

6 Phil. 367

[ G.R. No. 2549. August 15, 1906 ]

**THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. EMETERIO DACANAY,  
DEFENDANT AND APPELLANT.**

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

**WILLARD, J.:**

The record in this case was received in this court from the Court of First Instance on the 30th of March, 1905. It was ordered transferred to the Attorney-General's office on April 5, 1905, in order that the testimony might be translated into Spanish. When it was received here, and when it was sent to the Attorney-General's office, it contained a certificate of the stenographer to the effect that the testimony therein contained was all of the evidence taken by him in the case. That testimony was limited to the evidence of the defendant's witnesses and one witness of the Government in rebuttal. When it was returned from the Attorney-General's office, the translation contained a statement to the effect that the fiscal in the court below presented as proof the signed statements made by the witnesses who were examined before the justice of the peace in the preliminary investigation. The record when transferred to the Attorney-General's office, contained no such statement, and it must therefore be disregarded.

We think it sufficiently appears from the original record sent here from the court below that six witnesses were presented by the Government at the trial of the case in the Court of First Instance. The evidence of these witnesses was not preserved as required by section 32 of General Orders, No. 58. The five pages of manuscript apparently purporting to contain an abstract of the testimony of these witnesses, but not signed by anyone nor certified to be correct by anyone, was not in compliance with the provisions of said section.

We do not have before us, therefore, the evidence which was presented in the trial court. In accordance with the decisions in the cases of U. S. vs. Pablo Tan<sup>[1]</sup> (4 Off. Gaz., 177), U. S. vs. Hollis<sup>[2]</sup> (4 Off. Gaz., 152), and U. S vs. Quilatan.<sup>[3]</sup> (3 Off. Gaz., 414) the judgment must

be reversed and a new trial ordered.

The judgment is accordingly reversed and the case remanded to the court below for a new trial. At the new trial it will not be necessary to retake the evidence already taken, but either party may introduce such additional evidence as he sees fit. At the expiration of ten days judgment should be entered in accordance with this decision and the case remanded to the court below for execution of said judgment. So ordered.

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

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<sup>[1]</sup> 4 Phil. Rep., 625.

<sup>[2]</sup> 5 Phil. Rep., 626.

<sup>[3]</sup> 4 Phil. Rep., 481.

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