

6 Phil. 316

[ G.R. No. 2553. July 13, 1906 ]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. VALENTIN MARQUEZ ET AL., DEFENDANTS AND APPELLANTS.**

**D E C I S I O N**

**WILLARD, J.:**

The complaining witness, Lamberto Quelato, testified that the defendants hung him up by the feet to a beam in the warehouse of the defendant Marquez, and that he remained suspended for two hours. A plow of Marquez had disappeared, and the complaining witness was charged with the theft of it. The result of that act was an injury to the ankles of the complaining witness which was cured in fifteen days.

The testimony of the complaining witness is corroborated by the testimony of the defendants before the justice of the peace in the preliminary investigation. This testimony was reduced to writing and signed by the defendants, and it was introduced in evidence at the trial in the Court of First Instance, although in that court the defend denied that they made these declarations. We think, however, that credit can not be given to such denials and that the evidence is sufficient to sustain the conviction.

The judge below, for a violation of article 418 of the Penal Code, sentenced the defendants to two months and one day imprisonment (*arresto mayor*) and a fine of 325 pesetas. When the penalty of *arresto mayor* is inflicted under this article it is improper to impose a fine also. (United States vs. Flemister,<sup>[1]</sup> 3 Off. Gaz., 386.)

The judgment below is modified by eliminating the provision in regard to the fine. In all other respects it is affirmed with the costs of this instance against the appellants. After the expiration of ten days let final judgment be entered in accordance herewith and ten days thereafter let the cause be remanded to the lower court for proper procedure. So ordered.

*Arellano, C. J., Torres, Mapa, Carson, and Tracey, JJ., concur.*

*Johnson, J., did not sit in this case.*

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<sup>[1]</sup> 4 Phil. Rep., 300.

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