

[G.R. No. 2977. October 09, 1906]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. JERRY CLAUCK,
DEFENDANT AND APPELLANT.**

D E C I S I O N

TORRES, J.:

Between 10 and 11, o'clock on the night of the 23d of January, 1903, while one Charles Barnes was knocking at the door of the frame house with a stone foundation where Boroteo Alagaban lived, in the barrio of San Roque of the town of Legaspi, Province of Albay, and the door not being opened, the defendant, Jerry Clauck, approached Barnes and said: "I will show you how to wake up these s—s of b—s," and thereupon kicked the door open, breaking the wooden bolt which held it. Barnes and the defendant, Clauck, then entered the ground floor of the house where there was a store. The people of the house, who were sleeping on the upper floor, were awakened. The wife of the owner, Francisca Acuya, opened the window and looked out, and one of those who entered asked her whether her husband, Doroteo Alagaban, was at home, and requested her to come downstairs, which Francisca refused to do. Barnes and Clauck then went away.

The above established facts, fully proven in this case, constitute the crime of forcible entry of a dwelling, the door of the house having been broken open. This crime is defined and punished in paragraph 2, article 491 of the Penal Code. The defendant, without the consent of the owner of the house, forcibly entered the ground floor of the same, accompanied by another, and in order to accomplish this kicked the door open, breaking the wooden bolt which held it, the house then being occupied by Doroteo Alagaban and Francisca Acuya.

The forcible entry by .the defendant of the house in question, and at a late hour of the night, by breaking open the front door while the occupants thereof were sound asleep, shows that the house was entered against the will of the latter,, and it is absurd to presume that the occupants consented to such trespass.

The crime of forcible entry of a dwelling as punished in paragraph 1 of article 491 of the Penal Code is certainly quite different from the crime defined and punished in paragraph 2 of the same article.

The simple crime of forcible entry of a dwelling makes it essential that the entry be effected against" the will of the occupant of the house, so that if there were no previous express prohibition against, or the owner was ignorant of, such entry at the time of its occurrence, there can be no conviction for such crime, it being absolutely necessary in order to convict that it be shown that the occupants of the house expressly objected to, refused, or prohibited such entry.

In the crime of forcibly entry of a dwelling committed with violence, force, or intimidation it is to be presumed that such entry was effected against the will of the occupants. It is logical to presume that the occupants of a house would not consent to anyone entering the same forcibly or with violence or intimidation, and it is absurd to claim that such entry would not have been effected against the will of the occupants.

There is no doubt that when the defendant entered the house in question by breaking the wooden bolt which held the door he did so against the will of the occupants, who, in the absence of any evidence to the contrary, can not be presumed to have consented to the accused entering their house in the forcible manner above stated.

The defendant pleaded "not guilty," but offered no evidence to exonerate himself from the criminal liability incurred by him. He has therefore incurred the penalty prescribed in paragraph 2 of article 491 of the Penal Code, and there being no aggravating or extenuating circumstances to be considered in this case, the penalty should be imposed in its medium degree.

For the reasons hereinbefore set out we are of the opinion that the judgment of the court below should be, and it is hereby, affirmed, and the defendant Jerry Clauck is hereby sentenced to three years six months and twenty-one days' imprisonment (*prision correccional*) and to pay a fine of 325 pesetas at the rate provided in the decision of the court below, and in case of insolvency to suffer the corresponding subsidiary imprisonment, and to pay the costs of both instances. After the expiration of ten days from the date of final judgment let the case be remanded to the Court of First Instance for execution. So ordered.

Arellano, C. J., Mapa, Johnson, Willard, and Tracey, JJ., concur.

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