

5 Phil. 343

[G.R. No. 2289. November 21, 1905]

**THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. JOE HUTCHINSON,
DEFENDANT AND APPELLANT.**

D E C I S I O N

MAPA, J.:

By the judgment appealed from the accused was found guilty of the offense of illegal possession of arms and sentenced to one month's imprisonment and 100 dollars fine, or to subsidiary imprisonment, in case of insolvency or nonpayment, at the rate of one day for every 2 1/2 pesos, Philippine currency, and to the costs of the trial.

The guilt of the accused is sufficiently proven in this case, and the penalty imposed by the judge is in accordance with the law, with the exception of the imposition of subsidiary imprisonment in case of insolvency which is not proper, the same not being authorized by any statutory provision. Neither Act No. 610, quoted in the judgment of the lower court, nor Act No. 652, amendatory of the former, provide for the imposition of subsidiary imprisonment in case of nonpayment of the fine imposed, together with imprisonment, as the principal penalty. It should be understood, therefore, that said subsidiary imprisonment is not to be included in the judgment.

With this modification, the judgment of the lower court is affirmed with the costs in this instance to the defendant. So ordered.

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

