

4 Phil. 547

[G.R. No. 2188. May 05, 1905]

**THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. SANTIAGO PALMA ET AL.,
DEFENDANTS AND APPELLANTS.**

D E C I S I O N

WILLARD, J.:

The appellants were convicted of playing the game of *hueteng* in violation of article 343 of the Penal Code, Santiago Palma on the ground that he was the owner of the gambling house and Francisco Palma on the ground that he was a player.

The game of *hueteng* is described as follows by one of the witnesses for the Government:

“There are thirty-seven balls numbered consecutively from 1 to 37. The persons recorded as collectors in the banker’s book go from house to house for the purpose of collecting the money for the pool. The person who gives money for the pool is required to state the number he desires to bet on; then the collector enters the name of the person so betting, giving the number and the amount of the bet and returns to the gambler a slip on which the number of the bet is written in pencil. After the collection is made, the collectors proceed to the banker’s house in order to deliver to him the money collected by them; then the banker makes an announcement to the public to whom he shows that there are only, thirty-seven numbers, and which numbers he places in a receptacle. This receptacle, in some instances shaped like a bottle, and in others, like a small-necked phial, is shaken and the number or ball then extracted therefrom wins the prize.”

The appellant and twenty-six others were arrested in the house of Santiago Palma by the police and the evidence shows that they gathered around a table upon which was a bottle (*tambolo*) with the balls already in it, envelopes with papers in them, about 7 pesos in money, a box with papers in it, and a book.

There is no evidence in the case to show that the appellant Francisco Palma had made any bet upon the game. There is no evidence that his name appeared upon the book or that he was in possession of any ticket bearing any one of the thirty-seven numbers. The only proof against him is that he was a bystander. We do not understand that article 343 makes it an offense for one to be present in a gambling house. This appellant must accordingly be acquitted.

In order to convict the appellant Santiago Palma on the ground that he was the owner of a gambling house, it must be proved that he was maintaining a place devoted to that purpose. There is no evidence in the case to show that this game of *hueteng* or any other game had ever been played in his house before. This defendant produced a witness who testified that he lived very near the house of this appellant and that he had never seen people frequenting it for the purpose of gaming.

The apparatus required for the game of *hueteng* is very portable, and is of such a character that the game can be played almost anywhere. It does not require that a house or a room should be specially fitted up for the purpose, as is required for the playing of some other games of chance.

The decisions of this court are to the effect that the evidence in this case is insufficient to show that the house of this appellant was a gambling house within the meaning of article 343. (United States vs. Acuna, 1 Phil. Rep., 500; United States vs. Narvaes, 1 Phil. Rep., 36; United States vs. Reyes,^[1] 2 Off. Gaz., 440; United States vs. Hilario Santiago,^[2] No. 1773, April 19, 1905.)

The judgment of the court below as to the appellants Santiago Palma and Francisco Palma is reversed, and these appellants are acquitted,

with the costs of this instance *de officio*.

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

^[1] 3 Phil. Rep., 611.

^[2] Page 439, *supra*.
