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.

Wherefore, the order appealed from is affirmed, without pronouncement as to costs.

Bengzon, C.J., Padilla, Labrador, Concepcion, J.B.L. Reyes, Barrera, Paredes, Dizon, Regala and Makalintal, JJ., concurred.

V

Luneta Motor Company, Petitioner, vs. A.D. Santos, Inc. et al., Respondents, G.R. No. L-17716, July 31, 1962, Dizon, J.

1. CORPORATION; AUTHORITY TO PURCHASE, HOLD OR DEAL IN REAL AND PERSONAL PROPERTY.—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.
2. CERTIFICATE OF PUBLIC CONVENIENCE; IT IS LIABLE TO EXECUTION.—A certificate of public convenience granted to a public operator is liable to execution (Raymundo vs. Luneta Motor Co., 58 Phil. 889) and may be acquired by purchase.
3. CORPORATION; CORPORATE PURPOSES; CERTIFICATE OF PUBLIC CONVENIENCE TO OPERATE WATER TRANSPORTATION IS NOT AN AUTHORITY TO ENGAGE IN LAND TRANSPORTATION BUSINESS.—Petitioner claimed 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 ramification 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, merchandize and chattels by water; all this incidental to the transportation of automobiles. *Held*: There is nothing in the legal provision and the provisions of petitioner's articles of incorporation relied upon that could justify petitioner's contention to engage in land transportation business and operate a taxicab service. To the contrary, they are precisely the best evidence that it has no authority at all to engage in such transportation business. 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 acquisition would be without purpose and would have no necessary connection with petitioner's legitimate business.

D E C I S I O N

Appeal from the decision of the Public Service Commission in case No. 123401 dismissing petitioner's application for the approval of the sale in its favor, made by the Sheriff of the City of Manila, of the certificate of public convenience granted before the war to Nicolas Concepcion (Commission Cases Nos. 60604 and 60605, reconstituted after the war in Commission Case No. 1470) to operate a taxicab service of 27 units in the City of Manila and therefrom to any point in Luzon.

It appears that on December 31, 1941, to secure payment of loan evidenced by a promissory note executed by Nicolas Concepcion and guaranteed by one Placido Esteban in favor of petitioner, Concepcion executed a chattel mortgage covering the above mentioned certificate in favor of petitioner.

To secure payment of a subsequent loan obtained by Concepcion from the Rehabilitation Finance Corporation (now Development Bank of the Philippines) he constituted a second mortgage on the same certificate. This second mortgage was approved by the respondent Commission, subject to the mortgage lien in favor of petitioner.

The certificate was later sold to Francisco Benitez, Jr., who resold it to Redi Taxicab Company. Both sales were made with assumption of the mortgage in favor of the RFC, and were also approved provisionally by the Commission, subject to petitioner's lien.

On October 10, 1953 petitioner filed an action to foreclose the chattel mortgage executed in its favor by Concepcion (Civil Case No. 20853 of the Court of First Instance of Manila) in view of the failure of the latter and his guarantor, Placido Esteban, to pay their overdue account.

While the above case was pending, the RFC also instituted foreclosure proceedings on its second chattel mortgage and, as a result of the decision in its favor therein rendered, the certificate of public convenience was sold at public auction in favor of Amador D. Santos for ₱24,010.00 on August 31, 1956. Santos immediately applied with the Commission for the approval of the sale, and the same was approved on January 26, 1957, subject to the mortgage lien in favor of petitioner.

On June 9, 1958 the Court of First Instance of Manila rendered judgment in Civil Case No. 20853, amended on August 1, 1958, adjudging Concepcion indebted to petitioner in the sum of ₱15,197.84, with 12% interest thereon from December 2, 1941 until full payment, plus other assessments, and ordered that the certificate of public convenience subject matter of the chattel mortgage be sold at public auction in accordance with law. Accordingly, on March 3, 1959 said certificate was sold at public auction to petitioner, and six days thereafter the Sheriff of the City of Manila issued in its favor the correspondng certificate of sale. Thereupon petitioner filed the application mentioned heretofore for the approval of the sale. In the meantime and before his death, Amador D. Santos sold and transferred (Commission Case No. 1272231) all his rights and interests in the certificate of public convenience in question in favor of the now respondent A. D. Santos, Inc. who opposed petitioner's application.

The record discloses that in the course of the hearing on said application and after petitioner had rested its case, the respondent A.D. Santos, Inc., with leave of Court, filed a motion to dismiss based on the following grounds:

"a) under the petitioner's Articles of Incorporation, it was not authorized to engage in the taxicab business or operate as a common carrier;

"b) the decision in Civil Case No. 20853 of the Court of First Instance of Manila did not affect the oppositor nor its predecessor Amador D. Santos inasmuch as neither of them had been impleaded into the case;

"c) that what was sold to the petitioner were only the 'rights, interests and participation' of Nicolas Concepcion in the certificate that had been granted to him which were no longer existing at the time of the sale."

On October 18, 1960 the respondent Commission, after considering the memoranda submitted by the parties, rendered the appealed decision sustaining the first ground relied upon in support thereof, namely, that under petitioner's articles of incorporation it had no authority to engage in the taxicab business or operate as a common carrier, and that, as a result, it could not acquire by purchase the certificate of public convenience referred to above. Hence the present appeal interposed by petitioner who claims that, in accordance with the Corporation Law and its articles of incorporation, it can acquire by purchase the certificate of public convenience in question, maintaining inferentially that, after acquring said certificate, it could make use of it by operating a taxicab business or operate as a common carrier by land.

There is no question that a certificate of public convenience granted to a public operator is liable to execution (Raymundo vs. Luneta Motor Co., 58 Phil. 889) and may be acquired by purchase. The question involved in the present appeal, however, is not only whether, under the Corporation Law and petitioner's articles of incorporation, it may acquire by purchase a certificate of public convenience, such as the one in question, but also whether, after its acquisition, petitioner may hold the certificate and thereunder