

operate as a common carrier by land.

It is not denied that under Section 13 (5) of the Corporation Law, a corporation created thereunder may purchase, hold, etc., and otherwise deal in such real and personal property as the purpose for which the corporation was formed may permit, and the transaction of its lawful business may reasonably and necessarily require. The issue here is precisely whether the purpose for which petitioner was organized and the transaction of its lawful business reasonably and necessarily require the purchase and holding by it of a certificate of public convenience like the one in question and thus give it additional authority to operate thereunder as a common carrier by land.

Petitioner claims in this regard that its corporate purposes are to carry on a general mercantile and commercial business, etc., and that it is authorized in its articles of incorporation to operate and otherwise deal in and concerning automobiles and automobile accessories' business in all its multifarious ramifications (petitioner's brief, p. 7) and to operate, etc. and otherwise dispose of vessels and boats, etc., and to own and operate steamship and mailing ships and other floating craft and deal in the same and engage in the Philippine Islands and elsewhere in the transportation of persons, merchandise and chattels by water; all this incidental to the transportation of automobiles (id. pp. 7-8 and Exhibit B).

We find nothing in the legal provision and the provisions of petitioner's articles of incorporation relied upon that could justify petitioner's contention in this case. To the contrary, they are precisely the best evidence that it has no authority at all to engage in the business of land transportation and operate a taxicab service. That it may operate and otherwise deal in automobiles and automobile accessories; that it may engage in the transportation of persons by water does not mean that it may engage in the business of land transportation — an entirely different line of business. If it could not thus engage in this line of business, it follows that it may not acquire any certificate of public convenience to operate a taxicab service, such as the one in question, because such acquisition would be without purpose and would have no necessary connection with petitioner's legitimate business.

In view of the conclusion we have arrived at on the decisive issue involved in this appeal, we deem it unnecessary to resolve the other incidental questions raised by petitioner.

WHEREFORE, the appealed decision is affirmed, with costs.

*Bengzon, C.J., Padilla, Concepcion, Barrera, Paredes, and Makintal, JJ., concurred.*

*Regala, J., did not take part.*

## VI

*Ricardo M. Gutierrez, Plaintiff-Appellant, vs. Lucia Milagros Barretto-Datu, Executrix of the Testate Estate of the deceased Maria Gerardo Vda. de Barretto, Defendant-Appellee, G.R. No. L-17175, July 31, 1962, Makintal, J.*

1. ESTATE OF A DECEASED PERSON; CLAIMS; AS USED IN STATUTE REQUIRING PRESENTATION OF CLAIMS AGAINST A DECEDENT'S ESTATE: CONSTRUED.—The word "claims" as used in statutes requiring the presentation of claims against a decedent's estate is generally construed to mean debts or demands of a pecuniary nature which have been enforced against the deceased in his lifetime and could have been reduced to simple money judgments; and among these are those founded upon contract. 21 Am. Jur. 579.
2. ID.; CLAIM BASED ON BREACH OF CONTRACT.—The claim in the case at bar is based on contract — specifically, on a breach thereof. It falls squarely under Section 5 of Rule 87, Rules of Court.
3. ID.; ID.; CONTRACTS BY DECEDENT BROKEN DURING HIS LIFETIME; PERSONAL REPRESENTATIVE LIABILITY FOR BREACH OUT OF THE ASSETS.— Upon all contracts by the decedent broken during his lifetime, even though they were personal to the decedent in liability, the representative is answerable for the breach out of the assets.

3 Schouler on Wills, Executors and Administrators, 6th Ed., 2395.

4. ID.; ID.; PRESENTATION OF CLAIM FOR BREACH OF A COVENANT IN A DEED OF DECEDENT.— A claim for breach of a covenant in a deed of the decedent must be presented under a statute requiring such presentation of all claims grounded on contract.
5. EXECUTOR OR ADMINISTRATOR; ACTIONS THAT MAY BE INSTITUTED AGAINST EITHER.— The only actions that may be instituted against the executor or administrator are those to recover real or personal property from the estate, or to enforce a lien thereon, and actions to recover damages for an injury to person or property, real or personal. Rule 88, section 1. The instant suit is not one of them.

## DECISION

Ricardo M. Gutierrez appeals from the orders of the Court of First Instance of Rizal (1) dismissing his complaint against Lucia Milagros Barretto-Datu, as executrix of the estate of the deceased Maria Gerardo Vda. de Barretto, and (2) denying his motion for reconsideration of the dismissal.

The relevant facts alleged by appellant are as follows: In 1940 Maria Gerardo vda. de Barretto, owner of 371 hectares of fishpond lands in Pampanga, leased the same to appellant Gutierrez for a term to expire on May 1, 1947. On November 1, 1941, pursuant to a decision of the Department of Public Works rendered after investigation, the dikes of the fishponds were opened at several points, resulting in their destruction and in the loss of great quantities of fish inside, to the damage and prejudice of the lessee.

In 1956, the lessor having died in 1948 and the corresponding testate proceeding to settle her estate having been opened (Sp. Proc. No. 5002, C.F. I, Manila), Gutierrez filed a claim for two items: first, for the sum of P32,000.00 representing advance rentals he had paid to the decedent (the possession of the leased property, it is alleged, having been returned to her after the opening of the dikes ordered by the government); and second, for the sum of P60,000.00 as damages in the concept of unearned profits, that is, profits which the claimant failed to realize because of the breach of the lease contract allegedly committed by the lessor.

On June 7, 1957 appellant commenced the instant ordinary civil action in the Court of First Instance Rizal (Quezon City branch) against the executrix of the testate estate for the recovery of the same amount of P60,000.00 referred to as the second item claimed in the administration proceeding. The complaint specifically charges the decedent Maria Gerardo Vda. de Barretto, as lessor, with having violated a warranty in the lease contract against any damages the lessee might suffer by reason of the government that several rivers and creeks of the public domain were included in the fishponds.

In July 1957 appellant amended his claim in the testate proceeding by withdrawing therefrom the item of P60,000.00, leaving only the one for refund of advance rentals in the sum of P32,000.00.

After the issues were joined in the present case with the filing of the defendant's answer, together with a counterclaim, and after two postponements of the trial were granted, the second of which was in January 1958, the court dismissed the action for abandonment by both parties in an order dated July 31, 1959. Appellant moved to reconsider; appellee opposed the motion; and after considerable written argument the court, on March 7, 1960, denied the motion for reconsideration on the ground that the claim should have been prosecuted in the testate proceeding and not by ordinary civil action.

Appellant submits his case on this lone legal question: whether or not his claim for damages based on unrealized profits is a money claim against the estate of the deceased Maria Gerardo vda. de Barretto within the purview of Rule 87, Section 5. This section states:

"SEC. 5. Claims which must be filed under the notice. If not filed, barred; exception.—All claims for money against

the decedent, arising from contract, express or implied, whether the same be due, not due, or contingent, all claims for funeral expenses and expenses of the last sickness of the decedent, and judgment for money against the decedent, must be filed within the time limited in the notice; otherwise they are barred forever, except that they may be set forth as counterclaims in any action that the executor or administrator may bring against the claimants. Where an executor or administrator commences an action, or prosecutes an action already commenced by the deceased in his lifetime, the debtor may set forth by answer the claims he has against the decedent, instead of presenting them independently to the court as herein provided, and mutual claims may be set off against each other in such action; and if final judgment is rendered in favor of the defendant, the amount so determined shall be considered the true balance against the estate, as though the claim had been presented directly before the court in the administration proceedings. Claims not yet due, or contingent, may be approved at their present value."

The word "claims" as used in statutes requiring the presentation of claims against a decedent's estate is generally construed to mean debts or demands of a pecuniary nature which could have been enforced against the deceased in his lifetime and could have been reduced to simple money judgments; and among these are those founded upon contract. 21 Am. Jur. 579. The claim in this case is based on contract — specifically, on a breach thereof. It falls squarely under section 5 of Rule 87. "Upon all contracts by the decedent broken during his lifetime, even though they were personal to the decedent in liability, the personal representative is answerable for the breach out of the assets." 3 Schouler on Wills, Executors and Administrators, 6th Ed., 2395. A claim for breach of a covenant in a deed of the decedent must be presented under a statute requiring such presentation of all claims grounded on contract. Id. 2461; Clayton v. Dinwoody, 93 P. 723; James v. Corvin, 51 P. 2nd 689.(1)

The only actions that may be instituted against the executor or administrator are those to recover real or personal property from the estate, or to enforce a lien thereon, and actions to recover damages for an injury to person or property, real or personal. Rule 88, section 1. The instant suit is not one of them.

Appellant invokes Gavin v. Melliza, 84 Phil. 794, in support of his contention that this action is proper against the executrix. The citation is not in point. The claim therein, which was filed in the testate proceeding, was based upon a breach of contract committed by the executrix herself, in dismissing the claimant as administrator of the hacienda of the deceased. While the contract was with the decedent, its violation was by the executrix and hence personal to her. Besides, the claim was for indemnity in the form of a certain quantity of *palay* every year for the unexpired portion of the term of the contract. The denial of the claim was affirmed by this Court on the grounds that it was not a money

(1) Plaintiff's claim arose from a breach of a covenant in the deed. It is very clearly expressed by the statute that all claims arising on contracts whether due, not due, or contingent, must be presented. The only exception made by the statute is that a mortgage or lien "against the property of the estate subject thereto" may be enforced without first presenting a claim to the executor or administrator "where all recourse against any other property of the estate is expressly waived in the complaint." But this was not an action to enforce a lien. It was not one seeking to have the claim satisfied out of specific property of the estate, or to subject any particular property of the estate to the satisfaction thereof. Clayton v. Dinwoody, 93 p. 723.

The claim for damages for the unexpired portion of the lease is not an obligation incurred by the administratrix in the course of her administration of the estate. It arises out of a contractual obligation incurred by Louis Johnson and is governed by the statute of nonclaim. By the terms of the lease, he obligated himself, his heirs, executors, administrators and assigns to pay \$4,860 for the premises for a term of five years, covering the time involved in this action. A claim for damages for a breach of contract arising out of that obligation requiring as prerequisite to a suit thereon, that the claim be served on the administratrix and filed with the clerk of court. James v. Corvin, 51 P. (2d) 689.

claim and that it arose after the decedent's demise, placing it outside the scope of Rule 87, Section 5.

The orders appealed from are affirmed, with costs against appellant.

*Benzon, C.J., Labrador, Concepcion, Barerra, Paredes, Dizon and Regala, JJ., concurred.*

*Padilla, J., took no part.*

## VII

*Teresa Realty, Inc., Plaintiffs-Appellee vs. Carmen Preysler Vda. de Garriz, Defendant-Appellant, G.R. No. L-14717, July 31, 1962, Padilla, J.*

LANDED ESTATES; CITY OF MANILA; SUSPENSION OF DETAINER PROCEEDINGS UNDER REPUBLIC ACT 1162 AS AMENDED BY REPUBLIC ACT NO. 1599; REQUISITE.— The authority granted by section 1 of Republic Act No. 1599, approved on 17 June 1956, amending Republic Act No. 1162, which took effect on 18 June 1954, to expropriate "landed estates or haciendas, or lands which formerly formed part thereof, in the City of Manila, which are and have been leased to tenants for at least ten years," "Provided, That such lands shall have at least fifty houses of tenants erected thereon," does not mean that once these conditions or requisites are present, Republic Act No. 1599 or Republic Act No. 1162 would readily be applied. Before either Act together with the remedies therein provided, such as suspension of detainer proceedings, installment payment of rentals, or maximization of rentals, could be availed of, it is necessary that proceedings for the expropriation of the parcel of land must have been instituted. Otherwise, the law could not be availed of. In the case at bar, the parcel of land subject of the litigation is not being expropriated.

## D E C I S I O N

On 19 May 1948 Carmen Preysler vda. Garriz acquired by purchase from the successors-in-interest of D. M. Fleming a residential house and a leasehold right on a parcel of land (Lot 11-K) where the house stands (Exhibit A-2). Situated on 23 Manga Avenue, Santa Mesa, Manila, the parcel of land contains an area of 1,492.59 square meters described in transfer certificate of title No. 30061 issued in the name of Teresa Realty, Inc. by the Register of Deeds in and for the City of Manila, and assessed at P22,540. On 21 March 1918 D. M. Fleming acquired by purchase the leasehold right from John W. Haussermann (Exhibit A-1) who on 3 June 1910 had entered into a contract of lease with Demetrio Tuason y de la Paz, the manager (administrator) of the Estate of Santa Mesa y Diliman (Exhibit A). Under the original lease agreement (Exhibit A), the term thereof was to expire on 31, December 1953.

Effective 1954 the parcel of land above referred to was assessed at P22,540 by the City Assessor of Manila in the name of Teresa Realty, Inc. (Exhibit B).

On 22 December 1953, or before the expiration of the lease on 31 December 1959, the Teresa Realty, Inc. notified in writing Carmen Preysler vda. de Carriz that it would agree to a new lease for five years at an increased rental from P135 a year plus tax on the land to P225.40 a month, which is 12% of the assessed value of the parcel of land. Despite such offer to enter into a new lease contract the lessee refused to have it renewed for five years at an increased rental as offered by the lessor. For that reason, the Teresa Realty, Inc. brought a detainer action against Carmen Preysler vda. de Garriz in the Municipal Court of Manila. After trial, the court rendered judgment ordering Carmen Preysler vda. de Garriz or any person claiming under her to vacate the parcel of land subject of the lease and to pay P225.40 as reasonable monthly rental for the use of the parcel of land from 1 January 1954 until possession of the same shall have been restored to the plaintiff, and costs. She appealed to the Court of First Instance of Manila. Whereupon, the complaint filed in the Municipal Court was reproduced. On 17 January 1955 the defendant lessee answered anew the reproduced complaint and alleged further by way of special defenses that she was holding possession of the parcel of land waiting for the Court to decide the action