

**GODOFREDO B. HERRERA, AS MUNICIPAL PRESIDENT OF
CALOOCAN, PETITIONER, VS. ALBERTO BARRETTO, JUDGE OF FIRST
INSTANCE OF RIZAL, AND CONSTANCIO JOAQUIN, RESPONDENTS.**

G.R. No. 8692. December 20, 1913

Ponente: MORELAND, J.

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MORELAND, J.:

A decision having been rendered in this case dismissing the application for a writ of certiorari, the respondents or defendants in that application now come asking for an assessment by this court of the damages occasioned by reason of the issuance in that proceeding of an injunction by one of the members of this court restraining the defendant from operating his cockpit until this court should have passed finally upon the application for the writ.

It is provided by the Code of Civil Procedure that an injunction may be granted upon the demonstration to the court of certain facts and the presentation of an undertaking with sufficient sureties, conditioned "that the plaintiff will pay to the party enjoined all such damages as such party may sustain by reason of the injunction, if the court should finally decide that the plaintiff was not entitled thereto."

Section 170 of the Code (Act No. 190) provides that:

"Upon final trial the amount of damages to be awarded to the plaintiff or to the defendant upon the obligations provided in the last four preceding sections shall be ascertained by the court trying the action, and judgment for the same shall be included in the final judgment and the judgment shall be both against the plaintiff and against the sureties upon any obligation given under the provisions of any of the last four sections."

We do not believe that this court should take cognizance of the proceeding for damages as proposed. Certiorari is not an action within the sense in which that word is used in the sections of the Code of Civil Procedure relating to injunctions. Certiorari being limited in its issuance to cases involving jurisdictional defects can never be a proceeding in which the merits of a cause are ventilated. If an application for the writ be made before the action or proceeding in the inferior court is terminated, and such application is well founded, the only result will be, in a case where the court has exceeded its jurisdiction, the correction of the error and the continuation of the cause in the trial court in accordance with law. If the action or proceeding in the inferior court is terminated, this court in certiorari will either affirm, annul, or modify. In either case, it will be presumed that the party interested will take or has taken such proceedings in the court below as will protect him in the prosecution of the proceeding to obtain the damages sustained by reason of the injunction, if any. In certiorari this court touches no question but one of law and makes no adjudication which in any sense affects the merits of the action or proceeding in the inferior court. In that sense, therefore, it is not an action.

Under such circumstances, this court is not warranted in taking cognizance of the proceeding presented to it. If we may assume for the moment that the court could find any basis for such a proceeding before it, or there could be presented any facts which would warrant its action, we can readily see what embarrassment might arise. If this court should determine that the party restrained by the injunction had suffered damages and should award him a

sum sufficient to compensate him, the Court of First Instance subsequently, after a trial on the merits of the cause, might find that the party restrained was not entitled to a judgment upon the merits and had no basis whatever for his action. This very case is an illustration of that possible condition. Plaintiff in the action in the court below asked for a mandamus to compel the issuance to him of a cockpit license. In that action he obtained a mandatory injunction compelling the issuance of one to continue during the pendency of the action. A member of this court, upon a proceeding in certiorari, issued an injunction against the plaintiff in the court below restraining him from exploiting his cockpit under that license until "the Supreme Court should finally pass upon the certiorari proceeding. This court, acting upon the application, dismissed it, at the same time dissolving the injunction against the plaintiff in the court below. If, now, upon the proceeding presented for the assessment of damages, this court should find that the plaintiff in the court below was entitled to the sum asked, namely, P33,000, we might possibly be met in the future with a judgment of the Court of First Instance upon the merits of the cause, declaring that the plaintiff in that action was not entitled to a cockpit license and therefore suffered no damage by reason of not having been permitted to use it while the injunction was in force. If that judgment were well founded, then the plaintiff in that action could have suffered no damage by reason of the restraining order issued by the member of this court. It is apparent, therefore, that, before this court can determine intelligently and properly the question of damages resulting from an injunction, it must have before it for adjudication the merits of the cause. The merits never being before the court in a proceeding for the issuance of a writ of certiorari, no damages can be assessed by this court in that proceeding. This court is not, in certiorari proceedings, "the court trying the action" which has cognizance of the "final trial."

As we have already said, certiorari is not an action within the meaning of section 170 of the Code of Civil Procedure. While the decisions of this court frequently refer to the proceeding as "an ordinary action," such language, although correct in the sense used, is not intended to convey the idea that the proceeding is such in all that the term implies, especially in the sense in which the word is used in the section just referred to.

In the case of *Blanco vs. Ambler* (3 Phil. Rep., 358), the court said at page 360: "The court has adopted a different practice in case of certiorari from that adopted in cases of mandate and prohibition. The latter take the form of an ordinary action. In the former an order to show cause is issued and upon its return, if no sufficient cause is shown, the order provided for by section 217 is issued."

In the case of *Beech vs. Crossfield* (12 Phil. Rep., 555), the court said: "It was suggested at the argument that some of the defendants in this case had made no proper answer to the order to show cause. We had directed that the defendants should appear and state their reasons why a writ of certiorari should not be granted. Some of them appeared and presented what they called a demurrer to the complaint and the plaintiff says that a demurrer in such cases is improper. That is true, but the document they presented was improperly called by them a demurrer. If they saw fit to answer the order to show cause by saying that they admitted all the facts stated in the complaint, but that even on such admission the plaintiff was not entitled to relief, they had a right to do so. That is, in effect, what they did. The document which they called a demurrer was, in effect, their answer to the order to show cause."

From these decisions it is clear that certiorari is not considered by this court an action in all senses. While it may take somewhat the form of an action, being begun perhaps by a complaint, or something similar thereto, followed by what may be termed an answer, or what may be, in substance, a demurrer, it lacks many of the essential features of an action. It never touches the merits of the cause and deals almost exclusively with questions of law based upon the record of the case. A proceeding which, in its final judgment, does not touch the merits of the cause can hardly be called an action in all senses.

The motion to assess damages is denied and the parties are remanded to the Court of First Instance for the

vindication of their rights, if any they have, in that particular.

Arellano, C. J., Torres and Mapa, JJ., concur.

Carson, J., concurs in the result.

DISSENTING

TRENT, J.,

I dissent.

I cannot concur with my brethren in the disposition of this case, first, because the court, notwithstanding that it has decreed that the injunction was wrongfully issued against the defendant, refuses to now entertain his claim for damages for such wrongful issuance; and, second, because the majority opinion is directly in the teeth of the decisions of this court in *Somes vs. Crossfield* (9 Phil. Rep., 13) and *Macatangay vs. Municipality of San Juan de Bocboc* (9 Phil. Rep., 19). The court does not attempt to say that the defendant has not suffered damages. It simply refuses to hear him on this point.

The court finds a distinction between the action in certiorari and other actions which relieves it from the duty of assessing damages in such an action. Section 1 of the Code of Civil Procedure provides in part as follows: "An 'action' means an ordinary suit in a court of justice, by which one party prosecutes another for the enforcement or protection of a right, or the redress or prevention of a wrong; every other remedy furnished by law is a special proceeding."

Part II of the Code is devoted to special proceedings but certiorari is not included therein. Certiorari is found in part I of the Code under the heading "Special Remedies." Section 217 distinctly requires that the initial pleading in certiorari shall be a complaint, notwithstanding that it is often familiarly called by the court and bar a petition, the latter being reserved as the name of the initial pleading in special proceedings. If certiorari is an action and must be commenced by a complaint, the proceedings are subject and amenable to the rules governing the progress of any other action through courts of justice, subject only to the special provisions of sections 217-221, which give it its special character as a proceeding in certiorari. If there be anything in these sections which prohibits the courts from assessing damages for the wrongful issuance of an injunction during the progress of the certiorari proceedings, my brethren have failed to point it out. And, notwithstanding that section 170, which is quoted in the majority opinion, provides that damages for the issuance of an injunction, shall be assessed upon the final trial of an action, the court has refused to follow these directions on the ground that certiorari is different from other actions. It is true that it is different from and has other functions than an action for the appointment of a receiver, for the partition of real estate, for the usurpation of an office or franchise, for mandate, prohibition, contempt, eminent domain, foreclosure, and manual delivery of personal property. So also are each of those named different from the others. They are all special remedies as is also certiorari. Circumstances can be conceived when an injunction would be a proper accompaniment of a complaint asking for any one of these special remedies.

The court refers to *Blanco vs. Ambler* (3 Phil. Rep., 358), as making a distinction between certiorari, and mandate and prohibition. Mandate and prohibition, like certiorari, are special remedies. If it be conceded that they are ordinary actions as that term is used in the Code of Civil Procedure, there is no reason for saying that certiorari is not, since it also is a special remedy and is provided for in the same chapter of the code as mandate and prohibition. But conceding that it is the practice of this court to issue an order to show cause in certiorari, does this fact have the effect of so far changing an action in certiorari that damages for the wrongful issuance of an injunction could be assessed in mandate and prohibition while in certiorari they could not be assessed? Moreover,

any effect that decision might have toward denying the right of a defendant to file a demurrer to the complaint in an action of certiorari appears to have been overruled in *Artacho vs. Tan Chu Chay* (11 Phil. Rep., 47), in which the opinion of the court was written by the same member who wrote the opinion in *Blanco vs. Ambler*. In the *Artacho* case it is said: "This is an original action in certiorari in this court. The defendants demurred to the complaint and the case is now before us for resolution of this demurrer."

It was held that the complaint did not state a cause of action, and the demurrer was sustained, with leave to the plaintiff to amend. By reference to the decisions of this court, it may be found that the parties in certiorari are called respectively, plaintiffs and defendants; that the initial pleading is termed a complaint; that the complaint may be demurred to; that it may be amended; that final judgment is rendered; and that the whole procedure is termed an action.

No. 34 of the Rules of this court provides: "When the original jurisdiction of this court is invoked in cases of certiorari, mandamus, prohibition, and quo warranto, like procedure as to process and pleading shall be observed as is provided in the Code of Civil Procedure and the Rules of court for ordinary actions."

The terms used by this court to describe an action of certiorari and its parts are all technical terms, defined with great care in the Code of Civil Procedure, and have certain functions, also carefully defined, in that legal procedure defined as an "action" in section 1 (*supra*). If, with these attributes, damages for the wrongful issuance of an injunction cannot be assessed in certiorari, when it is admitted that they may, in a proper case, exist, it is difficult to see how such damages can be assessed as an incident of the final judgment in any other ordinary action.

By distinguishing between certiorari on the one hand, and prohibition and mandate on the other, it is assumed that the court would allow, in a proper case, damages for the wrongful issuance of an injunction in either of the last two named proceedings. It is quite evident, however, that neither an application for mandamus nor one for prohibition goes to the merits of the controversy out of which arose the action or the threatened action of the court to which objection is made by the mandamus or prohibition plaintiff. In prohibition, the whole question to be determined is whether there was jurisdiction to perform the act complained of. If such an act is within the jurisdiction of the court, the writ is denied, regardless of whether the act complained of may be subject to reversal by an ordinary appeal. In mandamus, the whole question is, was the act complained of within the legitimate bounds of judicial discretion? If it was, whether the court acted wisely or committed an error of judgment avails the mandamus plaintiff nothing. If the merits of the controversy are not reached by either of the three writs, I am unable to see why this fact should be made the ground for denying the certiorari defendant relief for the wrongful issuance of an injunction, while it has no such effect in mandamus and prohibition.

Suppose we consider a few hypothetical cases such as are liable to come up any day. The Board of Rate Regulation is a board which exercises judicial functions. (Act No. 1791.) It therefore falls within the provisions of section 217 of the Code of Civil Procedure. In an original action or proceeding of certiorari in this Court the plaintiff alleges that the said Board has exceeded its jurisdiction or acted without jurisdiction in fixing the rates to be charged by a certain public service corporation, or in promulgating rules and regulations for the government of such a corporation; and also alleges the other necessary facts. In conformance with the prayer a preliminary injunction is granted. Upon final hearing the court finds that the regulations are not well founded and renders judgment against the plaintiff dissolving the injunction and dismissing the complaint with costs. When and where and by what court or tribunal must the damages for which the bond is given be determined and fixed? The Board cannot do so because the law does not authorize it to determine such questions. In original actions of mandamus and prohibition in this court against the Board of Rate Regulation the same question might be asked, but this court has indirectly held that the damages in these two cases would be determined by this court in the same action. A

justice of the peace tries a case which involves, as the plaintiff claims, the right to the possession of a large hacienda. The defendant contends that the title is necessarily involved. Judgment for the plaintiff for possession. The defendant by reason of the amount of the bond required is unable to appeal. He institutes in this court certiorari proceedings and upon the presentation of a bond which he is now able to give obtains a preliminary injunction against the execution of the judgment of the justice of the peace. The basis of his action is that the justice of the peace was without jurisdiction. Upon trial this court finds that the justice of the peace did have jurisdiction and renders judgment dissolving the injunction and dismissing the complaint. The damages to the certiorari defendant for which the bond was given amount to several thousand pesos. The justice of the peace has long since terminated the original trial. What tribunal must determine the damages caused by the wrongful issuance of the preliminary injunction? Has the justice of the peace jurisdiction to decide this question in view of the fact that unliquidated damages in a large amount are involved? Under the holding, this court will not determine these damages. If the justice of the peace cannot, then an original action must be instituted, I suppose, in the Court of First Instance. From the judgment of that court an appeal will lie to this court where the damages must finally be settled. If the justice of the peace has jurisdiction an appeal will lie to the Court of First Instance and finally come here. Innumerable cases of the character of these can be mentioned. I think this court is wrong and it will have again to reverse itself and go back to the old rule established six years ago.

I do not believe there is a single clause in our Practice Act which can be seized upon as indicating the intention of the legislature that damages for the issuance of an injunction in certiorari proceedings are not to be assessed in the final, certiorari judgment. Yet this court has so laid the rule, and in explaining its operation says: "If an application for the writ be made before the action or proceeding in the inferior court is terminated, and such application is well founded, the only result will be, in a case where the court has exceeded its jurisdiction, the correction of the error and the continuation of the case in the trial court in accordance with law."

The court then goes on to say that in such cases the defendant in certiorari will be presumed to take such proceedings in the court below as will save him harmless from the wrongful issuance of an injunction staying the proceedings in the lower court. In one breath the court says that if the certiorari is well founded the only result is the correction of the error of the lower court and the continuation of the cause in the trial court. In the next it admits as a possible result of such a disposition of the certiorari action, damage to the certiorari defendant. The injunction bond is designed to save the one enjoined from injury. What further steps are necessary?

The other proposition advanced in the majority opinion is as follows: "If the action or proceeding in the inferior court is terminated, this court in certiorari will either affirm, annul, or modify."

And it is then laid down that the certiorari defendant will also be presumed to guard his interests by some proceeding in the lower court. Evidently he can take no further proceeding in an action which has been concluded by a final judgment. He might, it is true, ask the inferior court to require the certiorari plaintiff to execute a bond securing him for the damages he might suffer while the execution of the final judgment was stayed by the writs of certiorari and injunction sued out by his adversary. But could such inferior court, even were it inclined to do so, require the certiorari plaintiff to do this? The only effective method of compelling the certiorari plaintiff to execute such a bond would be to require it as a condition precedent to further proceedings in the certiorari action. But that would be mere effrontery on the part of the inferior court, and, needless to say, this court would not permit such trifling with cases pending before it. This method of saving himself from damages by reason of such writs of certiorari and injunction being denied the certiorari defendant imposes upon him the necessity of instituting a separate and distinct action from either the one concluded by the final judgment in the original case or the one forming the basis for the final judgment in certiorari. And consequently, he is deprived of his right to have included in the final judgment an award for damages.

It is urged in the majority opinion that if we allow the defendant in the case at bar to recover on the injunction bond, we might be met with a future judgment declaring that the defendant had no rights in the controversy. Yet this court, in an elaborate opinion, has already declared that he has the right, and has expressly conferred it upon him, of operating his business under a mandatory injunction in that cause. The court fails to distinguish between his rights as finally determined in that cause and his rights under the mandatory injunction. He is at this time, and by virtue of the authority of this court, in the full exercise and enjoyment of his rights under the mandatory injunction in question. It must be remembered that in order to exercise these rights he was compelled to execute a bond saving the herein plaintiffs from all damages by his exploitation of the cockpit privileges. It was not, therefore, necessary for the herein plaintiffs to resort to the extraordinary legal remedies of certiorari and injunction in order to vindicate all their rights and secure indemnity for all damages suffered by them during the pendency of that cause in the courts up to its final termination. It is no answer to this proposition that the herein defendant may eventually be thrown out of court. His right to operate his business in the mean time has been determined and it is not clear why an interference with it by his adversaries in the original litigation is any the less reprehensible or makes them any the less liable for damages arising from such interference than if the injunction which caused the interruption of that business had been issued by some stranger to the controversy. "Every possessor," says the Civil Code, "has a right to be respected in his possession." (Art. 446.) "The fruits collected in good faith by a possessor during the time the possession is not legally interrupted become his own." (Art. 451.) Let us suppose that an entire stranger to the present controversy sued out an injunction from some wrongful motive interrupting the herein defendant in the operation of his business. Would this court hesitate to afford him redress on the ground that his ultimate rights in the present controversy were undetermined? It is clear that if defendant's right to operate his business under the mandatory injunction which has been confirmed by a nonappealable judgment of this high court is not a mere delusion, if it has any substance at all, damages may result from its infringement, which cannot by any means be made to depend upon defendant's ultimate rights in some other legal controversy. This being true, there can be no reason for a strained and hair-splitting distinction between the action of certiorari and other actions, in order to deny the defendant the privilege of having his damages assessed in that action in accordance with section 170 of the Code of Civil Procedure.

Not only has the court departed from the express provisions of law as to the assessment of damages for the wrongful issuance of an injunction, but it has also directly reversed itself on the point at issue. The case of *Macatangay vs. San Juan de Boctoc* (supra) was an original action in this court wherein the plaintiff prayed for a writ of certiorari and a preliminary injunction against the defendant municipality. Before this court had attempted to adjudicate the question plaintiff asked that his action be dismissed. The defendant municipality appeared and asked that the damages sustained by it by reason of the injunction be assessed. This court said:

"Upon a consideration of the motion of the plaintiff to dismiss his action, the same is granted, without prejudice to the right of the defendant to present in this court specifications, in the nature of a complaint, setting forth the grounds relied upon for the purpose of recovering damages against the plaintiff, before final judgment is entered dismissing the said cause, in accordance with the ruling of this court in the case of *Somes vs. Crossfield et al.* (8 Phil. Rep., 284.)

"The Attorney-General in his motion asks that this court order the said cause to be referred to the Court of First Instance of the Province of Batangas for the purpose of ascertaining and reporting to this court the amount of damages which the defendant has sustained by reason of the granting of the said injunction. The defendant is entitled to have the amount of his damages ascertained and to have them included in the final judgment in said cause, but section 170 of the Code of Procedure in Civil Actions provides that said damages shall be ascertained by the court in which the action is pending. The present was an original action in this court; therefore it is the order of this court that the defendant file, in this court, within a period of ten days after the receipt of notice of this order, specifications, in the nature of a complaint, setting forth the grounds relied upon

for the purpose of recovering damages against the plaintiff and his bondsmen, by reason of the granting of the said injunction, and to serve a copy of these specifications upon the plaintiff and the said bondsmen."

In accordance with this decision the clerk of this court was appointed a referee to receive evidence as to the damages sustained by the certiorari defendant and this Supreme Court, after a review of the evidence thus taken, assessed the damages sustained at approximately P200. It is clear that had this procedure not been followed the defendant municipality would have been compelled to institute a new and entirely separate action in the Court of First Instance to recover the damages it sustained.

In that case the question as to where and how the damages must be determined was directly raised. It was the only question presented and decided. The Attorney-General asked that the matter be referred to the Court of First Instance for determination but this motion was denied without a dissenting vote.

But the case which completely supports my position on the question under consideration is *Somes vs. Grossfield* (9 Phil. Rep., 13). In that case *Somes* had secured a judgment against one *De la Riva*. Various other judgment creditors of *De la Riva* were proceeding to advertise an execution sale of his property when *Somes* instituted an action in the Court of First Instance against them in which he sought to have his own judgment take preference over the others by reason of its antedating them, and, at the same time, asked for an injunction prohibiting further steps toward the sale of *De la Riva's* property. The Court of First Instance refused to grant the preliminary injunction, and ordered that the sale be made as advertised, with the proviso that if *Somes* executed a bond indemnifying the various judgment creditors, who had instigated the execution sale, the proceeds thereof would be deposited in court pending the determination of the alleged priority of his claim. Instead of executing this bond, *Somes* filed a petition of certiorari in this court and secured a preliminary injunction which stopped the preparations for the sale. These facts, which do not clearly appear in the printed report, are apparent from an inspection of the record. The judgment creditors who had been made defendants in this certiorari action, demurred to the complaint, the preliminary injunction in the meantime having been dissolved, and the demurrer was sustained, with leave to amend. *Somes* not having elected to amend, the judgment became final and the certiorari defendants appeared before this court asking for damages by reason of the sale as originally planned having been prevented because of the preliminary injunction issued at the request of the certiorari plaintiff, *Somes*. This court quoted section 170 of the Code of Civil Procedure, and then said:

"In view of these provisions requiring that the damages shall be ascertained upon the final judgment, we are of the opinion, and so hold, that it is the duty of the parties seeking damages by reason of the granting of the injunction to file in the court in which the action is pending, specifications, in the nature of a complaint, setting forth the grounds upon which damages are claimed, serving copies of such specifications upon the parties against whom the damages are claimed, and asking that the court shall take such steps as may be advisable and necessary, by hearing the parties itself, or by appointing a commission for that purpose.

"Therefore it is the judgment of this court that, if the defendants herein desire to recover damages against the plaintiff" and his bondsmen, by reason of the said injunction, they must within ten days after receipt of this order file in this court specifications, setting forth the grounds upon which they expect to claim damages."

It is very clear that the action in certiorari did not touch the merits of the litigation. Whether *Somes's* judgment, as a matter of fact, was entitled to priority over those of the other judgment creditors, was a question raised by the action instituted by him in the Court of First Instance, and which was pending at the time he instituted his original action of certiorari and secured the issuance of the preliminary injunction in this court. Nor had that question been determined at the time this court ordered the judgment creditors, who had been made defendants in the certiorari action, to file specifications of their damages resulting from the issuance of the preliminary injunction in the said certiorari action. A set of facts more nearly analogous to the case at bar could hardly be hoped for. An ordinary

civil action pending in the Court of First Instance, an original action of certiorari instituted in this court accompanied by preliminary injunction, the dissolution of the preliminary injunction and a judgment of this court dismissing the complaint in the certiorari action, followed by the wrongful issuance of a preliminary injunction, was followed, in the *Somes* case, by an order of this court granting the said certiorari defendants the privilege of proving such damages; in the case at bar, under the same circumstances, the same request is denied and the defendants are "remanded to the Court of First Instance for the vindication of their rights, if any they have."

The result is that the court has completely reversed itself on the meaning to be given section 170 of the Code of Civil Procedure when applied to original actions in certiorari instituted in this court. Actions in certiorari have, moreover, been distinguished from ordinary civil actions, a difference heretofore unobserved, and, in my opinion, only possible by a positive disregard of the law providing for original actions in certiorari in the Supreme Court.

Where a question of property, or a rule by which the right to property shall be determined has been definitely decided by adjudicated cases, the court should feel bound to follow it. (*Propeller Genessee Chief vs. Fitzhugh*, 12 How., 443.) In questions which affect the rights of property it is better to adhere to principles once fixed, though, originally they might not have been perfectly free from all objections, than to unsettle the law in order to render it more consistent with the dictates of sound reason. (*Marine Ins. Co. vs. Tucker*, 3 Cranch, 357; *National Bank vs. Whitney*, 103 U. S., 99.) While the general authority of adjudication is not denied, the court is not, however, precluded from the right or exempted from the necessity of examining into the correctness or consistency of its own decisions. Moreover, the court should not hesitate to overrule an erroneous decision. (*Ex parte Bollman*, 4 Cranch, 75; *Wood vs. Brady*, 150 U. S., 18; *Pollock vs. Farmer's Loan, etc., Co.*, 157 U. S., 429, 575.) But courts should be slow to overrule their decisions especially where they have stood undisturbed for more than six years as the law upon the subject. This court decided in 1907 in the cases of *Somes vs. Crossfield* and *Macatangay vs. Municipality of San Juan de Bocboc* (*supra*), that a person damaged by the wrongful issuing of an injunction in an original action of certiorari instituted in this court may have his damages determined by this court in the same action.

The certiorari defendant in the case at bar had, under the ruling of this court, a right to operate his cockpit under the license issued to him. It was a right pertaining to his property. He was deprived of this right by the act of his adversary. The rule laid down by this court in the cases above cited being based upon the law, justice, and sound reason, is therefore perfectly applicable and should prevail.

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