

**MACONDRAY & CO., INC., PLAINTIFF AND APPELLANT, VS.
ANTONIO E. RUIZ AND ERNESTO CUISIA, DEFENDANTS AND
APPELLEES.***G.R. No. 44671. November 26, 1938*

Ponente: IMPERIAL, J.

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On January 21, 1932 plaintiff sold to the defendant Antonio E. Ruiz an automobile "De Sotto De Luxe Sedan" for P,572. They agreed that defendant would pay in cash P302 and for the balance of P3,270 he would execute several promissory notes in different amounts maturing on different dates. The defendant executed jointly with one Ramon Borromeo 27 promissory notes wherein both undertook to pay jointly and severally the value of said notes on the dates of their maturity. In addition, Ruiz mortgaged the automobile, executing the corresponding deed. Ruiz made some payments on account of his promissory notes and his indebtedness was reduced to P2,246.18. On March 15, 1934 the parties agreed to execute another contract excluding Ramon Borromeo, whereby Ruiz and another person would sign the promissory notes for the balance. Consequently, on said date Ruiz and the other defendant, Ernesto Cuisia, signed another promissory note whereby they promised jointly and severally to pay the plaintiff the sum of P2,246.18 with interest thereon at 12 per cent per annum. In this latter contract the parties stipulated that the mortgage of the automobile would be left to stand. Ruiz again made other payments and his indebtedness was reduced to P2,088.89 plus the interest thereon. As the defendants failed to pay some of the installments upon their maturity, the plaintiff foreclosed the mortgage and the sheriff sold the automobile at public auction, awarding it to the plaintiff for the sum of P500. After the account of the defendants had been liquidated and the proceeds of the public sale of the automobile together with the expenses of the proceeding had been deducted, it appeared that the defendants were owing the plaintiff the sum of P1,696.20. In order to recover this amount plus the interest thereon and the penalty agreed upon, the plaintiff brought this action against the defendants. After trial the court absolved the defendants from the complaint, without costs. The plaintiff appealed from the decision and timely filed the bill of exceptions which was approved and certified.

- The court absolved the defendants because in its opinion the first mortgage and the promissory notes signed by Ruiz and Ramon Borromeo on January 21, 1932 were substituted and novated by the deed executed by Ruiz and Ernesto Cuisia on March 14, 1934, and because on this latter date Act No. 4122 was already in force, under which the plaintiff cannot maintain the present action for the recovery from the defendants of the balance owing after it had elected to foreclose the mortgage. In its first assignment of error plaintiff contends that the court erroneously applied the law in considering as novated the first mortgage and the promissory notes which were then executed. We hold that the court did not commit the alleged error, for it clearly appears that the first contract was substituted in its entirety by the second, because the stipulations contained in the first were substantially altered by other stipulations that were inserted in the second. According to article 1203 of the Civil Code obligations are modified by altering their object or principal conditions, by substituting another in place of the debtor, or by subrogating a third person to the rights of the creditor; and article 1204 provides that in order that an obligation may be

extinguished by another which substitutes it, it shall be necessary that it be so declared expressly, or that the old and new obligations be incompatible in every respect. In the first contract the debtors were Ruiz and Borromeo and they were answerable jointly and severally for the sum of P3,270. In the second contract the debtors were the same Ruiz and Ernesto Cuisia and the amount for which they 'were liable was only P2,246.18. In the latter contract the dates of the maturity of the obligations were changed due to the lapse of time and to the partial payments made by the former debtors. These facts show at a glance that the first contract was in its terms substituted by the second, and that the latter is incompatible with the former. With respect to the first mortgage, the principal obligation, consisting of the previous indebtedness, having been extinguished, its terms and conditions should be understood as subject to those of the contract subsequently entered into.

- As we have already said, the trial court held that Act No. 4122 is applicable to the contract later entered into by the parties and that by virtue thereof the plaintiff cannot maintain the action for the recovery of the balance owing from the defendants. In its second assignment of error the plaintiff insists that the court erred in applying said law. The subsequent contract between the parties took place on March 14, 1934 and said law having gone into effect on December 9, 1933, it was doubtless applicable.

But the plaintiff argues further that said law is inapplicable because under the last contract there was no sale of the automobile, but only a renewal of the promissory notes and mortgage. We do not find any merit in the argument because according to Act No. 4122 its provisions are applicable when there is a contract of sale with mortgage of the property sold as well as when there is only mortgage of the property sold on installment, as in the present case. It is true that in the subsequent contract the automobile was not sold, but it cannot be denied that the promissory note and the mortgage were executed, the first, in order to evidence the unpaid balance of the price of the automobile, and the second, in order to guarantee payment of said balance; in other words, the promissory note and the mortgage originated from the sale of the automobile.

- The last assignment of error is a corollary of the preceding ones. If the court did not commit the errors we have discussed, it follows that it did not err in denying the motion for new trial filed by the plaintiff.

The appealed judgment being in accordance with law, the same is hereby affirmed, with the costs in this instance against the plaintiff-appellant. So ordered.

Avanceña, C. J., Villa-Real, Diaz, and Laurel, JJ., concur.

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