[G.R. No. 5004. November 19, 1909]

THE UNITED STATES, PLAINTIFF AND APPELLEE, *VS.* ANDRES LUNA, DEFENDANT AND APPELLANT.

D E C I S I O N

THEFT; SUFFICIENCY OF INFORMATION; PENALTY.— From the Court of First Instance of Batangas. Powell, J.

Defendant convicted of theft of cattle valued at P400,and sentenced to two years of *prision correccional* with accessories, article 518, paragrap 2, Penal Code. Defendant's contention that he should be convicted merely of attempted theft held to be without merit, inasmuch as he took actual possession of the cattle and drove them away. Objection to the sufficiency of the information overruled, following U.S. *vs.*. Sarabia (4 Phil. Rep., 566). approved in Serra *vs.*. Mortiga (11 Phil. Rep., 762; 204 U.S., 470). Evidence held to prove guilt beyond reasonable doubt, and, considering the presence of nocturnity, defendant finally sentenced to three years of *presidio correccional,* with accessories.

Per Elliott, J.
For appellant: Thos. D. Aitken.
For appellee: Attorney-General Villamor.

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