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 presentment 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 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.

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

Padilla, J., took no part.

(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 admnistration 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 arises 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.

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 ₱22,540. 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 (administrador) 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 ₱22,540 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 Presyler vda. de Carriz that it would agree to a new lease for five years at an increased rental from ₱135 a year plus tax on the land to ₱225.40 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 ₱225.40 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

she had brought for the purpose of asking the Court to fix the reasonable rental and the period of extension of the lease contract, the rental demanded by the plaintiff being speculative and excessive (civil case No. 21897); that the parcel of land the possession of which the plaintiff seeks to recover is part of the Hacienda of Santa Mesa and Diliman; and that pursuant to Republic Act No. 1162 all detainer cases had to be suspended until expropriation proceedings are terminated, provided the current rentals are paid by the tenant. Upon these premises she prayed for the dismissal of the complaint or suspension of the proceedings in the detainer case and for any other just and equitable relief. After trial, on 1 October 1955 the Court of First Instance of Manila rendered judgment which, aside from reiterating what the Municipal Court had adjudged, ordered the defendant Carmen Preysler vda. de Garriz to remove from the parcel of land her improvement or construction thereon. Her motion for reconsideration and/or new trial having been denied on 27 October 1955, she appealed to the Court of Appeals. The appeal was certified to this Court, because the appellee Teresa Realty, Inc., in objecting to the appellant's motion to suspend the detainer proceedings under the provisions of Republic Act No. 1599, had raised the question of constitutionality and applicability of the statute. On 7 November 1956 this Court returned the case to the Court of Appeals for the latter to ascertain the number of houses built on the leased parcel of land which was necessary for the determination as to whether the case would come under Republic Act No. 1599. Pursuant to this directive, the Court of Appeals designated its Deputy Clerk Esperidion M. Ventura as commissioner to receive evidence on such number of houses built thereon. On 5 August 1958 the commissioner rendered a report that more than 50 houses were on the tract of land belonging to the plaintiff, or, as admitted by the assistant manager of the Teresa Realty, Inc., there were about 460 tenants, and that 53 tenants, he had interviewed, had, in their own right or together with their predecessors-in-interest, occupied their respective parts of the tract of land for more than ten years before Republic Act No. 1599 was approved. On November 1958 the Court of Appeals again certified the case to this Court.

The appellant contends that the trial court erred in not suspending the detainer proceedings against her and in ordering her to vacate the lot leased by her and predecessors-in-interest since 3 June 1910 and to pay a monthly rental equivalent to 12% of assessed value of the parcel of land. According to her, the requisites of section 1 of Republic At No. 1599, namely, that the parcel of land in litigation (1) be part of a landed estate or hacienda—the former Hacienda de Santa Mesa y Diliman in Manila; (2) had been leased for at least ten years; and (3) that the landed estate had more than fifty houses of tenants, are present; hence the law invoked by her applies and the detainer proceedings against her should have been suspended as provided for in section 5 of Republic Act No. 1599. Said section partly provides:

> From the approval of this Act, and even before the commencement of the expropriation herein provided, ejectment proceedings against any tenant or occupant of any landed estates or haciendas or lands herein authorized to be expropriated, shall be suspended for a period of two years, upon motion of the defendant, if he pays his current rentals, x x x.

The appellant"s contention cannot be sustained. 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.(1) 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.

The rental of ₱225.40 a month, which is 12% per annum of the assessed value of the parcel of land involved herein, is reasonable.(2)

The judgment appealed from is affirmed, with costs against th appellant.

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

J.B.L. Reyes, J., took no part.

VIII

Godofredo Navera, petitioner vs. Hon. Perfecto Quicho, etc., et al., respondents G. R. No. L-18339, June 29, 1962, Bautista Angelo, J.

1. REGISTRATION OF LANDS; PUBLIC HIGHWAY IS EXCLUDED FROM THE TITLE.— Under Section 39, Act No. 496, Land Registration Law, any public highway, even if not noted on a title, is deemed excluded as a legal lien or encumbrance in the registered land.

2. ID.; INCLUSION BY MISTAKE OF A LAND WHICH CANNOT LEGALLY BE REGISTERED DOES NOT MAKE APPLICANT OWNER THEREOF.— A person who obtains a title which includes by mistake a land which cannot legally be registered does not by virtue of such inclusion become the owner of the land erroneously included therein. But this theory only holds true if there is no dispute that the portion to be excluded is really part of a public highway. This principle only applies if there is unanimity as to the issue of fact involved.

3. ID.; CORRECTION OF CERTIFICATE OF TITLE UNDER SECTION 112 OF ACT 496 (Land Registration Act); WHEN PETITION CANNOT BE GRANTED.— The claim of the municipality that an error has been committed in the survey of the lot recorded in respondent's name by including a portion of the Natera Street is not agreed to by petitioner. In fact, he claims that that is a question of fact that needs to be proven because it is controversial. There being dissension as to an important question of fact, the petition cannot be granted under Section 112 of Act No. 496.

4' ID.; ID.; JURISDICTION OF LAND REGISTRATION COURT TO MAKE CORRECTION IN CERTIFICATE OF TITLE; ORDINARY COURT.—While Section 112 of Act No. 496, among other things, authorizes a person in interest to ask for any erasure, alteration, or amendment of a certificate of title "upon the ground that registered interests of any description, whether vested, contingent, expectant, or inchoate, have terminated and ceased', and apparently the petition comes under its scope, such relief can only be granted if there is unanimity among the parties, or there is no adverse claim or serious objection on the part of any party in interest; otherwise the case becomes controversial and should be threshed out in an ordinary case or in the case where the incident properly belongs.

DECISION

On January 24, 1961, the municipality of Ligao filed with the Court of First Instance of Albay a petition under Section 112 of Act No. 496, as amended, for the correction of Transfer Certificate of Title No. T-9304 issued in the name of Godofredo Navera, covering Lot No. 2793-A, on the ground that a portion of 123 sq. m. was erroneously included in said title during the cadastral survey of Ligao.

Navera filed a motion to dismiss based on the ground that the relief which petitioner seeks to obtain cannot be granted under Section 112 of Act 496 because the same would involve the opening of the original decree of registration. He contends that, under

(1) Teresa Realty, Inc. vs. Maxima Blouse de Potenciano, G.R. No. L-17588, 30 May 1962.
(2) Id.