity whatsoever. *Provided*, nothing in this Act shall be deemed to prohibit the use of household spices and condiments or of the smoking of meats and fish with wood smoke applied directly as generated.

THIRD. If any substance or substances have been mixed with it so as to reduce or lower or injuriously affect its quality or strength of food value so that such articles of food or beverage when offered for sale shall deceive or tend to deceive the purchaser, or if any substance or substances other than dyes, flavoring or preservatives permitted by this Act have been added to it which deceive or tend to deceive the user or purchaser as to the true qualities of the article or beverage, or which cause the article or beverage to appear to be superior to or different from its real qualities.

FOURTH. If any inferior or cheaper substance or substances have been substituted wholly or in part for any of the natural or proper ingredients of such product, article, or beverage, so that the product, when sold, shall deceive or tend to deceive the purchaser.

FIFTH. If any necessary or valuable constituent of the article has been in whole or part abstracted.

SIXTH. If it be an imitation of or offered for sale under the specific name of another article.

SEVENTH. If it be labeled, branded, colored, coated, treated, or stained, whereby damage or inferiority is concealed, so as to deceive or mislead the purchaser, or if it be falsely labeled in any respect, or if it purport to be a foreign article when not so. It shall be unlawful to color or to treat any food product or beverage so as to make it an imitation of another article, or to make it appear of superior quality or of a higher grade than it really is so that it may deceive or mislead the purchaser.

EIGHTH. If it consists wholly or in part of a diseased, decomposed, filthy or putrid animal or vegetable substance, or if such substance or substances be used in the preparation thereof, or if it is the product of a diseased animal, or one that has died otherwise than by slaughter, or if it be produced, stored, transported or kept in a condition that would render the article diseased, contaminated, or unwholesome, or if it is the milk of an animal fed upon a substance unfit for the food of dairy animals.

NINTH. If every package, bottle or container does not bear the

true net weight, measure or numerical count, as hereinafter provided for, the name and address of the real manufacturer or jobbers, and the true grade or class of the product, or, in case of compounds, mixtures, or blends, it does not show, in accordance with regulations provided for by the Food Commissioner, the true composition of the said product when essential to public welfare and to prevent fraud and deception, the same to be expressed on the face of the principal label in clear and distinct English words in black type on a white background, said type to be in size uniform with that used to name the brand or producer, or in a form to be approved by the Food Commissioner.

TENTH. Every article of food or beverage as defined in the statutes of this state shall be sold by weight, measure or numerical count and as now generally recognized by trade custom, and shall be labeled in accordance with the provisions of the food and beverage laws of this state. Only those products shall be sold by numerical count which cannot well be sold by weight or measure. All weights shall be net, excluding the wrapper or container, and shall be stated in terms of pounds, ounces and grains avoirdupois weight, and all measure shall be in terms of gallons of two hundred and thirty-one (231) cubic inches or fractions thereof, as quarts, pints, and ounces. Reasonable variations shall be permitted and tolerations therefor shall be established and promulgated by the Food Commissioner.

ELEVENTH. If the article of food or beverage is inferior to the standard prescribed by the Food Commissioner for such article of food or beverage and is labeled or offered for sale as complying with such standard, or if it is not labeled or offered for sale under the designation prescribed by said Food Commissioner to indicate its grade of purity, quality and strength as compared with the standard for such product.

Provided, that an article of food or beverage shall not be deemed adulterated in the following cases:

FIRST. If it be a compound or mixture of recognized food products not included in definitions sixth, eighth and ninth of this Section, and if it be properly labeled or tagged to comply with the other provisions of Section 3.

SECOND. In the case of candies, confections and chocolates, if they contain no terra alba, barytes, talc, chrome yellow or other mineral substances or aniline dye, or other coal tar dyes or other poisonous colors, shellac, resinous bodies, paraffin, flavors, alcoholic liquor, or products detrimental to health, and are correctly labeled to comply with all the other provisions of this Act.

Provided, further, that upon the outside and the face of every box, can, or package containing baking powder or any mixture or compound intended for use as a baking powder or leavening agent for cooking, there shall be affixed a light colored label upon which shall be printed with black ink and in clear, legible type the name

and address of the manufacturer and, in a form to be prescribed by the Food Commissioner, a true statement showing the constituents and ingredients of the product.

Provided, further, that in the case of perishable goods put up in bulk, sodium benzoate or other less harmful preservatives may be used in proportion not to exceed one part in two thousand in such products and under such regulations as may be determined upon and proclaimed by the Food Commissioner at the Agricultural College at Fargo. This clause shall not be applicable to any case at any time where products can be commercially produced without the use of chemical preservatives. Where the use of preservatives is permitted the fact shall be clearly set forth on the face label in a form and manner to be prescribed by the Food Commissioner at the Agricultural College at Fargo.

§ 4. STANDARDS. HOW FIXED.] The Food Commissioner at the Agricultural College at Fargo is, with the approval of the board of trustees, hereby authorized and directed to prescribe standards of purity, quality and strength for all recognized food products in this state, not fixed by statute, and to fix approximate designations which shall disclose to the purchaser the relative purity, quality and strength of the product as compared with the standard for such product.

§ 5. FOOD COMMISSIONER, HOW APPOINTED.] It shall be the duty of the board of trustees, or governing board of the North Dakota Agricultural College and Experiment Station, to appoint a Food Commissioner and State Chemist as a member of the Agricultural College whose duty it shall be to enforce all the provisions of this Act, and the said board of trustees may employ, for the assistance of the Food Commissioner, such other chemists, scientific aids, experts, agents and employees as may be deemed necessary for the proper enforcement of this Act.

§ 6. FOOD COMMISSIONER AND STATE CHEMIST TO MAKE ANALYSES.] The Food Commissioner and State Chemist at the Agricultural College at Fargo shall make analyses of food products and beverages on sale in North Dakota suspected of being adulterated, misbranded or in violation of this Act, at such times and places and to such extent as he may determine and shall make such experiments and investigations as he deems necessary for gathering information for the better enforcement of the food laws; and the Sheriffs of the respective counties of the state are hereby appointed and constituted agents for the enforcement of this Act, and such Food Commissioner, agent or agents thereof and Sheriff shall have free access at all reasonable hours, for the purpose of examining into any place wherein it is suspected any article of food or beverage adulterated with any deleterious or foreign ingredient or ingredients exists, and such Commissioner, agents, or Sheriff, upon tendering the market price of said article may take from any person, firm or corporation samples of any articles suspected of

being adulterated as aforesaid. The provisions of this Act shall apply to all hotels, restaurants, boarding-houses, public institutions or places where foods, or meals are served for pay.

§ 7. PENALTY FOR SO DOING.] Any person violating any of the provisions of this Act shall be deemed guilty of a misdemeanor and shall for each offense be punished by a fine of not less than twenty-five dollars or more than one hundred dollars, and all necessary costs, including the expense of analysing such adulterated articles when said person has been found guilty under this Act.

§ 8. SEIZURES. HOW MADE.] Any article of food or beverage that is unwholesome, misbranded, adulterated or insufficiently labeled within the meaning of this Act, and which is in the possession of any person, firm or corporation in this state for the purpose of being offered for sale or to be sold or delivered in this state for food or as a beverage shall be liable to be proceeded against in the district court of the county where the same may be found and seized for confiscation by a process of libel for condemnation. The proceedings in such cases shall conform as near as may be to the proceedings followed in such cases under the Food and Drugs Act of the United States in the federal district courts, except that the proceedings shall be at the suit of and in the name of the State of North Dakota. And if the articles or beverages so seized in such proceeding shall be found by the court to be unwholesome within the meaning of this Act, then the court shall render judgment ordering the destruction thereof; but if the same are found to be adulterated, misbranded or insufficiently labeled but not unwholesome then the court shall render judgment for the sale thereof in the manner and upon the notice usual in sales of personal property upon execution and proceeds of such sale shall be paid into the treasury of the county where the seizure was made to the credit of the general fund.

Provided, however, that upon payment of the costs and charges of such proceedings and the execution and delivery of a good and sufficient bond to be approved by the court, to the effect that such articles or beverages as seized shall not be sold contrary to the provisions of this Act, the court may, if the food or beverage seized is not unwholesome, by order direct such articles or beverages to be surrendered to the owner thereof and the proceedings shall be dismissed.

§ 9. DUTY OF STATE'S ATTORNEY.] It shall be the duty of the Attorney General and the State's Attorney to prosecute all persons violating any of the provisions of this Act when the evidence thereof has been presented by the Food Commissioner and State Chemist as provided for in Sections 11 and 12 of this Act; and to institute and conduct proceedings for seizure and condemnation of foods and beverages as provided in this Act when it shall appear that such foods or beverages are kept, manufactured, or offered for sale in violation of this Act.

§ 10. CITIZENS MAY SEND SAMPLE OF FOOD OR BEVERAGE FOR ANALYSIS.] Any citizen of the state may, by prepaying the transportation charges, send any article of manufactured food or food products, or beverages, in the original package to said Food Commissioner to be analyzed, and such article, if not before analyzed, shall be analyzed and included in the next bulletin or report of the Food Commissioner as provided for in Section 13 of this Act.

§ 11. FACTS, HOW TRANSMITTED.] Whenever said Food Commissioner shall find by analysis that adulterated, misbranded or insufficiently labeled food products or beverages have been on sale in this state, he shall forthwith transmit the facts so found to the Attorney General and to the State's Attorney of the county in which said food product was found.

§ 12. CERTIFICATE OF EVIDENCE.] Every certificate duly signed and acknowledged by the State Chemist at the Agricultural College at Fargo relating to the analysis of any food, food product or beverage, shall be presumptive evidence of the facts herein stated.

§ 13. FOOD COMMISSIONER TO MAKE ANNUAL REPORT.] The said Food Commissioner shall make an annual report to the Governor upon adulterated food products, and said report shall be published by the state, and the said Food Commissioner is further authorized to publish or cause to be printed from time to time such bulletins as are found necessary for setting forth the results of analysis and investigations made under this Act, and in June and December of each year the said Food Commissioner shall furnish to the Auditor of each county in the state a certified list of all adulterated foods, food products and beverages as found by such analysis, showing the name and brand of the article, the manufacturer and the reason for classing the same as illegal. The County Auditor of each county shall cause the said list to be printed in the official papers of such county. Said publication shall be made in July and January of each year and shall continue for two successive issues, to be paid for by such county at the rate allowed by law for publishing the proceedings of the Board of County Commissioners.

§ 14. DUTY OF SHERIFF OR ANY COUNTY HEALTH OFFICER ON PRESENTATION OF COMPLAINT OF VIOLATION OF THIS ACT. COMPENSATION.] It is hereby made the duty of the Sheriff or any County Health Officer of any county of this state, on presentation to him of a verified complaint of the violation of any provision of this Act, to at once proceed to obtain by purchase a sample of the adulterated food, food products, or beverage complained of, and forward the same to the said Food Commissioner for analysis, marking the package or wrapper containing the same for identification with the name of the person from whom procured, the date on which the same was procured, and the substance therein contained. For his services hereunder the said Sheriff or County Health Officer shall

be allowed the same fees for travel as are now allowed by law to Sheriffs on service of criminal process, together with such compensation as may be by the County Commissioners of his county deemed reasonable, and all amounts expended by him in procuring and transmitting the said samples, which fees and amount expended shall be audited and allowed by the said Commissioners and paid by his said county as other bills of said Sheriff or County Health Officer.

§ 15. NO ACTION IN COURT.] No action shall be maintained in any court in this state on account of any sale or other contract made in violation of this Act.

§ 16. REPEAL.] All Acts and parts of Acts inconsistent with the provisions of this Act are hereby repealed.

§ 17. EMERGENCY.] Whereas, an emergency exists, in that the present food law is imperfect and affords inadequate protection against the sale of misbranded food products and beverages, therefore, this Act shall take effect and be in force from and after its passage and approval.

Approved, March 8, 1915.

RAPE

CHAPTER 201.

[S. B. No. 187—Overson.]

RAPE—DEFINING.

AN ACT to Amend and Re-enact Sections 9566 and 9567 of the Compiled Laws of North Dakota for 1913, and Defining the Crime of Rape and Fixing the Degrees Thereof and Punishment Therefor, and Repealing Sections 9568 and 9569.

Be it Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. AMENDMENT.] Section 9566 of the Compiled Laws of 1913 is hereby amended and re-enacted to read as follows:

§ 9566. RAPE IN THE FIRST AND SECOND DEGREES DEFINED. PUNISHMENT.] Rape is rape in the first degree:

1. In all cases in which the person committing the offense is twenty-four years of age, or over, at the time of the commission of the offense, and,

2. In all cases in which the offense is committed under the conditions described in sub-divisions 2, 3, 4, 5, 6 and 7 of Section 9563, or either of them, and in which the person committing the offense is twenty years of age, or over, at the time of the commission of the offense.