

[G.R. No. 2304. November 03, 1905]

EL BANCO ESPAÑOL-FILIPINO, PLAINTIFF AND APPELLANT, VS. FULGENCIO TAN-TONGCO ET AL., DEFENDANTS AND APPELLEES.

D E C I S I O N

WILLARD, J.:

On September 26, 1902, the defendant Fulgencio Tan-Tongco executed and delivered to the other defendant, Antonio Torres, a promissory note whereby he promised to pay to the order of said Torres 5,300 pesos three months after the date of said note—that is to say, on the 26th day of December, 1902. On the said 26th day of September, 1902, the defendant Torres duly endorsed and delivered said note to the plaintiff. On December 27, 1902, a demand for payment was duly made upon the defendant Tan-Tongco by a notary public. Payment was refused and the said note was duly protested. No notice of this demand and protest was given to Antonio Torres prior to the commencement of this action. Upon these facts the court below entered judgment for the defendant Torres upon the ground that he had been relieved from liability upon the note by the failure of plaintiff to notify him of the protest thereof.

We do not think that this judgment can be sustained. There is nothing in the Code of Commerce which requires notice to an endorser of the protest of a promissory note at the time of or immediately subsequent to the said protest. If notice is given in accordance with article 517 of that code, it is sufficient.

The question whether the plaintiff, in view of the provisions of article 516 of the Code of Commerce, can maintain one action against

the two defendants was not raised by demurrer or answer, and was therefore waived.

The judgment of the court below is reversed, and after the expiration of twenty days judgment should be entered in accordance herewith and the case remanded to the court below, with directions to enter judgment against the defendant Antonio Torres, as prayed for in the complaint, with costs. No costs will be allowed to either party in this court. So ordered.

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