

"On rebuttal a witness for appellee testified that in his opinion, based on samples analyzed in 1950 from mushroom salt identified as lots 102 and 103, and an analysis of samples from the 1955 shipments here in issue, the mushroom salt analyzed in 1955 could not be from the same stock as the mushroom salt analyzed in 1950. He expressed this opinion because the two samples varied so in contents.⁸ Appellant argues that admission of this testimony was error as it was opinion testimony relating to an ultimate fact properly to be determined by the jury. We disagree. The testimony of the witness did not relate to the ultimate issue involved, which was whether the food introduced in interstate commerce in 1955 was adulterated, but related to whether the 1955 sample came from the same stock as the 1950 sample. We also disagree for the reason that the witness was an expert with specialized skill in chemistry. He examined mushroom salt samples in 1950 and other samples in 1955. The competency and qualifications of a witness offered as an expert, and the extent to which his opinion may be required, are matters largely within the judicial discretion of the trial judge. *Reuter v. Eastern Air Lines, Inc.*, 1955, 5 Cir., 226 F. 2d 443, 445; *Hatch v. United States*, 1929, 8 Cir., 34 F. 2d 436, 437, cert. den., 1930, 281 U. S. 731; *United States v. Kolodny*, 1945, 2 Cir., 149 F. 2d 210; *Landfield et al. v. United States*, 1925, 9 Cir., 9 F. 2d 315, 316. While the witness did state facts about the contents of the 1950 and 1955 samples, we do not believe the trial court abused its discretion in permitting the witness to express his opinion based on many years of scientific analysis of food.

"Appellant also contends that the trial court erred in refusing to sustain appellant's challenge to the legal sufficiency of the evidence and in refusing to direct a verdict of not guilty. We have examined the entire record on appeal and are convinced that there was sufficient evidence to carry the case to the jury and that the evidence was substantial and supports the verdict.

"Judgment Affirmed."

A petition for rehearing was filed by the defendant in the court of appeals on 3-14-57, and denied by that court on 3-19-57.

Defendant then filed a petition for a writ of certiorari, which petition was denied by the United States Supreme Court on 5-27-57.

24345. Mustard bran. (F. D. C. No. 40722. S. No. 58-239 M.)

QUANTITY: 15 100-lb. bags at Oklahoma City, Okla., in possession of Bailey Mfg. Co., Inc.

SHIPPED: 11-20-56, from Houston, Tex.

LIBELED: 8-30-57, W. Dist. Okla.

CHARGE: 402 (a) (3)—contained rodent urine; and 402 (a) (4)—held under insanitary conditions.

DISPOSITION: 10-3-57. Default—destruction.

24346. Ginger root. (F. D. C. No. 40652. S. No. 69-940 M.)

QUANTITY: 550 40-lb. bags at Philadelphia, Pa.

SHIPPED: 10-11-56 and 10-15-56, from Bound Brook, N. J.

LIBELED: 9-19-57, E. Dist. Pa.

CHARGE: 402 (a) (3)—contained insects while held for sale.

DISPOSITION: 10-17-57. Default—destruction.

⁸ The 1950 and 1955 samples showed the following:

1950 Samples	1955 Samples
(1) No appreciable filth	(1) Substantial filth
(2) Appreciable amount of cornstarch	(2) A few grains of starch—not enough to permit identification as cornstarch
(3) Net weight per can—.90 oz.	(3) Net weight per can—from 1.63 oz. to 1.82 oz.
(4) Headspace per can—2¼ in. to 3½ in.	(4) Headspace per can—1½ in. to 1½ in.

The appreciable filth included whole larva and large beetle fragments, smaller fragments, and rat or mouse hairs.