

LEVY HERMANOS, INC., PLAINTIFF AND APPELLEE, VS. SIMEON C. CAPULE, DEFENDANT AND APPELLANT.

G. R. No. 44304. October 27, 1936

Ponente: AVANCEÑA, C.J.

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AVANCEÑA, C.J.:

This is an action for the recovery of a certain sum of money. The decision rendered orders the defendant to pay to the plaintiff the sum of P1,310.63, with interest thereon at 12 per cent per annum from August 23, 1934, the date of the filing of the complaint, until fully paid, plus the additional sum of P41.45, with legal interest thereon from said date, until fully paid, with the costs. The case is now before this court upon appeal from the foregoing decision.

On May 31, 1933, the plaintiff Levy Hermanos, Inc., sold an Essex sedan terraplane to the defendant Simeon C. Capule, for the sum of P1,900. The defendant made a cash payment of P250 on account of the purchase price thereof, and for the balance of P1,650 he executed in favor of the plaintiff a promissory note for P100 and another for P1,550 payable on June 15, 1933, and May 31, 1934, respectively. To secure the payment of the balance in question, the defendant mortgaged said automobile, the mortgage thereon having been duly registered. By reason of payments subsequently made by the defendant, the amount of the debt was reduced to P1,571.63. To expedite payment of said balance, the defendant, on January 3, 1934, issued another promissory note for the amount thereof (P1,571.63) at the same rate of interest, with the following note:

"This promissory note supersedes the one made by me on May 31, 1933, and due on May 31, 1934, the present promissory note being, *in fact*, secured by the same mortgage securing the former, which mortgage shall continue in full force and effect for all legal ends and purposes."

Payments were made later, reducing the defendant's obligation to the amount which he is ordered to pay by the lower court.

The only thing sought in this appeal is to have Act No. 4122 applied to the case and that the defendant be absolved from the complaint upon delivery of the automobile purchased and mortgaged to the plaintiff.

The automobile was sold to the defendant on May 31, 1933 and the mortgage thereon was constituted on said date. Act No. 4122 took effect only on December 9, 1933, that is, after the consummation of the transactions between the plaintiff and the defendant, which gave rise to this action. Consequently, Act No. 4122 is not applicable to this case.

However, the appellant contends that said transactions of sale and mortgage of the automobile were novated on January 3, 1934, when the defendant replaced the two promissory notes with the one made by him on said date, while Act No. 4122 was already in force, thus making it applicable to the contract so novated. This court finds this petition unfounded.

The extension of the promissory note on January 3, 1934, cannot be considered a novation of the transactions of

May 31, 1933, because it refers to the same debt, although said debt had been reduced by payments made on account thereof. In fact the only thing done was to transfer the evidence of said indebtedness to another document. It was merely a substitution of one document by another on the same transaction. It is true that different terms more advantageous to the payment thereof than those formerly agreed upon have been stipulated, but such fact does not imply novation. (Decision of the Supreme Court of Spain of November 19, 1894.)

This court having arrived at the conclusion that Act No. 4122 is not applicable to the present case, without discussing the other questions raised, the appealed judgment is affirmed, with costs to the appellant. So ordered.

Villa-Real, Abad Santos, Imperial, Diaz, and Laurel, JJ., concur.

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