

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS ALEJANDRO DIONISIO AND NICOLAS DEL ROSARIO, DEFENDANTS AND APPELLANTS.

G.R. No. 4655. December 19, 1908

Ponente: CARSON, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-4655/>

CARSON, J.:

The accused are charged with the crime of *allanamiento de morada* (forcible entry into the dwelling house of another). The evidence discloses that at the hour of 9 o'clock on the morning of the 6th day of January, 1908, the defendants entered a house situated on Calle Santo Cristo, in the district of Binondo, in the city of Manila, by the principal door, which they found half open; that the lower part of the house was at that time occupied by a Chinaman, named Lim Chio Liong, and the upper portion of the house by a woman named Narcisa de los Santos; that when the defendants pushed open the door and passed into the house, no opposition of any kind whatever was made to their doing so; that they passed on up the stairway to the room where Narcisa de los Santos was sitting; that as they entered the house and passed up the stairs, they were seen by Lim Chio Liong who offered no opposition to their entry into the house or to their going up the stairs, he evidently thinking that they were visitors of the occupant of the upper portion of the house; that when they reached the upper portion of the house, they were met by the occupant, Narcisa de los Santos, of whom they made some inquiries as to the whereabouts of another woman, an alleged cousin; that they entered into conversation with Narcisa de los Santos who invited them to sit down, and that they continued in her rooms for about two hours; that they made inquiries of her as to whether or not the Chinamen who lived in the house smoked opium; that the woman told them that she did not know, but that, if they desired so to do, they could wait until the Chinamen came home and talk to them; that the defendants told her that they were secret service men, and desired to make search for opium; that she offered no opposition and that they then entered the other rooms on the upper floor which they searched, and in which they found some opium and a pipe; that they questioned the woman as to her name and the name of the Chinaman who lived there, making notes of the information furnished, and threatening to take everybody in the house to jail; that finally Lim Chio Liong, hearing the noise, went upstairs, and that when he arrived there, the defendants demanded of him the sum of P50 under threat that if he did not pay that amount, he would be taken to jail, and fined P500 in court; that the Chinamen told them that he had no money, and tried to escape downstairs; that they then seized him, and that in the struggle which ensued, his clothes were torn and his watch was broken; that as a result of the disturbance caused by the dispute between the Chinaman and the defendants, the police entered the house and arrested both the defendants and the Chinaman; that the defendants, while it is true that they had sought employment as secret service agents, had failed in their efforts to secure such employment, and were acting wholly on their own initiative.

Upon these facts the trial court convicted the defendants of the crime with which they were charged and sentenced both and each of them to four years, nine months and ten days of *presidio correccional* (imprisonment.)

While the facts proven would appear to be sufficient to sustain a conviction upon a charge of the commission of

an assault, and perhaps of attempted estafa or robbery, we do not think that they warrant a conviction of the crime of forcible entry into the dwelling of another. In the case of *The United States vs. Pedro Dulfo*[1] No. 4133, decided August 10, 1908, we held that "it is an essential element of the offense under consideration, as denned and penalized in the Penal Code, that the entry must have been made without the consent or, more accurately speaking, against the will of the occupant of the dwelling house, and it is, therefore, the duty of the prosecution to affirmatively establish this fact, before a conviction can be had upon a complaint charging its commission;" and in that decision we cited the decision of the supreme court of Spain of the 28th of September, 1876, holding that "the preposition contra (against) which is used in the article of the Penal Code denning the crime of *allanamiento de morada* signifies *negativa, oposicion manifiesta & que se haga alguna cosa*" (negation, manifest opposition to the doing of something.)

In the case at bar, there is no proof whatever of opposition on the part of the owners of the house to the entry of the defendants. On the contrary, the action of the occupant of the lower part of the house in permitting the defendants to enter the house and go upstairs without objection, was at least an implied permission to enter if there was no objection on the part of the woman occupying the upper floor of the house; and her conduct in entering into amicable conversation with the defendants when they came upstairs, and later inviting them to sit down and await the return of other persons living there, leaves no room for doubt that the entry of the defendants was not against her will and that she interposed no objection or opposition to their doing so.

The trial court was of opinion that it is but reasonable to infer that had the occupant of the lower part of the house known the intention of the defendants when he saw them enter the door and go upstairs, he would have protested vigorously, and that "in the light of what followed it would-seem-that their entrance 'is to be presumed' to have been as much 'against the will of the occupants' as *United States vs. Dionisio and Del Rosario*. that in the case of *The United States vs. Clauck*" (6 Phil. Rep., 486); in support of his conclusion the trial judge cites the latter case and the case of *The United States vs. Arceo* (3 Phil. Rep., 381).

The facts, however, in the case at bar are in no wise similar to those in the cases cited. In the case of *The United States vs. Clauck*, the defendant after vainly endeavoring to secure an entrance through the locked door of a dwelling by knocking and demanding admission, kicked the door down and thus forced his way into the house. Manifestly such an entrance was against the will of the occupants, and the defendant could not pretend to have had either their express or implied permission to do what he did. So in the case of *The United States vs. Arceo*, the evidence showed that the accused, armed with guns and bolos, entered the house of the complaining witness, "without first obtaining the permission of any person," and "immediately after" entering the house, wounded the owner with a bolo, and then stole some money and carried away a woman who was living there. There could be no question of express or implied consent to the entry of the accused in that case, for where one enters a dwelling for the purpose of committing a robbery and meets with immediate resistance resulting in the physical injury of the occupant no one can doubt that such entry was against the will of the occupant.

The trial court appears to have been of opinion that there is some conflict in the doctrine laid down in these cases and that announced in the case of *The United States vs. Agas* (4 Phil. Rep., 129), but we think that an examination of the facts set out in the decisions in those various cases and of the judgments based thereon, together with the other cases involving the crime of forcible entry decided by this court, will disclose that we have uniformly held that it is an essential requisite in the commission of this crime that the entry may be against the will of the occupant, and that this fact must be proven by competent testimony in order to determine the existence of the crime. (*U. S. vs. Agas*, supra.) But that it is not necessary to prove that there was an express or a formal prohibition of the entry of the accused on the part of the occupant, in order to establish the fact that an entry was made against his will; so that proof that the entry was made with violence and without his consent is sufficient to

establish that fact. (U. S. vs. Clauck, supra.) And that proof that one who entered a house without the consent of the occupant, met with resistance immediately after entering, and maintained or attempted to maintain his position with violence is sufficient to establish the fact that the entry was against the will of the occupant, notwithstanding the fact that he may have succeeded in crossing the threshold without violence; the entry to the dwelling in such cases being incomplete until one has gained a position inside. (U. S. vs. Arceo, 3 Phil. Rep., 381.)

As was said in the case of *The United States vs. Dulfo*, supra, "the doctrine laid down in these cases in no wise relieves the prosecution of the burden of affirmatively establishing that entry was made against the prohibition of the occupant either express or implied," and certainly they do not support a holding that where one tacitly or expressly gives his consent to the entry of another, such entry will nevertheless be presumed to have been against his will, if it appears that it is improbable that he would have given his consent had he known certain facts which he discovered later, or had he been able to anticipate certain incidents which occurred long after entry had been gained.

In the case under consideration, the accused gained access to the house with the tacit if not express consent of the occupants, and it was not until they had been in the house for more than two hours, and then only after they attempted to impersonate police officers, that any objection whatever was made to their presence.

A decision of the supreme court of Spain, dated February 12, 1895, is also cited in support of the judgment of conviction of the trial court in this case, but we think that the doctrine laid down in that decision does not go beyond that laid down in the above cited decisions of this court, and in no wise sustains the judgment below. It appears that the accused and his companions in that case seized the opportunity afforded by the unlocking and opening of the door of the house of the complaining witness, on the departure of some visitors, to rush tumultuously and uninvited into the house, with their heads masked or disguised with shawls, and that on entering they put out the light and smashed the lamp and other furniture in the house, immediately thereafter making their escape, while the mistress of the house and her daughter ran to the street crying and calling for help. These facts were held to conclusively establish the fact that the entry was made against the will of the occupant, the court at the same time reiterating its holding in former decisions that this fact is an essential element of the crime, but adding that to prove this fact it is not necessary to prove a prior formal prohibition on the part of the occupant, it being sufficient if his opposition can be deduced from the facts proven.

We do not question the doctrine laid down in this decision, and we agree that to prove that an entry is against the will of the occupant it is not necessary that the entry should be preceded by an express prohibition, provided the opposition of the occupant is clearly established by the circumstances under which the entry was made; but we hold that the facts or circumstances from which in a given case the opposition of the occupant may be inferred must have been in existence prior to or at the time of the entry, and in no event could facts arising after an entry has been secured with the express or tacit assent of the occupant change the character of the entry from one with the assent of the occupant to one contrary thereto. It would be an intolerable burden upon the personal business and social relations of the members of a civilized community to permit one who has expressly or tacitly consented to the entry of another in his house to convert such entry into a criminal action at his whim, or even when it appears in the light of later events that the occupant would have been justified in originally withholding his assent, and denying access to his home to one who has proved unworthy.

An excellent illustration of the rule that the improper conduct of one person in the house of another even when it amounts to a criminal offense against the occupant or where it is such that it may safely be inferred that admission to the house would have been denied had such conduct been anticipated will not justify a conviction for the crime of *allanamiento de morada* unless it affirmatively appears that the original entry was made against the will of the occupant, is furnished in the decision of the supreme court of Spain of May 3, 1892. The doctrine is stated in that

decision so succinctly that we quote verbatim the portion of the decision cited by Viada (vol. 6, p. 364), together with Viada's statement of the case:

"Question IV. Where the record only shows that while a girl was sitting in the yard of her own house, in company with other persons, the defendant, who desired to speak to her, entering the store, which communicated with the said yard through a doorway, and finding the door bolted, forced the same open, and stepping' into the yard, told the girl what he had to say; and that, he having addressed her in a rude manner, one of those present called a neighbor, thereafter reporting the matter to the mayor of the town, and that nothing further occurred, can these acts be held to constitute the crime of forcible entry of a dwelling, as defined in paragraph 2 of article 504 of the code? The audiencm of Soria so held, and its judgment was reversed on appeal by the supreme court, on the ground that the said article had been improperly applied: 'Considering that the crime of forcible entry of a dwelling, whether committed with or without violence, is characterized, in the language of article 504 of the Penal Code, by the entry of a stranger into another's house against the will of the occupant, which latter fact need not be expressly and directly proven, it being sufficient if same can be logically and reasonably inferred from previous occurrences or from the nature of the act itself; and considering that in the case at bar it does not appear that Eliseo Lopez had been expressly enjoined from entering the dwelling of his fiancée, Maria Blanco, nor that there is anything from which such prohibition can be inferred, nor that the acts themselves disclose such prohibition, since the object of the appellant was only to speak to Maria, and there being no ground for the belief that either she or her father objected to such interview; considering, on this assumption, that the mere fact that Eliseo Lopez forced open the door leading into the yard where Maria Blanco was at the time in question did not of itself constitute the crime of forcible entry of a dwelling, though perhaps it amounted independently to an unlawful act; and considering therefore that the trial court, in qualifying and punishing as a crime an act which did not in fact constitute such crime, committed the errors of law assigned on this appeal, etc. etc' (Judgment of the 3d of May, 1892, published in the Gazette of the 30th of September, pages 95 and 96.)"

The judgment and sentence of the trial court are reversed with the costs of both instances de oficio. So ordered.

Arellano, C. J., Torres,, Mapa, Willard, and Tracey, JJ.,concur.
Johnson, J., did not sit in this case.

[1] 11 Phil. Rep., 75.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.