

**MACONDRAY & CO., INC., PLAINTIFF AND APPELLANT, VS.
FELICIANO BENITO AND SEBASTIAN OCAMPO, DEFENDANTS AND
APPELLEES.**

G.R. No. 43014. September 24, 1935

Ponente: GODDARD, J.

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GODDARD, J.:

Under its amended complaint in this case the plaintiff seeks to recover over P2,500 with interest at 12 per cent per annum from the defendants, less the sum of F550 realized from the sale at public auction of certain chattels mortgaged to it as security for the payment of the above mentioned sum.

In the lower court the parties submitted the case for decision on the following stipulation of facts:

"1. That the defendants admit each and every allegation in each and every paragraph of the plaintiff's amended complaint subject to the stipulations herein contained.

"2. That the promissory notes mentioned in paragraphs II and IV of the amended complaint were executed by the defendants to cover the unpaid balance of the price of certain personal properties purchased by them from the plaintiff payable in installments, the said properties being those described in paragraph IV of the amended complaint covered by the two chattel mortgages specified therein.

"3. That upon the failure of the defendants to pay the two (2) and more installments on the purchase price of said personal properties, plaintiff foreclosed the mortgages executed on said properties,

"4. That when the properties mortgaged were seized by the sheriff for the Province of Rizal by virtue of the writ of seizure, the same were in fairly good condition, allowing deterioration for ordinary wear and tear during the time defendants were in possession of the said properties from the time of their purchase, on December 21, 1933, up to the date of the seizure.

"5. That the properties mortgaged were sold at public auction, as specified in paragraph XIII of the amended complaint, to the plaintiff which was the only bidder therefor.

"6. That the parties, in view of this stipulation, submit for determination by the court the sole question of law whether by virtue of sec. 1454-A of the Civil Code (Act No. 4122 of the Philippine Legislature) plaintiff is entitled to recover from the defendants the unpaid balance of the purchase price of said personal properties,"

The decision of the trial court reads in part as follows:

"En efecto, la unica cuestion a determinar en esta causa, segun la estipulaci6n de hechos sometida en autos es, si lo jdispuesto por la Ley No. 4122 de la Legislatura Filipina beneficia en esta causa a los aqui demandados. No estS impugnada la efectividad y la validez de la referida ley. Los pagare"s en cuesti6n se han otorgado con posterioridad a la vigencia de la ley. Es obvio, por tanto, que la transacci6n objeto del presente litigio se halla comprendida dentro de sus disposiciones legales, entre las que se dispone expresamente que el vendedor no tendra acci6n contra el comprador, a recobrar por el balance no pagado despugs de ejecutada la propiedad, y

que cualquier convenio contrario a esta provisi6n legal es nulo e invalido.

"Por lo expuesto, se absuelve a los demandados, sin costas."

The plaintiff appealed from this judgment and now makes the following assignments of error:

"I. The lower court erred in not finding Act No. 4122 unconstitutional in that it denies to the appellant the equal protection of the laws, deprives it of property without due process of law, and impairs the obligation of contracts.

"II. The lower court erred in applying Act No. 4122 to the facts of the case.

"III. The lower court erred in rendering judgment dismissing the complaint and in not rendering judgment in favor of the plaintiff for the amount claimed in the amended complaint, together with the costs of the suit.

"IV. The lower court erred in denying the plaintiff's motion for new trial." The question of the constitutionality of article 1454-A of the Civil Code (Act No. 4122 of the Philippine Legislature) was not raised in the trial court. The general rule seems to be that if a question affecting the constitutionality of an act is not raised by the pleadings, ordinarily it may not be raised at the trial and if not raised in the trial court, it will not be considered on appeal. In the case of *State ex rel. Vandiver vs. Burfee* (175 Ala., 561, 578; 57 S., 870), it was held:

"* * * This court will never, on appeal, investigate or inquire into the constitutionality of statutes in civil cases, where the questions were not raised or passed upon below, unless the statute is necessary to the jurisdiction of this court or to that of the court below."

In view of the above decision and the fact that the plaintiff elected to foreclose its mortgage after the defendants failed to pay two or more installments on the chattels sold to them by the plaintiff on the installment plan, this court does not feel called upon in this case to inquire into the constitutionality of article 1454-A, which reads as follows:

"Art. 1454-A. In a contract for the sale of personal property payable in installments, failure to pay two or more installments shall confer upon the vendor the right to cancel the sale or foreclose the mortgage if one has been given on the property, without reimbursement to the purchaser of the installments already paid, if there be an agreement to this effect.

"However, if the vendor has chosen to foreclose the mortgage he shall have no further action against the purchaser for the recovery of any unpaid balance owing by the same, and any agreement to the contrary shall be null and void,"

* * * * *

Under the above article of the Civil Code the vendor of personal property, the purchase price of which is payable in installments, has the right to cancel the sale or foreclose the mortgage if one has been given on the property thus sold on the installment plan. Whichever right the vendor elects he need not return to the purchaser the amount of the installments already paid, if there is an agreement to that effect. Furthermore, if the vendor avails himself of the right to foreclose his mortgage this article prohibits him from bringing an action against the purchaser for the unpaid balance. Under this article, in proceedings for the foreclosure of chattel mortgages, executed on chattels sold on the installment plan, the mortgagee is limited to the property included in the mortgage.

In this case the plaintiff, the vendor of personal property on the installment plan, elected, as stated above, to foreclose its mortgage on that property and consequently under the second paragraph of this article he has "no further action against the purchaser for the recovery of any unpaid balance owing by the same."

In view of the foregoing, all of the above assignments of error are overruled and the judgment of the trial court is affirmed with costs in this instance against the plaintiffappellant.

Avanceña, C.J., Malcolm, Villa-Real, Abad Santos, Hull, Vickers, and Recto, JJ., concur.

Judgment affirmed.

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