language to include representations on the labeling of one device with respect to another device constitutes a reasonable construction of the statute.[17]

III. OTHER CONTENTIONS

"A motion for an instructed verdict filed by the appellant at the close of the Government's case was denied by the district court. No similar motion was made at the close of all the evidence. Appellant now seeks to assert that the denial of her motion for an instructed verdict constituted error. However, appellant by offering evidence after her motion was denied and not subsequently renewing that motion, waived the motion so that it need not be considered on appeal. Mosca v. United States, 174 F. 2d 448 (9th Cir. 1949) and cases cited at 451; see Gaunt v. United States, 184 F. 2d 284, 290 (1st Cir. 1950), cert. denied, 340 U. S. 917.

"On October 22, 1951, 28 days after the verdict had been returned by the jury, appellant moved for permission to file motions for a new trial and in arrest of judgment. She contends that denial of these motions by the district court constituted error because she had substituted counsel and he was unable to familiarize himself with the trial record at an earlier date. A motion for a new trial based on any grounds other than newly discovered evidence, as well as a motion in arrest of judgment, must be filed within five days after verdict or within such further time as the court may fix during that five day period. Fed. R. Crim. P. 33 and 34. Grounds for extending this five day period are expressly limited. Fed. R. Crim. P. 45 (b). The district court therefore lacked jurisdiction to grant the appellant's motions. Marion v. United States, 171 F. 2d 185 (9th Cir. 1948), cert. denied, 337 U. S. 944; see United States v. Smith, 331 U. S. 469, 473–475 (1947). The dictum in Abbot v. Brown, 241 U. S. 606, 609 (1916), relied upon by the appellant, is not in point since it involves a situation where a motion for new trial was granted in violation of a mere regulation of practice followed by a particular district court prior to the adoption of the Federal Rules of Criminal Procedure, 18 U. S. C. A.

"A number of other contentions are made by the appellant in her brief. However, we do not find them sufficiently substantial to warrant discussion.

"Judgment affirmed."

A petition for a writ of certiorari subsequently was filed with the United States Supreme Court, and on January 19, 1953, this petition was denied.

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[17] 21 C. F. R. (1949 Ed.) Sec. 1.101 (p. 12): "Drugs and devices; labeling misbranding—

(a) Among representations in the labeling of a drug or device which render such drug or device misbranded is a false or misleading representation with respect to another drug or device or a food or cosmetic." [Our emphasis.]

4030. Misbranding of Le Joi device. U. S. v. 160 Devices, etc. (F. D. C. No. 33126. Sample No. 17220–L.)

LIBEL FILED: May 15, 1952, Southern District of California.

ALLEGED SHIPMENT: On or about April 15, 1952, by the Propenex Co., from Minneapolis, Minn.

PRODUCT: 160 *Le Joi devices* at Hollywood, Calif., each of which was packed in a plastic case containing a leaflet entitled "Instructions Le Joi." Additional leaflets entitled "New Horizons," which were used by the consignee in promoting the sale of the device, were caused to be printed by the consignee in Los Angeles, Calif., from copies of a similar leaflet originally obtained from the Propenex Co.

Examination showed that the device consisted of a thin rubber tube with a locking attachment at each end.

NATURE OF CHARGE: The libel alleged that the device was misbranded while held for sale after shipment in interstate commerce within the meaning of

Section 502 (a), in that certain statements in the leaflet entitled "New Horizons" accompanying the device were false and misleading. The statements represented and suggested that use of the device was effective in improving the sexual capacities of older men by enlarging and reinforcing the sexual organ. The device was not effective for such purpose, and it would not fulfill the promises of benefit made for it.

The libel alleged also that if the leaflet entitled "New Horizons" was not part of the labeling of the device, then the device was misbranded when introduced into and while in interstate commerce within the meaning of Section 502 (f) (1), in that its labeling failed to state the purposes and conditions for which the device was intended, namely, to improve the sexual capacities of older men by enlarging and reinforcing the sexual organ.

DISPOSITION: June 13, 1952. Default decree of condemnation. The court ordered that the product be delivered to the Food and Drug Administration.

DRUGS ACTIONABLE BECAUSE OF DEVIATION FROM OFFICIAL OR OWN STANDARDS

4031. Adulteration and misbranding of Vio-Ferronate tablets. U. S. v. Rowell Laboratories, Inc. Plea of nolo contendere. Fine, $350. (F. D. C. No. 34351. Sample No. 48581–L.)

INFORMATION FILED: March 19, 1953, District of Minnesota, against Rowell Laboratories, Inc., Baudette, Minn.

ALLEGED SHIPMENT: On or about February 7, 1952, from the State of Minnesota into the State of North Dakota.

LABEL, IN PART: (Bottle) "Coated Tablets Vio-Ferronate Ferrous Gluconate with Liver and Vitamin B–12 * * * Rowell Laboratories Division of Burbot Liver Products Co. Baudette, Minnesota."

NATURE OF CHARGE: Adulteration, Section 501 (c), the strength of the article differed from that which it purported and was represented to possess since each tablet of the article purported and was represented to contain 3 milligrams of thiamine hydrochloride, 1 milligram of pyridoxine, and 30 milligrams of vitamin C, whereas each tablet contained less than 3 milligrams of thiamine hydrochloride, less than 1 milligram of pyridoxine, and less than 30 milligrams of vitamin C.

Misbranding, Section 502 (a), the label statements displayed upon the bottles were false and misleading in that the statements represented and suggested that each tablet of the article contained 3 milligrams of thiamine hydrochloride, 1 milligram of pyridoxine, and 30 milligrams of vitamin C (ascorbic acid), whereas each tablet contained less than 3 milligrams of thiamine hydrochloride, less than 1 milligram of pyridoxine, and less than 30 milligrams of vitamin C (ascorbic acid).

DISPOSITION: May 20, 1953. The defendant having entered a plea of nolo contendere, the court fined it $350.

4032. Adulteration and misbranding of gum karaya. U. S. v. 75 Drums * * *. (F. D. C. No. 33513. Sample No. 54058–L.)

LIBEL FILED: September 3, 1952, Northern District of Illinois.

ALLEGED SHIPMENT: On or about July 28, 1952, by Dodwell & Co., Ltd., from Newark, N. J.

PRODUCT: 75 300-pound drums of *gum karaya* at Franklin Park, Ill.