

4 Phil. 369

[G.R. No. 1760. April 03, 1905]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. IRINEO BIBAL,
DEFENDANT AND APPELLANT.**

D E C I S I O N

WILLARD, J.:

Upon the question of fact presented by the brief of the defendant we hold that the participation in the robbery by the defendant is proved.

It is suggested, also, that the complaint presented by a private person, not having been sworn to, was void. The provincial fiscal, on February 3, 1903, certified in writing that he found the complaint sufficient, and named three other witnesses for the prosecution. Whether this amounted to an adoption by him of the complaint, and made it an information which did not require an oath, it is not necessary to decide. The want of an oath was, in any event, a defect of form which did not affect the substantial rights of the defendant on the merits. Section 10 of General Orders, No. 58, does not permit a judgment to be set aside for such a defect.

Evidence that the defendant was the leader of the band which committed the robbery is found at folio 68.

The judgment is affirmed, with the costs of this instance against the appellant.

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

