

4 Phil. 265

[G.R. No. 1986. March 13, 1905]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. JUAN GATMAITAN,
DEFENDANT AND APPELLANT.**

D E C I S I O N

MAPA, J.:

The proofs in the case show conclusively that the defendant, on an evening in the month of September, 1903, with the intention of profiting thereby, substracted two carabaos valued at 280 pesos belonging to Prudencio Soriano from the corral where they were kept, and against the will of said Soriano.

These facts constitute the crime of theft as provided for and punished in subsection 2 of article 518 of the Penal Code. The value of the effects stolen exceeds 1,250 pesetas and is less than 6,250 pesetas. The judge of the court below acted in accordance with the law when he found the defendant guilty of the crime with which he was charged, and, taking into consideration the aggravating circumstance of nocturnity, imposed upon him the penalty of two years eleven months and eleven days of *presidio correccional*.

The defense in this instance alleges (1) that the complaint does not state facts sufficient to constitute the crime of theft, since there is nothing in it regarding the fact that the taking of the carabaos was without the consent of the owner thereof, which circumstance is a requisite necessary to constitute the crime in question; (2) that in fact there was nothing proven at the trial, nor even attempted to be proven, that the substruction of the carabaos was made against the will of the owner.

The first allegation of the defense lacks foundation because the complaint states that the defendant *substracted* the carabaos. This word “substract” means that the defendant took possession of the carabaos against the will of the owner, because, as the public prosecutor shows in his brief, ‘to substract” means to take something clandestinely away without the knowledge and, therefore, without the consent of its owner.

Section 6 of General Orders, No. 58, expressly declares that it is not necessary to use in the complaint the same words as in the law when the complaint states acts or omissions which constitute a crime; it is sufficient if it states the crime in such a way that a person of ordinary intelligence may immediately know what is meant and the court can decide the matter according to the law. As regards the second allegation of the defense, it is not true that there is no proof that the carabaos were substracted against the will of the owner. The latter says in his statement that the carabaos were *stolen* and that the defendant was the one who *stole the same*. In another part of his statement he says that the carabaos were in a corral when the defendant *stole* them and that the *theft* was perpetrated in the nighttime. He could not, indeed, express in a more emphatic manner the want of his consent to the subtraction of the said carabaos when he says they have been *stolen* by the defendant. Theft implies, necessarily, the lack of consent on the part of the owner.

The judgment appealed from is affirmed with the costs in this instance. So ordered.

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