

LAUDENCIO TORIO, GUILLERMO EVANGELISTA, MANUEL DE GUZMAN, ALFONSO R. MAGSANOC, JESUS MACARANAS, MAXIMO MANANGAN, FIDEL MONTEMAYOR, MELCHOR VIRAY, RAMON TULAGAN, ALL MEMBERS OF T...

G.R. No. L-29993. October 23, 1978

Ponente: MUÑOZ PALMA, J.

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MUÑOZ PALMA, J.:

These Petitions for review present the issue of whether or not the celebration of a town fiesta authorized by a municipal council under Sec. 2282 of the Municipal Law as embodied in the Revised Administrative Code is a governmental or a corporate or proprietary function of the municipality.

A resolution of that issue will lead to another, viz: the civil liability for damages of the Municipality of Malasiqui, and the members of the Municipal Council of Malasiqui, province of Pangasinan, for a death which occurred during the celebration of the town fiesta on January 22, 1959, and which was attributed to the negligence of the municipality and its council members.

The following facts are not in dispute:

On October 21, 1958, the Municipal Council of Malasiqui, Pangasinan, passed resolution No. 159 whereby "it resolved to manage the 1959 Malasiqui town fiesta celebration on January 21, 22, and 23, 1959." Resolution No. 182 was also passed creating the "1959 Malasiqui Town Fiesta Executive Committee" which in turn organized a subcommittee on entertainment and stage, with Jose Macaraeg as Chairman. The council appropriated the amount of P100.00 for the construction of 2 stages, one for the "zarzuela" and another for the "cancionan". Jose Macaraeg supervised the construction of the stage and as constructed the stage for the "zarzuela" was "5-1/2 meters by 8 meters in size, had a wooden floor high at the rear and was supported by 24 bamboo posts -- 4 in a row in front, 4 in the rear and 5 on each side -- with bamboo braces." [1]

The "zarzuela" entitled "Midas Extravaganza" was donated by an association of Malasiqui employees of the Manila Railroad Company in Calocan, Rizal. The troupe arrived in the evening of January 22 for the performance and one of the members of the group was Vicente Fontanilla. The program started at about 10:15 o'clock that evening with some speeches, and many persons went up the stage. The "zarzuela" then began but before the dramatic part of the play was reached, the stage collapsed and Vicente Fontanilla who was at the rear of the stage was pinned underneath. Fontanilla was taken to the San Carlos General Hospital where he died in the afternoon of the following day.

The heirs of Vicente Fontanilla filed a complaint with the Court of First Instance of Manila on September 11, 1959 to recover damages. Named party-defendants were the Municipality of Malasiqui, the Municipal Council of Malasiqui and all the individual members of the Municipal Council in 1959.

Answering the complaint defendant municipality invoked inter alia the principal defense that as a legally and duly

organized public corporation it performs sovereign functions and the holding of a town fiesta was an exercise of its governmental functions from which no liability can arise to answer for the negligence of any of its agents.

The defendant councilors in turn maintained that they merely acted as agents of the municipality in carrying out the municipal ordinance providing for the management of the town fiesta celebration and as such they are likewise not liable for damages as the undertaking was not one for profit; furthermore, they had exercised due care and diligence in implementing the municipal ordinance.[2]

After trial, the Presiding Judge, Hon. Gregorio T. Lantin, narrowed the issue to whether or not the defendants exercised due diligence in the construction of the stage. From his findings he arrived at the conclusion that the Executive Committee appointed by the municipal Council had exercised due diligence and care like a good father of the family in selecting a competent man to construct a stage strong enough for the occasion and that if it collapsed that was due to forces beyond the control of the committee on entertainment, consequently, the defendants were not liable for damages for the death of Vicente Fontanilla. The complaint was accordingly dismissed in a decision dated July 10, 1962.[3]

The Fontanillas appealed to the Court of Appeals. In a decision promulgated on October 31, 1968, the Court of Appeals through its Fourth Division composed at the time of Justices Salvador V. Esguerra, Nicasio A. Yatco and Eulogio S. Serrano reversed the trial court's decision and ordered all the defendants-appellees to pay jointly and severally the heirs of Vicente Fontanilla the sums of P12,000.00 by way of moral and actual damages; P1,200.00 as attorney's fees; and the costs.[4]

The case is now before Us on various assignments of errors all of which center on the proposition stated at the opening sentence of this Opinion and which We repeat:

Is the celebration of a town fiesta an undertaking in the exercise of a municipality's governmental or public function or is it of a private or proprietary character?

1. Under Philippine laws municipalities are political bodies corporate and as such are endowed with the faculties of municipal corporations to be exercised by and through their respective municipal governments in conformity with law, and in their proper corporate name, they may, inter alia, sue and be sued, and contract and be contracted with.[5]

The powers of a municipality are twofold in character - public, governmental, or political on the one hand, and corporate, private, or proprietary on the other. Governmental powers are those exercised by the corporation in administering the powers of the state and promoting the public welfare and they include the legislative, judicial, public, and political. Municipal powers on the other hand are exercised for the special benefit and advantage of the community and include those which are ministerial, private and corporate.[6]

As to when a certain activity is governmental and when proprietary or private, that is generally a difficult matter to determine. The evolution of the municipal law in American jurisprudence, for instance, has shown that none of the tests which have evolved and are stated in textbooks have set down a conclusive principle or rule, so that each case will have to be determined on the basis of attending circumstances.

In *McQuillin on Municipal Corporations*, the rule is stated thus: "A municipal corporation proper has a public character as regards the state at large insofar as it is its agent in government, and private (so-called) insofar as it is to promote local necessities and conveniences for its own community." [7]

Another statement of the test is given in *City of Kokomo v. Loy*, decided by the Supreme Court of Indiana in 1916, thus:

"Municipal corporations exist in a dual capacity, and their functions are twofold. In one they exercise the right springing from sovereignty, and while in the performance of the duties pertaining thereto, their acts are political and governmental. Their officers and agents in such capacity, though elected or appointed by them, are nevertheless public functionaries performing a public service, and as such they are officers, agents, and servants of the state. In the other capacity the municipalities exercise a private, proprietary or corporate right, arising from their existence as legal persons and not as public agencies. Their officers and agents in the performance of such functions act in behalf of the municipalities in their corporate or individual capacity, and not for the state or sovereign power." (112 N.E., 994-995)

In the early Philippine case of *Mendoza v. de Leon*, 1916, the Supreme Court, through Justice Grant T. Trent, relying mainly on American jurisprudence classified certain activities of the municipality as governmental, e.g.: regulations against fire, disease, preservation of public peace, maintenance of municipal prisons, establishment of schools, post-offices, etc., while the following are corporate or proprietary in character, viz: municipal waterworks, slaughterhouses, markets, stables, bathing establishments, wharves, ferries, and fisheries.[8] Maintenance of parks, golf courses, cemeteries and airports among others, are also recognized as municipal or city activities of a proprietary character.[9]

2. This distinction of powers becomes important for purposes of determining the liability of the municipality for the acts of its agents which result in an injury to third persons.

If the injury is caused in the course of the performance of a governmental function or duty no recovery, as a rule, can be had from the municipality unless there is an existing statute on the matter,[10] nor from its officers, so long as they performed their duties honestly and in good faith or that they did not act wantonly and maliciously.[11] In *Palafox, et al. v. Province of Ilocos Norte, et al.*, 1958, a truckdriver employed by the provincial government of Ilocos Norte ran over Proceto Palafox in the course of his work at the construction of a road. The Supreme Court in affirming the trial court's dismissal of the complaint for damages held that the province could not be made liable because its employee was in the performance of a governmental function - the construction and maintenance of roads - and however tragic and deplorable it may be, the death of Palafox imposed on the province no duty to pay monetary consideration.[12]

With respect to proprietary functions, the settled rule is that a municipal corporation can be held liable to third persons *ex contractu*[13] or *ex delicto*. [14]

"Municipal corporations are subject to be sued upon contracts and in tort. x x x

xxx xxx xxx

"The rule of law is a general one, that the superior or employer must answer civilly for the negligence or want of skill of his agent or servant in the course or line of his employment, by which another, who is free from contributory fault, is injured. Municipal corporations under the conditions herein stated, fall within the operation of this rule of law, and are liable, accordingly, to civil actions for damages when the requisite elements of liability coexist. xx xx" (*Dillon on Municipal Corporations*, 5th ed. Secs. 1610, 1647, cited in *Mendoza v. de Leon*, supra, 514)

3. Coming to the case before Us, and applying the general tests given above, We hold that the holding of the town fiesta in 1959 by the Municipality of Malasiqui, Pangasinan, was an exercise of a private or proprietary function of the municipality.

Section 2282 of the Chapter on Municipal Law of the Revised Administrative Code provides:

"Section 2282. Celebration of fiestas. - A fiesta may be held in each municipality not oftener than once a year upon a date fixed by the municipal council. A fiesta shall not be held upon any other date than that lawfully fixed therefor, except when, for weighty reasons, such as typhoons, inundations, earthquakes, epidemics, or other public calamities, the fiesta cannot be held in the date fixed, in which case it may be held at a later date in the same year, by resolution of the council."

This provision simply gives authority to the municipality to celebrate a yearly fiesta but it does not impose upon it a duty to observe one. Holding a fiesta even if the purpose is to commemorate a religious or historical event of the town is in essence an act for the special benefit of the community and not for the general welfare of the public performed in pursuance of a policy of the state. The mere fact that the celebration, as claimed, was not to secure profit or gain but merely to provide entertainment to the town inhabitants is not a conclusive test. For instance, the maintenance of parks is not a source of income for the town, nonetheless it is a private undertaking as distinguished from the maintenance of public schools, jails, and the like which are for public service.

As stated earlier, there can be no hard and fast rule for purposes of determining the true nature of an undertaking or function of a municipality; the surrounding circumstances of a particular case are to be considered and will be decisive. The basic element, however beneficial to the public the undertaking may be, is that it is governmental in essence, otherwise, the function becomes private or proprietary in character. Easily, no governmental or public policy of the state is involved in the celebration of a town fiesta.[15]

4. It follows that under the doctrine of respondeat superior, petitioner municipality is to be held liable for damages for the death of Vicente Fontanilla if that was attributable to the negligence of the municipality's officers, employees, or agents.

"Art. 2176, Civil Code: Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. x x x"

"Art. 2180, Civil Code: The obligation imposed by article 2176 is demandable not only for one's own acts or omission, but also for those of persons for whom one is responsible. x x x"

On this point, the Court of Appeals found and held that there was negligence.

The trial court gave credence to the testimony of Angel Novado, a witness of the defendants (now petitioners), that a member of the "extravaganza troupe" removed two principal braces located on the front portion of the stage and used them to hang the screen or "telon", and that when many people went up the stage the latter collapsed. This testimony was not believed however by respondent appellate court, and rightly so. According to said defendants, those two braces were "mother" or "principal" braces located semi-diagonally from the front ends of the stage to the front posts of the ticket booth located at the rear of the stage and were fastened with a bamboo twine.[16] That being the case, it becomes incredible that any person in his right mind would remove those principal braces and leave the front portion of the stage practically unsupported. Moreover, if that did happen, there was indeed negligence as there was lack of supervision over the use of the stage to prevent such an occurrence.

At any rate, the guitarist who was pointed to by Novado as the person who removed the two bamboo braces

denied having done so. The Court of Appeals said: "Amor by himself alone could not have removed the two braces which must be about ten meters long and fastened them on top of the stage for the curtain. The stage was only five and a half meters wide. Surely, it would be impractical and unwieldy to use a ten meter bamboo pole, much more two poles, for the stage curtain." [17]

The appellate court also found that the stage was not strong enough considering that only P100.00 was appropriated for the construction of two stages and while the floor of the "zarzuela" stage was of wooden planks, the posts and braces used were of bamboo material. We likewise observe that although the stage was described by the petitioners as being supported by "24" posts, nevertheless there were only 4 in front, 4 at the rear, and 5 on each side. Where were the rest?

The Court of Appeals thus concluded:

"The court a quo itself attributed the collapse of the stage to the great number of onlookers who mounted the stage. The municipality and/or its agents had the necessary means within its command to prevent such an occurrence. Having failed to take the necessary steps to maintain the safety of the stage for the use of the participants in the stage presentation prepared in connection with the celebration of the town fiesta, particularly, in preventing nonparticipants or spectators from mounting and accumulating on the stage which was not constructed to meet the additional weight, the defendants-appellees were negligent and are liable for the death of Vicente Fontanilla." (pp. 30-31, rollo, L-29993)

The findings of the respondent appellate court that the facts as presented to it establish negligence as a matter of law and that the Municipality failed to exercise the due diligence of a good father of the family, will not be disturbed by Us in the absence of a clear showing of an abuse of discretion or a gross misapprehension of facts. [18]

Liability rests on negligence which is "the want of such care as a person of ordinary prudence would exercise under the circumstances of the case." [19]

Thus, private respondents argue that the "Midas Extravaganza" which was to be performed during the town fiesta was a "donation" offered by an association of Malasiqui employees of the Manila Railroad Co. in Caloocan, and that when the Municipality of Malasiqui accepted the donation of services and constructed precisely a "zarzuela stage" for the purpose, the participants in the stage show had the right to expect that the Municipality through its "Committee on entertainment and stage" would build or put up a stage or platform strong enough to sustain the weight or burden of the performance and take the necessary measures to insure the personal safety of the participants. [20] We agree.

Quite relevant to that argument is the American case of *Sanders v. City of Long Beach*, 1942, which was an action against the city for injuries sustained from a fall when plaintiff was descending the steps of the city auditorium. The city was conducting a "Know your City Week" and one of the features was the showing of a motion picture in the city auditorium to which the general public was invited and plaintiff Sanders was one of those who attended. In sustaining the award for damages in favor of plaintiff, the District Court of Appeal, Second District, California, held inter alia that the "Know your City Week" was a "proprietary activity" and not a "governmental one" of the city, that defendant owed to plaintiff, an "invitee", the duty of exercising ordinary care for her safety, and plaintiff was entitled to assume that she would not be exposed to a danger (which in this case consisted of lack of sufficient illumination of the premises) that would come to her through a violation of defendant's duty. [21]

We can say that the deceased Vicente Fontanilla was similarly situated as Sanders. The Municipality of Malasiqui

resolved to celebrate the town fiesta in January of 1959; it created a committee in charge of the entertainment and stage; an association of Malasiqui residents responded to the call for the festivities and volunteered to present a stage show; Vicente Fontanilla was one of the participants who like Sanders had the right to expect that he would not be exposed to danger on that occasion.

Lastly, petitioner or appellant Municipality cannot evade responsibility and/or liability under the claim that it was Jose Macaraeg who constructed the stage. The Municipality acting through its municipal council appointed Macaraeg as chairman of the sub-committee on entertainment and in charge of the construction of the "zarzuela" stage. Macaraeg acted merely as an agent of the Municipality. Under the doctrine of respondeat superior mentioned earlier, petitioner is responsible or liable for the negligence of its agent acting within his assigned tasks.[22]

"x x x when it is sought to render a municipal corporation liable for the act of servants or agents, a cardinal inquiry is, whether they are the servants or agents of the corporation. If the corporation appoints or elects them, can control them in the discharge of their duties, can continue or remove them, can hold them responsible for the manner in which they discharge their trust, and if those duties relate to the exercise of corporate powers, and are for the peculiar benefit of the corporation in its local or special interest, they may justly be regarded as its agents or servants, and the maxim of respondent superior applies." x x x (Dillon on Municipal Corporations, 5th Ed., Vol. IV, p. 2879)

5. The remaining question to be resolved centers on the liability of the municipal councilors who enacted the ordinance and created the fiesta committee.

The Court of Appeals held the councilors jointly and solidarily liable with the municipality for damages under Article 27 of the Civil Code which provides that "any person suffering material or moral loss because a public servant or employee refuses or neglects, without just cause, to perform his official duty may file an action for damages and other relief against the latter." [23]

In their Petition for review the municipal councilors allege that the Court of Appeals erred in ruling that the holding of a town fiesta is not a governmental function and that there was negligence on their part for not maintaining and supervising the safe use of the stage, in applying Article 27 of the Civil Code against them, and in not holding Jose Macaraeg liable for the collapse of the stage and the consequent death of Vicente Fontanilla.[24]

We agree with petitioners that the Court of Appeals erred in applying Article 27 of the Civil Code against them, for this particular article covers a case of non-feasance or nonperformance by a public officer of his official duty; it does not apply to a case of negligence or misfeasance in carrying out an official duty.

If We are led to set aside the decision of the Court of Appeals insofar as these petitioners are concerned, it is because of a plain error committed by respondent court which however is not invoked in petitioners' brief.

In Miguel v. The Court of Appeals, et al., the Court, through Justice, now Chief Justice, Fred Ruiz Castro, held that the Supreme Court is vested with ample authority to review matters not assigned as errors in an appeal if it finds that their consideration and resolution are indispensable or necessary in arriving at a just decision in a given case, and that this is authorized under Sec. 7, Rule 51 of the Rules of Court.[25] We believe that this pronouncement can well be applied in the instant case.

The Court of Appeals in its decision now under review held that the celebration of a town fiesta by the Municipality of Malasiqui was not a governmental function. We upheld that ruling. The legal consequence thereof

is that the Municipality stands on the same footing as an ordinary private corporation with the municipal council acting as its board of directors. It is an elementary principle that a corporation has a personality, separate and distinct from its officers, directors, or persons composing it[26] and the latter are not as a rule co-responsible in an action for damages for tort or negligence (culpa aquiliana) committed by the corporation's employees or agents unless there is a showing of bad faith or gross or wanton negligence on their part.[27]

“xxx xxx xxx

"The ordinary doctrine is that a director, merely by reason of his office, is not personally liable for the torts of his corporation; he must be shown to have personally voted for or otherwise participated in them." xx xx xx

(Fletcher Cyclopedia Corporations, Vol. 3A, Chap. 11, p. 207)

"Officers of a corporation are not held liable for the negligence of the corporation merely because of their official relation to it, but because of some wrongful or negligent act by such officer amounting to a breach of duty which resulted in an injury ... To make an officer of a corporation liable for the negligence of the corporation there must have been upon his part such a breach of duty as contributed to, or helped to bring about, the injury; that is to say, he must be a participant in the wrongful act." xx xx xx (pp. 207-208, *ibid.*)

xxx xxx xxx

"Directors who merely employ one to give a fireworks exhibition on the corporate grounds are not personally liable for the negligent acts of the exhibitor." (p. 211, *ibid.*)

On these principles We absolve the municipal councilors from any liability for the death of Vicente Fontanilla. The records do not show that said petitioners directly participated in the defective construction of the "zarzuela" stage or that they personally permitted spectators to go up the platform.

6. One last point We have to resolve is on the award of attorney's fees by respondent court. Petitioner-municipality assails the award.

Under paragraph 11, Art. 2208 of the Civil Code attorney's fees and expenses of litigation may be granted when the court deems it just and equitable. In this case of Vicente Fontanilla, although respondent appellate court failed to state the grounds for awarding attorney's fees, the records show however that attempts were made by plaintiffs, now private respondents, to secure an extrajudicial compensation from the municipality; that the latter gave promises and assurances of assistance but failed to comply; and it was only eight months after the incident that the bereaved family of Vicente Fontanilla was compelled to seek relief from the courts to ventilate what was believed to be a just cause.[28]

We hold, therefore, that there is no error committed in the grant of attorney's fees which after all is a matter of judicial discretion. The amount of P1,200.00 is fair and reasonable.

PREMISES CONSIDERED, We AFFIRM in toto the decision of the Court of Appeals insofar as the Municipality

of Malasiqui is concerned (L-30183), and We absolve the municipal councilors from liability and SET ASIDE the judgment against them (L-29993).

Without pronouncement as to costs.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Fernandez, and Guerrero, JJ., concur.

[1] pp. 3-4 of Petitioner's brief.

[2] pp. 35-37, rollo of L-29993.

[3] pp. 42-44, *ibid.*

[4] pp. 21-31, *ibid.*

[5] Sec. 2125, Art. 1, Municipal Law as embodied in the Revised Administrative Code.

[6] *Mendoza v. de Leon*, 33 Phil. 508; 56 Am Jur 2d 254, sec. 199; *Martin on the Revised Administrative Code*, 1963 ed., pp. 482-483, citing *Cooley's Municipal Corporation*, pp. 136-137.

[7] 2nd Ed. Vol. 1, Sec. 126, p. 381, cited in *Dept. of Treasury v. City of Evansville*, Sup. Ct. of Indiana, 60 N.E. 2d 952,954.

[8] *supra*, p. 509

[9] *Dept. of Treasury v. City of Evansville*, *supra*, p. 956

[10] For instance, Art. 2189, Civil Code provides -

"Art. 2189. Provinces, cities and municipalities shall be liable for damages for the death of, or injuries suffered by, any person by reason of the defective condition of roads, streets, bridges, public buildings, and other public works under their control or supervision."

[11] *Mendoza v. de Leon*, *supra*, p. 513 In *Palma v. Graciano*, the City of Cebu, et. al., 99 Phil. 72, the Court held that although the prosecution of crimes is a governmental function and as a rule the province and city of Cebu are not civilly liable by reason thereof, nonetheless when a public official goes beyond the scope of his duty, particularly when acting tortiously, he is not entitled to protection on account of his office but is liable for his acts like any private individual.

[12] L-10659, January 31, 1958, Unrep., 102 Phil. 1186

[13] *Municipality of Paoay, Ilocos Norte v. Manaois*, et al., 86 Phil. 629; *Municipality of Moncada v. Cajuigan*, et al., 21 Phil. 184

[14] *Mendoza v. de Leon*, *supra*. 513

[15] We came across an interesting case which shows that surrounding circumstances plus the political, social, and cultural backgrounds may have a decisive bearing on this question. The case of *Pope v. City of New Haven*, et al., was an action to recover damages for personal injuries caused during a Fourth of July fireworks display resulting in the death of a bystander alleged to have been caused by dependants' negligence. The dependants demurred to the complaint invoking the defense that the city was engaged in the performance of a public governmental duty from which it received no pecuniary benefit and for negligence in the performance of which

no statutory liability is imposed. This demurrer was sustained by the Superior Court of New Haven County. Plaintiff sought to amend his complaint to allege that the celebration was for the corporate advantage of the city. This was denied. In affirming the order, the Supreme Court of Errors of Connecticut held inter alia:

Municipal corporations are exempt from liability for the negligent performance of purely public governmental duties, unless made liable by statute. ...

"A municipal corporation, which, under permissive authority of its charter or of statute, conducted a public Fourth of July celebration, including a display of fireworks, and sent up a bomb intended to explode in the air, but which failed to explode until it reached the ground, and then killed a spectator, was engaged in the performance of a governmental duty." (99 A.R. 51)

This decision was concurred in by three Judges while two dissented.

At any rate the rationale of the Majority Opinion is evident from this excerpt:

"July 4th, or, when that date falls upon Sunday, July 5th, is made a public holiday, called Independence Day, by our statutes. All or nearly all of the other states have similar statutes. While there is no United States statute making a similar provision, the different departments of the government recognize, and have recognized since the government was established, July 4th as a national holiday. Throughout the country it has been recognized and celebrated as such. These celebrations, calculated to entertain and instruct the people generally and to arouse and stimulate patriotic sentiments and love of country, frequently take the form of literary exercises consisting of patriotic speeches and the reading of the Constitution, accompanied by a musical program including patriotic airs, sometimes preceded by the firing of cannon and followed by fireworks. That such celebrations are of advantage to the general public and their promotion a proper subject of legislation can hardly be questioned. x x x" (ibid., p. 52)

[16] See page 8 of Court of Appeals decision, p. 28 rollo L-29993

[17] p. 29, *ibid.*

[18] *De Gala-Sison v. Manalo*, 8 SCRA 595; *Ramos v. Pepsi-Cola Bottling Co.*, 19 SCRA 289; *Tan v. Court of Appeals, et al.*, 20 SCRA 54; *Chan v. Court of Appeals, et al.*, 33 SCRA 737, among others.

[19] 19 Cal. Jur., p. 548; *Corliss v. Manila Railroad Co.*, 27 SCRA 674

[20] Respondents' brief, p. 70, rollo L-29993

[21] 129 P. 2d 511, 514

[22] See page 8 of this Decision for quotation from *Dillon on Municipal Corporations*.

[23] p. 31, rollo L-29993

[24] pp. 1-3, petitioners' brief

[25] 29 SCRA 760

[26] *Banque General Belge, et al. v. Walter Bull & Co., Inc. and Walter Bull*, 47 Off. Gaz., No. 1, 140

[27] See *Mindanao Motor Line, Inc. et al. v. Court of Industrial Relations, et al.*, 6 SCRA 710

[28] pp. 34, 72-73, rollo L-29993

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