

1 Phil. 58

[G.R. No. 85. November 05, 1901]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. TAN JENJUA,
DEFENDANT AND APPELLANT.**

D E C I S I O N

WILLARD, J.:

Attorney Francisco Ortigas has filed a petition soliciting the reopening of this case in accordance with the provisions of section 42 of General Orders, No. 58. The reopening of a cause under section 42 is only available when there exists newly discovered evidence. If the accused or his attorney knew what would be the testimony of the absent witness or could have known it by the exercise of proper diligence, it can not be said that he has discovered these proofs after the trial. No affidavit whatever setting forth the facts upon this point accompanies the petition as is required by the aforesaid section 42.

It is, of course, evident that the error of the judge of the inferior court, if error it was, in the manner of administering the oath to the Chinese witness, can not be presented as newly discovered evidence.

For the foregoing reasons the petition is denied without deciding (1) whether the judgment has become final as soon as registered here, thereby making this motion inopportune; or, in case it has not become final (2), whether this motion should have been made before the lower court, since the cause has been remanded and is no longer a cause pending before this court.

The motion is therefore denied with costs taxed against the moving party, and it is so ordered.

Arellano, C. J., Cooper, Mapa, and Ladd, JJ., concur.

Torres, J., did not sit in this case.

Date created: April 03, 2014