THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. MARIANO PESCADOR, DEFENDANT AND APPELLANT.

G.R. No. 4346. February 29, 1908

Ponente: WILLARD, J.

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WILLARD, J.:

That a fight took place between Mariano Pescador, the defendant, and Brigido Ribad, a municipal policeman, is undisputed. The only question is, Who commenced the fight?

After an examination of the evidence, we agree with the Attorney-General that it is not proven beyond a reasonable doubt that the defendant was the aggressor. If the policeman attacked him, he was justified in defending himself, and such defense can not constitute the crime of atentado contra los agentes de la autoridad, defined in article 249 of the Penal Code.

The judgment of the court below is reversed and the defendant is acquitted, with the costs of both instances de oficio So ordered.

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

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