

3 Phil. 611

[G.R. No. 1645. April 04, 1904]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. HUGO REYES ET AL.,
DEFENDANTS AND APPELLANTS.**

D E C I S I O N

COOPER, J.:

The defendants, Hugo Reyes, Gonzales Bias, Fausto Satorre, Teodorico Bautista, Pascual Galan, and Crispulo Mendoza, were charged with the offense of playing a prohibited game, to wit, the game of monte. The defendant Hugo Reyes was convicted by the Court of First Instance and sentenced to imprisonment for one month and one day and to pay a fine of 625 pesetas. The other defendants were acquitted.

It is neither charged in the complaint nor is it shown by the evidence that the house in which the defendants were found playing monte was a house used for the purpose of gambling. The supreme court of Spain, by a decision on the 28th day of December, 1887, held in construing this article of the Penal Code that the playing must occur in a house used for the purpose of gambling, whether it be public or private; but if it happened that the playing had taken place by mere accident in such place, the persons engaged in playing the prohibited game are not guilty of the offense defined and made punishable in article 343.

This court has concurred in the construction given to article 343 by the supreme court of Spain in a decision which has not yet been published, and, on the authority of these cases, the judgment of the Court of First Instance must be reversed and the defendant acquitted, with the costs de oficio, which is accordingly done.

Arellano, C. J., Torres, Willard, Mapa, McDonough, and Johnson, JJ., concur.

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