close of business hours of said day for lack of trust and confidence upon the recommendation of the chief of police. With regard to Aguilar, he was separated on the additional ground of immorality and of maintaining a house of prostitution. His position was filled by a civil service eligible on August 16, 1951. As a justification for the action he has taken against petitioners, respondent invoked the provisions of Executive Order No. 264 promulgated by President Quezon on April 1, 1940 believing that petitioners as detectives who occupy confidential positions could be separated upon a moment's notice for lack of trust and confidence, and his authority to dismiss them was sustained by the Executive Secretary who in an indorsement intimated that the removal of a detective from the service for lack of confidence was lawful. His action was also sustained by a provincial circular issued on April 3, 1954 by the Executive Secretary confirming the propriety of his action.

With regard to petitioner Diaz, who admittedly was a civil service eligible and was extended on more than one occasion a permanent appointment as member of the police force of Bacolod City, there is no question that his dismissal was illegal for having been made in a manner contrary to the procedure prescribed in Republic Act No. 557.[1] Executive Order No. 264 is no longer in force, the same having been impliedly repealed by said Act. Thus, in Mission v. Del Rosario, 50 O. G., No. 4, 1571, this Court said: "It appearing that petitioners, as detectives, or members of the police force of Cebu City, were separated from the service not for any of the grounds enumerated in Republic Act No. 557 and without the benefit of investigation or trial therein prescribed, the conclusion is inescapable that their removal is illegal and of no valid effect. In this sense, the provisions of Executive Order No. 264 of the President of the Philippines should be deemed as having been impliedly repealed in so far as they may be inconsistent with the provisions of said Act."

A different consideration should be made with regard to petitioner Aguilar for it appears that he was not a civil service eligible even if he was extended several appointments as detective or patrolman by the City Mayor of Bacolod, for not being a civil service eligible, he is not qualified for a permanent appointment. Thus, in one case, this Court said: "In accordance with Section 682 of the Rev. Adm. Code, when a position in the classified service is filled by one who is not a qualified civil service eligible, his appointment is limited to the period necessary to enable the appointing officer to secure a civil service eligible, qualified for the position, and in no case is such temporary appointment for a long period than three months. As petitioners herein were not civil service eligibles at the time of their appointment, and it does not appear that they have since then qualified for the positions they are holding, their respective appointments were only for a period of three months and not more." (Pana, et al. v. City Mayor, et al., G. R. No. L-2700, December 18, 1953).[2] The case of Aguilar comes squarely within the purview of this ruling.

The lower court ordered respondent not only to reinstate petitioners but also to pay them their back salaries and moral and exemplary damages in the aggregate amount of ₱7,000.00. We agree with the trial court that respondent should be made to pay the back salaries of petitioners for the reason that under the Charter of the City of Bacolod (Section 5, Commonwealth Act No. 326), the city cannot be made liable for damages arising from the failure of the mayor to enforce any provisions of the law or from his negligence in the enforcement of any of its provisions. We may also agree with the trial court in holding that respondent in separating the petitioners from the service acted with gross negligence, if not in bad faith, considering the events of contemporary history that had happened in his province and his official acts amounting to abuse of authority of which the trial court took judicial notice in its decision, but we believe that the sum of ₱5,000.00 it slapped upon respondent as moral damages is not justified, for the same is already included in, if not absorbed by, the back salaries he was ordered to pay to petitioners. And with regard to the sum of ₱2,000.00 which respondent was ordered to pay as exemplary damages, the same is somewhat excessive, considering that respondent acted in the belief that he had the requisite authority under Executive Order No. 264 of the President which at that time has not yet been declared repealed by the Supreme Court. But these damages should be imposed if only to curtail the abuses that some public officials are prone to commit upon coming to power in utter disregard of the civil service rules which constitute the only safeguard of the tenure of office guaranteed by our Constitution. These damages should therefore be reduced to ₱1,000.00.

Wherefore, the decision appealed from is hereby modified as follows: respondent, or the incumbent Mayor of Bacolod City, is ordered to reinstate petitioner Leonardo Diaz as prayed for; respondent Amante is ordered to pay petitioner Diaz his unpaid salaries from August 16, 1951 up to the date of his reinstatement and the sum of ₱1,000.00 as exemplary damages. In all other respects, the decision appealed from is hereby reversed. With costs against respondent.

Paras, C.J., Padilla, Labrador, Concepcion, J.B.L. Reyes and Endencia, JJ., concurred.

Bengzon, J., took no part.

[1] Uy v. Rodriguez, July 30, 1954, 50 O.G., No. 8, pp. 3574-76; Abella v. Rodriguez, June 29, 1954, 50 O.G., No. 7, pp. 3039-41; Mission v. Del Rosario, Feb. 26, 1954, 50 O.G., No. 4, pp. 1571, 1573-74; Palamine v. Zagado, March 5, 1954, 50 O.G., No. 4, pp. 1566-67.

[2] See also Reyes, et al. v. Dones, et al., G.R. No. L-11427, May 28, 1958.

III

In re: Disbarment Proceedings Against Atty. Diosdado Q. Gutierrez, Respondent, Adm. Case No. 363, July 31, 1962, Makalintal, J.

1. ATTORNEYS-AT-LAW; REMOVAL AND SUSPENSION BY REASON OF CONVICTION OF CRIME INVOLVING MORAL TURPITUDE SUCH AS MURDER.— Under Section 5 of Rule 127 a member of the bar may be removed or suspended from his office as attorney by the Supreme Court by reason of his conviction of a crime involving moral turpitude. Murder is, without doubt, such a crime.

2. ID.; MORAL TURPITUDE; WHAT MAY IT INCLUDES.— The term "moral turpitude" includes everything which is done contrary to justice, honest, modesty or good morals. (In re Carlos S. Basa, 41 Phil. 275.)

3. ID.; ID.; IN DISBARMENT STATUTES; MEANING OF.— As used in disbarment statutes it means an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellowmen or to society in general, contrary to the accepted rule of right and duty between man and man. (State ex rel. Conklin v. Buckingham, 84 P. 2nd 49; 5 Am. Jur. Sec. 279, pp. 428-429.)

4. ID.; ID.; PARDON; WHEN IT MAY BE A BAR TO DISBARMENT PROCEEDING.—When proceedings to strike on attorney"s name from the rolls are founded on, and depend alone, on a statute making the fact of a conviction for a felony ground for disbarment, it has been held that a pardon operates to wipe out the conviction and is a bar to any proceeding for the disbarment of the attorney after the pardon has been granted.

5. ID.; ID.; EFFECTS OF ABSOLUTE PARDON.—A person reaches both the punishment prescribed for the offense and the guilt of the offender; and when the pardon is full, it releases the punishment and blots out of existence the guilt, so that in the eye of the law the offender is as innocent as if he had never committed the offense. If granted before conviction, it prevents any of the penalties and disabilities, consequent upon conviction, from attaching; if granted after conviction, it removes the penalties and disabilities, and restores him to all his civil rights; it makes him, as it were, a new man, and gives him a new credit and capacity.

6. ID.; ID.; ID.; PARDON GRANTED TO RESPONDENT IS NOT ABSOLUTE BUT CONDITIONAL.—The pardon granted to respondent here is not absolute but conditional, and merely remitted the unexecuted portion of his term. It does not reach the offense itself, unlike that in Ex parte Garland, which was "a full pardon and amnesty for all offenses by him committed in connection with the rebellion (civil war) against the government of the United States."

7. ID.; ID.; ID.; IN RE LONTOK CASE INAPPLICABLE TO TO THE CASE AT BAR.—Respondent Gutierrez must be judged upon the fact of his conviction for murder without regard to the pardon he invokes in defense. The crime was qualified by treachery and aggravated by its having been committed in band, by taking advantage of his official position (espondent being municipal mayor at the time) and with the use of a motor vehicle. The degree of moral turpitude involved is such as to justify his being purged from the profession.

8. ID.; PRACTICE OF LAW; RIGID STANDARD REQUIREMENTS.—The practice of law is privilege accorded only to those who measure up to certain rigid standards of mental and moral fitness. For the admission of a candidate to the bar the Rules of Court not only prescribe a test of academic preparation but require satisfactory testimonials of good moral character. These standards are neither dispensed with nor lowered after admission; the lawyer must continue to adhere to them or else incur the risk of suspension or removal.

9. ID.; DUTIES TO UPHOLD THE LAWS.—"Of all classes and professions, the lawyer is most sacredly bound to uphold the laws. He is their sworn servant; and for him, of all men in the world, to repudiate and override the laws, to trample them under foot and to ignore the very bands of society, argues recreancy to his position and office and sets a pernicious example to the insubordinate and dangerous elements of the body politic. (Ex parte Wall, 107 U.S. 263, 37 Law ed., 552, 556.)

D E C I S I O N

Respondent Diosdado Q. Gutierrez is a member of the Philippine Bar, admitted to it on October 5, 1945. In criminal case No. R-793 of the Court of First Instance of Oriental Mindoro he was convicted of the murder of Filemon Samaco, former municipal mayor of Calapan, and together with his co-conspirators was sentenced to the penalty of death. Upon review by this Court the judgment of conviction was affirmed on June 30, 1956 (G.R. No. L-7107), but the penalty was changed to *reclusion perpetua*. After serving a portion of the sentence respondent was granted a conditional pardon by the President on August 19, 1958. The unexecuted portion of the prison term was remitted "on condition that he shall not again violate any of the penal laws of the Philippines."

On October 9, 1958 the widow of the deceased Filemon Samaco, victim in the murder case, filed a verified complaint before this Court praying that respondent be removed from the roll of lawyers pursuant to Rule 127, section 5. Respondent presented his answer in due time, admitting the facts alleged by complainant regarding his previous conviction but pleading the conditional pardon in defense, on the authority of the decision of this Court in the case of In re Lontok, 43 Phil. 293.

Under section 5 of Rule 127 a member of the bar may be removed or suspended from his office as attorney by the Supreme Court by reason of his conviction of a crime involving moral turpitude. Murder is, without doubt, such a crime. The term "moral turpitude" includes everything which is done contrary to justice, honesty, modesty or good morals. In re Carlos S. Basa, 41 Phil. 275. As used in disbarment statutes, it means an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellowmen or to society in general, contrary to the accepted rule of right and duty between man and man. State ex rel. Conklin v. Buckingham, 84 P. 2nd 49; 5 Am. Jur. Sec. 279, pp. 428-429.

The only question to be resolved is whether or not the conditional pardon extended to respondent places him beyond the scope of the rule on disbarment aforecited. Reliance is placed by him squarely on the Lontok case. The respondent therein was convicted of bigamy and thereafter pardoned by the Governor-General. In a subsequent proceeding for his disbarment on the ground of such conviction, this Court decided in his favor and held: "When proceedings to strike on attorney's name from the rolls are founded on, and depend alone, on a statute makng the fact of a conviction for a felony ground for disbarment, it has been held that a pardon operates to wipe out the conviction and is a bar to any proceeding for the disbarment of the attorney after the pardon has been granted."

It is our view that the ruling does not govern the question now before us. In making it the Court proceeded on the assumption that the pardon granted to respondent Lontok was absolute. This is implicit in the *ratio decidendi* of the case, particularly in the citations to support it, namely, In re Emmons, 29 Cal. App. 121; Scott vs. State 6 Tex. Civ. App. 343; and Ex parte Garland, 4 Wall. 380. Thus in Scott vs. State the court said:

> "We are of opinion that after he received an unconditional pardon the record of the felony conviction could no longer be used as a basis for the proceeding provided for in article 226. This record, when offered in evidence, was met with an unconditional pardon, and could not, therefore, properly be said to afford "proof of a conviction of any felony." Having been thus cancelled, all its force as a felony conviction was taken away. A pardon falling short of this would not be a pardon, according to the judicial construction which that act of executive grace was received. Ex parte Garland, 4 Wall, 344; Knote v. U.S., 95 U.S. 149, and cases there cited; Young v. Young, 61 Tex. 191."

And the portion of the decision in Ex parte Garland quoted with approval in the Lontok case is as follows:

> "'A pardon reaches both the punishment prescribed for the offense and the guilt of the offender; and when the pardon is full, it releases the punishment and blots out of existence the guilt, so that in the eye of the law the offender is as innocent as if he had never committed the offense. If granted before conviction, it prevents any of the penalties and disabilities, consequent upon conviction, from attaching; if granted after conviction, it removes the penalties and disabilities, and restores him to all his civil rights; it makes him, as it were, a new man, and gives him a new credit and capacity.'"

The pardon granted to respondent here is not absolute but conditional, and merely remitted the unexecuted portion of his term. It does not reach the offense itself, unlike that in Ex parte Garland, which was "a full pardon and amnesty for all offenses by him committed in connection with the rebellion (civil war) against the government of the United States."

The foregoing considerations render In re Lontok inapplicable here. Respondent Gutierrez must be judged upon the fact of his conviction for murder without regard to the pardon he invokes in defense. The crime was qualified by treachery and aggravated by its having been committed in band, by taking advantage of his official position (respondent being municipal mayor at the time) and with the use of a motor vehicle. People vs. Diosdado Gutierrez, supra. The degree of moral turpitude involved is such as to justify his being purged from the profession.

The practice of law is a privilege accorded only to those who measure up to certain rigid standards of mental and moral fitness. For the admission of a candidate to the bar the Rules of Court not only prescribe a test of academic preparation but require satisfactory testimonials of good moral character. These standards are neither dispensed with nor lowered after admission; the lawyer must continue to adhere to them or else incur the risk of suspension or removal. As stated in Ex parte Wall, 107 U.S. 263, 27 Law ed., 552, 556: "Of all classes and professions, the lawyer is most sacredly bound to uphold the laws. He is their sworn servant; and for him, of all men in the world, to repudiate and override the laws, to trample them under foot and to ignore

the very bands of society, argues recreancy to his position and office and sets a pernicious example to the insubordinate and dangerous elements of the body politic."

Wherefore, pursuant to Rule 127, Section 5, and considering the nature of the crime for which respondent Diosdado Q. Gutierrez has been convicted, he is ordered disbarred and his name stricken from the roll of lawyers.

Bengzon, C.J., Labrador, Concepcion, Barrera, Paredes, Dizon and Regala, JJ., concurred.

Padilla, J., took no part.

IV

Mateo Canite, et al., plaintiffs-appellants vs. Madrigal & Co., Inc., et al, defendants-appellees, G. R. No. L-17836, August 30, 1962, Bautista Angelo, J.

1. PLEADING AND PRACTICE; MOTION TO DISMISS COMPLAINT; GROUNDS MAY BE BASED ON FACTS NOT ALLEGED IN THE COMPLAINT.—Under Rule 8 of our Rules of Court, a motion to dismiss is not like a demurrer provided for in the old Code of Civil Procedure that must be based *only* on facts alleged in the complaint. Except where the ground is that the complaint does state no cause of action which must be based only on the allegations of the complaint, a motion to dismiss may be based on facts not alleged and may even deny those alleged in the complaint (Ruperto vs. Fernando, 83 Phil., 943).
2. ID.; ID.; DISMISSAL OF COMPLAINT WITHOUT RESERVATION IS AN ADJUDICATION UPON THE MERITS.—Section 4, Rule 30, of the Rules of Court provides that "Unless otherwise ordered by the court, any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction, operates as an adjudication upon the merits". Where a complaint had been dismissed without reservation, the dismissal operated as an adjudication upon the merits.
3. RES JUDICATA; AS GROUND TO DISMISS A COMPLAINT.—Where all the essential requisites for the existence of *res judicata* are present, namely, final judgment, jurisdiction of the court, judgment on the merits, and identity of parties, cause of action and subject matter, the motion to dismiss the complaint on the ground of *res judicata* must be granted.
4. STATUTE OF LIMITATIONS; WHEN ACTION IS BARRED BY STATUTE OF LIMITATIONS.—Where the facts disclose that more than ten years had already elapsed since the cause of action accrued on September 30, 1948, the action of plaintiffs is barred by the statute of limitations.

D E C I S I O N

Plaintiffs impleaded defendants before the Court of First Instance of Manila to recover certain sums of money representing the salaries and allowances due them from March 17, 1948 to September 30, 1948 as members of the crew employed by defendants to fetch the ship S.S. BRIDGE from Sasebu, Japan to Manila by virtue of a certain shipping contract entered into between them.

Within the reglementary period, defendants filed a motion to dismiss on the grounds (a) that plaintiffs' cause of action is already barred by a prior judgment rendered by the Court of First Instance of Manila in Civil Case No. 29663 and (b) that plaintiffs' cause of action is also barred by prescription.

Counsel for plaintiffs filed his opposition to this motion, and after both the motion and the opposition were set for hearing, the court issued an order dismissing the complaint on the grounds set forth in the motion to dismiss.

Plaintiffs interposed the present appeal before this Court on purely questions of law.

It appears that prior to the filing of the instant case, a complaint was filed before the Court of First Instance of Manila by the same plaintiffs herein and other co-members of the same crew to which they belonged seeking to recover from the same defendants the total amount of ₱14,254.12 representing their unpaid salaries as crew members of the vessel S.S. BRIDGE corresponding to the period from March 17, 1948 to September 30, 1948, which amount includes the same sums now sought to be recovered in the instant case. Plaintiffs' cause of action is predicated upon alleged violation of the same shipping contract entered into between herein plaintiffs and defendants. After trial on the merits, the court rendered decision ordering defendants to pay to one Miguel Olimpo the amounts of ₱1,016.13 as wages and ₱300.00 as attorney's fees and costs, but dismissing the complaint with regard to the other plaintiffs among them the claims of Mateo Canite, Abdon Jamaquin and Filomeno Sampinit, who are the plaintiffs in the instant case. The dispositive part of the decision states that "the case of the other plaintiffs is dismissed as well as defendant's counterclaim for *insufficiency of evidence*." (Underlining supplied) The plaintiffs, whose complaint was dismissed, gave notice of their intention to appeal, but the same was denied because it was filed out of time. They filed a petition for mandamus with the Court of Appeals in an attempt to have the lower court approve and give course to their appeal, but their petition was dismissed, and so the decision became final and executory. It is because of these facts which appear to be undisputed that the court a quo found no other alternative than to dismiss the present action on the ground of *res judicata*. In this we find no error for evidently all the essential requisites for the existence of the principle of *res judicata* are here present. These requisites are:

> "In order that a judgment rendered in a case may be conclusive and bar a subsequent action, the following requisites must be present: (a) it must be a final judgment; (b) the court rendering it must have jurisdiction of the subject matter and of the parties; (c) it must be a judgment on the merits; and (d) there must be between the two cases identity of parties, identity of subject matter, and identity of cause of action." (Lapid v. Lawan, et al., G.R. No. L-10686, May 31, 1957)

It is, however, contended that the court *a quo* erred in dismissing the complaint on the ground of *res judicata* there being no allegation in the complaint that the present action has been the subject of a decision in a previous case. This contention is clearly unmeritorious, for under Rule 8 of our Rules of Court, a motion to dismiss is not like a demurrer provided for in the Old Code of Civil Procedure that must be based *only* on facts alleged in the complaint. "Except where the ground is that the complaint does state no cause of action which must be based only on the allegations of the complaint, a motion to dismiss may be based on facts not alleged and may even deny those alleged in the complaint x x x."[1] The court *a quo*, therefore, acted properly in sustaining the motion to dismiss.

The contention that only the claim of Miguel Olimpo was adjudicated on the merits while the claims of the other plaintiffs, including the plaintiffs in the instant case, were dismissed *merely* for failure of the parties to testify in the hearing of the case and so not on the merits, cannot also be sustained in view of what is provided for in Section 4, Rule 30, of our Rules of Court. Thus, under said Section 4, "Unless otherwise ordered by the court, any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction, operates as an adjudication upon the merits", and in the aforesaid case there is nothing in the decision that would take the case out of the operation of the general rule. The complaint having been dismissed without reservation, the dismissal operated as an adjudication upon the merits.

It appearing that all the essential requisites for the existence of *res judicata* are here present, namely, final judgment, jurisdiction of the court, judgment on the merits, and identity of parties, cause of action and subject matter, as laid down in the case above-mentioned, the court *a quo* had no other alternative than to dismiss the present action on the ground of *res judicata*.

Aside from the foregoing, the facts also discloses that more than ten years had already elapsed since the cause of action herein accrued on September 30, 1948, which justifies the contention that the action of plaintiffs is also barred by the statute of limitations.

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[1] Ruperto v. Fernando, 83 Phil., 943.