

4 Phil. 541

[G.R. No. 1948. May 05, 1905]

**THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. CLEMENTE DIRAIN,
DEFENDANT AND APPELLANT.**

D E C I S I O N

WILLARD, J.:

The defendant was the chief of police of the town of Ternate in the Province of Cavite, and the court below found as facts, that because the president of the town had not paid the salaries of the policemen, the defendant, accompanied by four of them armed with guns, went to the house of the president, compelled him by force to leave it and go to the presidencia and there kept him confined until he had raised enough money to pay what was due them as salaries.

That these facts, if true, constitute the commission of the crime charged in the complaint, there is no doubt. The defendant, however, claims that he did not compel the president by force to accompany them but went to his house for the purpose of asking for the money for the payment of their salaries; that the president directed them to go to the presidencia whither he would follow them in a few moments and there arrange the matter, and that this was done, no force at all being used.

We think the witnesses for the Government are entitled to more credit than those for the defendant. It is admitted that the defendant went to the house of the president in the middle of the afternoon, armed; that the latter at once went to the presidencia and remained there about four hours; that relatives of his brought to the presidencia money sufficient to pay the salaries of the policemen and that the president then went home. In view of the fact as claimed by

the defendant that their salaries had been in arrears for some time and that they had been unable to secure payment of them from the president, it is difficult to believe that on this particular occasion he would have gone to the presidencia under the circumstances related above and remained there about four hours until relatives of his had produced enough money to discharge the obligations of the police, unless some kind of force or intimidation had been used.

We take into consideration in favor of the defendant article 11 of the Penal Code as an extenuating circumstance and reduce the penalty imposed by the court below from four years two months and one day to two years four months and one day. In all other respects the judgment of the court below is affirmed with the costs of this instance against the defendant.

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