Drugs Act, on or about November 8, 1933, from the State of Mississippi into the State of New York, of a quantity of butter which was adulterated.

The article was alleged to be adulterated in that a product containing less than 80 percent by weight of milk fat had been substituted for butter, a product which must contain not less than 80 percent by weight of milk fat as required by the act of Congress of March 4, 1923, which the article purported to be.

On December 3, 1934, the defendant entered a plea of guilty and the court imposed a fine of $50.

M. L. WILSON, *Acting Secretary of Agriculture.*

23886. Adulteration of canned salmon. U. S. v. F. A. Gosse Co. and Fishermens' Packing Corporation. Plea of guilty by Fishermen's Packing Corporation. Fine, $75. Special plea in bar interposed by defendant F. A. Gosse Co. Plea in bar sustained and action dismissed as to F. A. Gosse Co. (F. & D. no. 32215. Sample no. 39608–A.)

This case was based on an interstate shipment of canned salmon, samples of which were found to be decomposed.

On September 4, 1934, the United States attorney for the Western District of Washington, acting upon a report by the Secretary of Agriculture, filed in the district court an information against the F. A. Gosse Co., a corporation, Seattle, Wash., and the Fishermen's Packing Corporation, Seattle, Wash., alleging shipment by said defendants in violation of the Food and Drugs Act, on or about July 3, 1933, from the State of Washington into the State of Massachusetts of a quantity of canned salmon that was adulterated. The article was labeled in part: (Can) "Red Breast Salmon * * * Distributed by F. A. Gosse Company, Seattle, Wash."

The article was alleged to be adulterated in that it consisted in part of a decomposed and putrid animal substance.

On October 10, 1934, the Fishermen's Packing Corporation entered a plea of guilty and was fined $75. A special plea in bar was interposed by the F. A. Gosse Co., setting up that it had a valid guaranty from the Fishermen's Packing Corporation and praying dismissal of the action in so far as it concerned said defendant. The Government having filed an answer to the plea in bar, the issues were tried to the court on November 13, 1934, which, after hearing the evidence and argument of counsel, handed down the following opinion dismissing the case as to the F. A. Gosse Co.: (Bowen *D. J.*)

"The court is ready to rule on this now. If I were sitting on a jury with the evidence that is before this court I would not convict this defendant by reason of the peculiar facts in this particular case. The case, in my mind, whatever the ruling on the plea in bar might be, could not have any effect as a precedent anyway, by reason of the peculiar circumstances in this case.

"I think the two parties in this action were both jointly acting as principals in this matter. In the first place, Gosse & Company went to the manufacturer or packer of these goods and told him that he had an order and wanted to know if he desired to fill it, and, according to the evidence in the file, asked to see some samples of stock that he wished delivered, and he was shown some samples of stock that met the grade that this particular sales agent had to have to meet the requirements of his trade; and after that was done, arrangements were made to use the labels of the distributor, F. A. Gosse Company, on this article, and they were used and put on the goods in that way.

"One of them was as much a principal as the other, and this pack may be said to have been furnished to the trade for the account of this broker or sales agent, F. A. Gosse Company.

"There is some doubt in my mind as to whether there were all the elements of a sale—quite a lot of doubt—as regards the transaction between the Fishermen's Packing Corporation and F. A. Gosse Company, but it was more nearly in the nature of a sales transaction than anything I can find it to be, and I believe that there is a positive and sufficient showing of good faith on the part of F. A. Gosse Company in this particular transaction, and that no jury would convict the corporation on the evidence; and I hold, as a matter of law on this plea in bar that the plea must be sustained, and the action will have to be dismissed, so far as this defendant F. A. Gosse Company is concerned, and the reason I believe the court arrived at this conclusion is because of this relationship of distributor for the packer which arose in this particular transaction."

M. L. WILSON, *Acting Secretary of Agriculture.*