

[G.R. No. 2198. April 19, 1905]

THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. SILVERIO NUÑEZ ET AL., DEFENDANTS AND APPELLANTS.

D E C I S I O N

WILLARD, J.:

A Constabulary corporal stationed in Ambos Camarines, pretending to be an insurgent, went into a small *visita* in that province, brought together the five defendants, and told them that the general of the insurgent forces was about to make an attack upon Nueva Caceres, and had given instructions that all of his lieutenants should exhibit their commissions and be prepared to take part in the expedition. Thereupon each one of the five defendants produced what purported to be an appointment of himself by Jose Roldan, the above-mentioned general, as a lieutenant of his band. The Constabulary corporal immediately arrested the defendants and a complaint was filed against them charging them with the crime of brigandage.

There is no evidence to show that they had committed this crime, except what has been before stated. Moreover, it appeared that they had never united with any party of brigands, and never had been in any way connected with such parties, unless the physical possession of these appointments proved such a relation. Each one of the defendants testified as to the circumstance under which he received the commission, and it appeared that they were separately approached at different times by armed men, while working in the field, and were virtually compelled to accept the commissions.

In the case of the United States vs. Antonio de los Reyes^[1] (2 Off. Gaz., 364) it was held by this court that the mere possession of an appointment as an officer in the insurgent army did not constitute an "overt act" within the meaning of the laws relating to treason. The same rule should be applied to this case, and we hold that the mere possession of these appointments, without any evidence that the persons holding them had ever acted under

them, is not sufficient to convict them of the crime of brigandage. The judgment is reversed and the defendants are acquitted, with the costs *de officio*.

Arellano, C. J., Torres, Mapa, Johnson, and Carson, JJ., concur.

^[1] 3 Phil. Rep., 349.
