

[ G.R. No. 876. September 05, 1902 ]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. JOHN H. FLEMISTER,  
DEFENDANT AND APPELLANT.**

**D E C I S I O N**

**WILLARD, J.:**

In the evening of November 28, 1901, Don Teodoro Suller gave a ball at his house in the pueblo of Cabuyau. The defendant went to the ball without any invitation from the owner, danced with an American doctor, and then went away. He returned after a short time. What then occurred is thus described by Don Teodoro: "I met him almost in the door of the stairway, took him by the hand, and said to him, 'Friend, what do you wish; do you come to dance?' Without making any answer he roughly withdrew his hand and struck me. "Q.—Did you not ask him to take a seat? A.—I did so, but he answered nothing and immediately entered." Don Teodoro also testifies that he had heard that the defendant had some design of attacking Captain Davison, who was in the sala, and that he stopped him because he was attempting to enter that apartment. The testimony of Ramos is to the effect that the owner of the house attempted to stop the defendant as he was entering the sala.

The defendant admits that he struck Don Teodoro so that he fell, and that he had a quarrel with Captain Davison, in which he, the defendant, drew his revolver.

It seems clear to us that the purpose of the owner of the house was to prohibit the defendant not from entering his house but from entering the sala in order to avoid a quarrel between the two Americans. His taking the defendant by the hand, asking him if he came to dance, and requesting him to be seated, are inconsistent with the idea that he was attempting to keep the defendant from entering the house. His efforts to prevent this meeting were praiseworthy and the conduct of the defendant extremely reprehensible. The latter can not, however, under the evidence be convicted of the offense of allanamiento de morada.

It is unnecessary to consider other questions argued by counsel for the defendant.

The judgment is reversed and the defendant acquitted, with the costs of both instances de oficio.

*Arellano, C. J., Torres, Cooper, Ladd, Smith, and Mapa, JJ., concur.*

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