

MACONDRAY & CO., INC., PLAINTIFF AND APPELLANT, VS. URBANO EUSTAQUIO, DEFENDANT AND APPELLEE.

G. R. No. 43683. July 16, 1937

Ponente: IMPERIAL, J.

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IMPERIAL, J.:

This is an appeal taken by the plaintiff corporation from the judgment of the Court of First Instance of Manila dismissing its complaint, without costs.

The plaintiff brought the action against the defendant to obtain the possession of an automobile mortgaged by the latter, and to recover, the balance owing upon a note executed by him, the interest thereon, attorney's fees, expenses of collection, and the costs. The defendant was duly summoned, but he failed to appear or file his answer, wherefore, he was declared in default and the appealed judgment was rendered accordingly.

The plaintiff sold the defendant a De Soto car, Sedan, for the price of which, P595, he executed in its favor the note of May 22, 1934. Under this note, the defendant undertook to pay the car in twelve monthly installments, with 12 per cent interest per annum, and likewise agreed that, should he fail to pay any monthly installment together with interest, the remaining installments would become due and payable, and the defendant shall pay 20 per cent upon the principal owing as attorney's fees, expenses of collection which the plaintiff might incur, and the costs. To guarantee the performance of his obligations under the note, the defendant on the same date mortgaged the purchased car in favor of the plaintiff, and bound himself under the same conditions stipulated in the note relative to the monthly installments, interest, attorney's fees, expenses of collection, and costs. The mortgage deed was registered on June 11, 1934, in the office of the register of deeds of the Province of Rizal. On the 22d of the same month, the defendant paid P43.75 upon the first installment, and thereafter failed to pay any of the remaining installments. In accordance with the terms of the mortgage, the plaintiff called upon the sheriff to take possession of the car, but the defendant refused to yield possession thereof, whereupon, the plaintiff brought the replevin sought and thereby succeeded in getting possession of the car. The car was sold at public auction to the plaintiff for P250, the latter incurring legal expenses in the amount of P10.68. According to the liquidation filed by the plaintiff, the defendant was still indebted in the amount of P342.20, interest at 12 per cent from November 20, 1934, P110.25 as attorney's fees, and the costs.

I. The plaintiff's first assignment of error is addressed to the appealed judgment in so far as it applied Act No. 4122 and dismissed the complaint, notwithstanding the fact that the defendant waived his rights under said law by not making any appearance, by having been declared in default, by not interposing any special defense, and by not asking for any positive relief.

Under section 128 of our Code of Civil Procedure, the judgment by default against a defendant who has neither appeared nor filed his answer does not imply a waiver of rights except that of being heard and of presenting evidence in his favor. It does not imply admission by the defendant of the facts and causes of action of the plaintiff, because the codal section requires the latter to adduce his evidence in support of his allegations as an

indispensable condition before final judgment could be given in his favor. Nor could it be interpreted as an admission by the defendant that the plaintiff's causes of action find support in the law or that the latter is entitled to the relief prayed for. (Chaffin vs. McFadden, 41 Ark., 42; Johnson vs. Pierce, 12 Ark., 599; Mayden vs. Johnson, 59 Ga., 105; Peo. vs. Rust, 292 111., 4i2; Madison County vs. Smith, 95 111., 328; Keen vs. Leipold, 211 111. A., 163; Chicago etc. Electric R. Co. vs. Krempel, 116 111. A., 253.) For these reasons, we hold that the defendant did not waive the application by the court of Act No. 4122, and that the first assignment of error is untenable.

II. The plaintiff contends in its second assignment of error that Act No. 4122 is invalid because it takes property without due process of law, denies the equal protection of the laws, and impairs the obligations of contract, thereby violating the provisions of section 3 of the Act of the United States Congress of August 29, 1916, known as the Jones Law. This is not the first time that the constitutionality of the said law has been impugned for like reasons. In Manila Trading & Supply Co. vs. Reyes (62 Phil., 461), the validity of the said law was already passed upon when it was questioned for the same reasons here advanced. In resolving the questions in favor of the validity of the law, we then held: "2. Liberty of contract, class legislation, and equal protection of the laws.—The question of the validity of an act is solely one of constitutional power. Questions of expediency, of motive, or of results are irrelevant. Nevertheless it is not improper to inquire as to the occasion for the enactment of a law. The legislative purpose thus disclosed can then serve as a fit background for constitutional inquiry.

"Judge Moran in first instance had the following to say relative to the reasons for the enactment of Act No. 4122:

" 'Act No. 4122 aims to correct asocial and economic evil, the inordinate love for luxury of those who, without sufficient means, purchase personal effects, and the ruinous practice of some commercial houses of purchasing back the goods sold for a nominal price besides keeping a part of the price already paid and collecting the balance, with stipulated interest, costs, and attorney's fees. For instance, a company sells a truck for P6,500. The purchaser makes a down payment of P500, the balance to be paid in twenty-four equal installments of P250 each. Pursuant to the practice before the enactment of Act No. 4122, if the purchaser fails to pay the first two installments, the company takes possession of the truck and has it sold at public auction at which sale it purchases the truck for a nominal price, at most P500, without prejudice to its right to collect the balance of P5,500, plus interest, costs, and attorney's fees. As a consequence, the vendor does not only recover the goods sold, used hardly two months perhaps with only slight wear and tear, but also collects the entire stipulated purchase price, probably swelled up fifty per cent including interest, costs, and attorney's fees. This practice is worse than usurious in many instances. And although, of course, the purchaser must suffer the consequences of his imprudence and lack of foresight, the chastisement must not be to the extent of ruining him completely and, on the other hand, enriching the vendor in a manner which shocks the conscience. The object of the law is highly commendable. As to whether or not the means employed to do away with the evil abovementioned are arbitrary will be presently set out.'

"In a case which reached this court, Mr. Justice Goddard, interpreting Act No. 4122, made the following observations :

" 'Undoubtedly the principal object of the above amendment was to remedy the abuses committed in connection with the foreclosure of chattel mortgages. This amendment prevents mortgagees from seizing the mortgaged property, buying it at foreclosure sale for a low price and then bringing suit against the mortgagor for a deficiency judgment. The almost invariable result of this procedure was that the mortgagor found himself minus the property, and still owing practically the full amount of his original indebtedness. Under this amendment 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. Whichever right the vendor elects he need not return to the purchaser the amount of the installments already paid, "if there be an

agreement to that effect." Furthermore, if the vendor avails himself of the right to foreclose the mortgage this amendment prohibits him from bringing an action against the purchaser for the unpaid balance.'

" 'In other words, under this amendment, in all proceedings for the foreclosure of chattel mortgages, executed on chattels which have been sold on the installment plan, the mortgagee is limited to the property included in the mortgage.' (Bachrach Motor Co. vs. Millan [1935], 61 Phil., 409.)

"Public policy having thus had in view the objects just, outlined, we should next examine the law to determine if notwithstanding that policy, it violates any of the constitutional principles dealing with the three general subjects here to be considered.

"In an effort to enlighten us, our attention has been directed to certain authorities, principally one coming from the State of Washington and another from the State of Oregon. For reasons which will soon appear, we do not think that either decision is controlling.

"In 1897, an Act was passed in the State of Washington which provided 'that in all proceedings for the foreclosure of mortgages hereafter executed, or on judgments rendered upon the debt thereby secured, the mortgagee or assignee shall be limited to the property included in the mortgage.' It was held by a divided court of three to two that the statute since limiting the right to enforce a debt secured by mortgage to the property mortgaged, whether realty or chattels, was an undue restraint upon the liberty of a citizen to contract with respect to his property rights. But as is readily apparent, the Washington law and the Philippine law are radically different in phraseology and in effect. (Dennis vs. Moses [1898], 40 L. R. A., 302.)

"In Oregon, in a decision of a later date, an Act abolishing deficiency judgments upon the foreclosure of mortgages to secure the unpaid balance of the purchase price of real property was unanimously sustained by the Supreme Court of that State. The importance of the subject matter in that jurisdiction was revealed by the fact that four separate opinions were prepared by the justices participating, in one of which Mr. Justice Johns, shortly thereafter to become a member of this court, concurred. However, it is but fair to state that one of the reasons prompting the court to uphold the law was the financial depression which had prevailed in that State. While in the Philippines the court can take judicial notice of the stringency of finances that presses upon the people, we have no reason to believe that this was the reason which motivated the enactment of Act No. 4122. (Wright vs. Wimberley [1919], 184 Pac., 740.)

"While we are on the subject of the authorities, we may state that we have examined all of those obtainable, including some of recent date, but have not been enlightened very much because as just indicated, they concerned different states of facts and different laws. We gain the most help from the case of Bronzon vs. Kinzie ([1843], 1 How., 311), decided by the Supreme Court of the United States. It had under consideration a law passed in the State of Illinois, which provided that the equitable estate of the mortgagor should not be extinguished for 12 months after sale on decree, and which prevented any sale of the mortgaged property unless two-thirds of the amount at which the property had been valued by appraisers should be bid therefor. The court, by Mr. Chief Justice Taney, declared: 'Mortgages made since the passage of these laws must undoubtedly be governed by them; for every State has the power to describe the legal and equitable obligations of a contract to be made and executed within its jurisdiction. It may exempt any property it thinks proper from sale for the payment of a debt; and may impose such conditions and restrictions upon the creditor as its judgment and policy may dictate. And all future contracts would be subject to such provisions; and they would be obligatory upon the parties in the courts of the United States, as well as in those of the State.'

"As we understand it, parties have no vested right in particular remedies or modes of procedure, and the legislature may change existing remedies or modes of procedure without impairing the obligation of contracts, provided an efficacious remedy remains for enforcement. But changes in the remedies available for the enforcement of a mortgage may not, even when public policy is invoked as an excuse, be pressed so far as to cut down the security of a mortgage without moderation or reason or in a spirit of oppression (Brotherhood of American Yeoman vs. Manz [1922], 206 Pac, 403; Oshkosh Waterworks Co. vs. Oshkosh [1908], 187 U. S.,

437; *W. B. Worthen Co. vs. Kavanaugh* [1935], 79 U. S. Supreme Court Advance Opinions, 638.)

"In the Philippines, the Chattel Mortgage Law did not expressly provide for a deficiency judgment upon the foreclosure of a mortgage. Indeed, it required decisions of this court to authorize such a procedure. (*Bank of the Philippine Islands vs. Olutanga Lumber Co.* [1924], 47 Phil., 20; *Manila Trading & Supply Co. vs. Tamaraw Plantation Co.*, supra.) But the practice became universal enough to acquire the force of direct legislative enactment regarding procedure. To a certain extent the Legislature has now disauthorized this practice, but has left a sufficient remedy remaining.

"Three remedies are available to the vendor who has sold personal property on the installment plan. (1) He may elect to exact the fulfillment of the obligation. (*Bachrach Motor Co. vs. Millan*, supra.) (2) If the vendee shall have failed to pay two or more installments, the vendor may, cancel the sale. (3) If the vendee shall have failed to pay two or more installments, the vendor may foreclose the mortgage, if one has been given on the property. The basis of the first option is the Civil Code. The basis of the last two options is Act No. 4122, amendatory of the Civil Code. And the proviso to the right to foreclose is, that if the vendor has chosen this remedy, he shall have no further action against the purchaser for the recovery of any unpaid balance owing by the same. In other words, as we see it, the Act does no more than qualify the remedy.

"Most constitutional issues are determined by the court's approach to them. The proper approach in cases of this character should be to resolve all presumptions in favor of the validity of an act in the absence of a clear conflict between it and the constitution. All doubts should be resolved in its favor.

"The controlling purpose of Act No. 4122 is revealed to be to close the door to abuses committed in connection with the foreclosure of chattel mortgages when sales were payable, in installments. That public policy, obvious from the statute, was defined and established by legislative authority. It is for the courts to perpetuate it.

"We are of the opinion that the Legislature may change judicial methods and remedies for the enforcement of contracts, as it has done by the enactment of Act No. 4122, without unduly interfering with the obligation of the contract, without sanctioning class legislation, and without a denial of the equal protection of the laws. We rule that* Act No. 4122 is valid and enforceable. As a consequence, the errors assigned by the appellant are overruled, and the judgment affirmed, the costs of this instance to be taxed against the losing party."

In his brief counsel for the plaintiff advances no new arguments which have not already been considered in the *Reyes* case, and we see no reason for reaching a different conclusion now. The law seeks to remedy an evil which the Legislature wished to suppress; this legislative body has power to promulgate the law; the law does not completely deprive vendors on the installment basis of a remedy, but requires them to elect among three alternative remedies; the law, on the other hand, does not completely exonerate the purchasers, but only limits their liabilities and, finally, there is no vested right when a procedural law is involved, wherefore the Legislature could enact Act No. 4122 without violating the aforesaid organic law.

III. In its last assignment of error plaintiff contends that, even granting that Act No. 4122 is valid, the court should have ordered the defendant to pay at least the stipulated interest, attorney's fees, and the costs. This question involves the interpretation of the pertinent portion of the law, reading: "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." This paragraph, as its language shows, refers to the mortgage contract executed by the parties, whereby the purchaser mortgages the chattel sold to him on the installment basis in order to guarantee the payment of its price, and the words "any unpaid balance" should be interpreted as having reference to the deficiency judgment to which the mortgagee may be entitled where, after the mortgaged chattel is sold at public auction, the proceeds obtained therefrom are insufficient to cover the full amount of the secured obligations which, in the case at bar as shown by the note and by the mortgage deed, include interest on the principal, attorney's fees, expenses of collection, and the costs. The

fundamental rule which should govern the interpretation of laws is to ascertain the intention and meaning of the Legislature and to give effect thereto. (Sec. 288, Code of Civil Procedure; U. S. vs. Toribio, 15 Phil., 85; U. S. vs. Navarro, 19 Phil., 134; De Jesus vs. City of Manila, 29 Phil., 73; Borromeo vs. Mariano, 41 Phil., 322; People vs. Concepcion, 44 Phil., 126.) Were it the intention of the Legislature to limit its meaning to the unpaid balance of the principal, it would have so stated. We hold, therefore, that the assignment of error is untenable.

In view of the foregoing, the appealed judgment is affirmed, with the costs of this instance to the plaintiff and appellant. So ordered.

Avancena, C. J., Villa-Real, Abad Santos, Diazf Laurel, and Concepcion, JJ., concur.

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