reached the Court of First Instance, that court held that respondent, not being a peace officer of the Philippines, was not authorized to file a complaint in accordance with § 2 of Rule 106. Respondent appealed. *Held,* under the Military Bases Agreement between the Philippines and the United States, Philippine laws continue to be in force in said bases except otherwise agreed upon in the agreement. Since no provision is made for the appointment of peace officers of the Philippines within the bases, it is understood that the enforcement of Philippine laws is left to the officers of the United States of America. Respondent therefore had the capacity to file the complaint. LIWANAG *v.* HAMILL, G.R. No. L-7881, Feb. 27, 1956

REMEDIAL LAW — CRIMINAL PROCEDURE — JUSTICES OF THE PEACE HAVE THE POWER TO ADMIT TO BAIL A PERSON ACCUSED OF A CAPITAL OFFENSE. — Petitioners were charged with murder before the Justice of the Peace Court of Batangas. Three days after the filing of the complaint, the accused moved that they be granted bail for their provisional liberty. The Justice of the Peace Court denied the application for bail on the theory that Justice of the Peace Courts cannot entertain a petition for bail for a person charged with a capital offense and thereafter hear the evidence to determine whether the same is strong or not so as to warrant the giving of bail. Accused appealed. *Held,* the general rule is that Justice of the Peace Courts have the power to admit to bail an accused person unless such power is limited by the Constitution or by statute. There being no limitation in our Constitution and because of the Judiciary Reorganization Act of 1948 which seems to expressly confer the power upon them, it is clear that Justice of the Peace Courts have the power to admit to bail a person accused of a capital offense. MANIGBAS *v.* LUNA, G.R. No. L-8455, Feb. 27, 1956.

REMEDIAL LAW — CRIMINAL PROCEDURE — AN ACCUSED IS NOT ENTITLED AS OF RIGHT TO CROSS-EXAMINE THE WITNESSES PRESENTED AGAINST HIM IN A PRELIMINARY INVESTIGATION. — Defendant was charged with grave oral slander by the City Attorney of Roxas City upon previous investigation of the merits of the case at the instance of the offended party. When the case reached the CFI, the accused filed an urgent motion for reinvestigation of the case. Accordingly, the case was sent back to the Municipal Court for further investigation. On the date of the reinvestigation, the accused asked that the witnesses for the prosecution be first called for cross-examination and refused to submit to the reinvestigation unless he could cross-examine them. The City Attorney did not yield to the petition, closed the reinvestigation and asked the CFI to give due course to the trial. From a decision dismissing the case, the City Attorney appealed. *Held,* the CFI should have given due course to the trial as the accused has been given all the opportunity to present her side of the case with the assistance of counsel not only in the preliminary investigation but also in the reinvestigation. It can be seen from a reading of § 11 of Rule 108 that in a preliminary investigation, an accused is not entitled as of right to cross-examine the witnesses presented against him. Hence, the demand of the accused to cross-examine the witnesses presented against him had no basis on any provision of law. PEOPLE *v.* RAMILO, G.R. No. L-7380, Feb. 29, 1956.

REMEDIAL LAW — CRIMINAL PROCEDURE — A PRELIMINARY INVESTIGATION CONDUCTED BY A FISCAL DOES NOT EXCUSE A JUDGE FROM HIS DUTY TO DETERMINE WHETHER PROBABLE CAUSE EXISTS BEFORE ISSUING A WARRANT OF ARREST. —Petitioner, Provincial Fiscal of Sulu, filed in the CFI an information for murder at the foot of which he certified under oath that "he has conducted the necessary preliminary investigation pursuant to the provisions of R.A. No. 732." The information was supported by only one affidavit and respondent judge dismissed the case for lack of evidence sufficient to make out a prima facie case. Petitioner brought this petition for certiorari and mandamus claiming that, since he had already conducted a preliminary investigation, it became the duty of respondent judge to issue the corresponding warrant of arrest upon the filing of the information. *Held,* the preliminary investigation conducted by petitioner under R.A. No. 732 does not dispense with respondent's duty to exercise his judicial power of determining before issuing the corresponding warrant of arrest, whether or not probable cause exists therefor. The Constitution vests such power in the respondent judge who, however, may rely on the facts stated in the information filed after preliminary investigation by the prosecuting attorney. Although the failure or refusal of the petitioner to present further evidence is good as a ground for refusing to issue a warrant of arrest, it is not a legal cause for dismissal. AMARGA *v.* ABBAS, G.R. No. L-8666, March 18, 1956.

REMEDIAL LAW — EVIDENCE — THE SILENCE OF AN ACCUSED AND HIS VOLUNTARY PARTICIPATION IN THE REENACTMENT OF A CRIME IS ADMISSIBLE AS EVIDENCE AGAINST HIM ALTHOUGH HE WAS UNDER ARREST AT THE TIME. — Tia Fong with three others was convicted of homicide for the killing of Lian Kaw, on the strength of his participation in the reenactment of the crime. The reenactment was ordered and photographed by the Constabulary investigators. Ah Sam was the only one who appealed claiming that the trial court erred in considering his participation as evidence against him because he was under arrest at the time and was merely obeying directions for fear of further maltreatment. *Held,* there is no evidence that the appellant was forced against his will to participate in the reenactment of the crime. On the contrary, he seemed to have done so willingly as on one instance, he even corrected his co-accused on the position he was to take in reenacting one phase of the crime. Although there are conflicting opinions regarding the admissibility of an incriminating statement made before an accused while under arrest and not denied by him, the better rule is to allow some flexibility according to the circumstances of each case and decide the admissibility of the silence accordingly. Under this principle, the facts and circumstances of the present case show that the lower court committed no error in taking into account appellant's participation in the reenactment of the crime as voluntary and in considering it as evidence against him. PEOPLE *v.* TIA FONG, G.R. No. L-7615, March 14, 1956.

COURT OF APPEALS

CIVIL LAW — PROPERTY — A MERE LESSEE CANNOT DEMAND AN EASEMENT OF RIGHT OF WAY SINCE ART. 649 N.C.C. IS LIMITED TO OWNERS. — Defendants acquired by purchase a residential lot from the Philippine Trust Co. After the

sale, they instituted ejectment proceedings against plaintiff and other squatters found on the property. The court ordered plaintiff to vacate the portion of defendants' property on which they were squatting. Failing to remove such parts of his house standing on defendants' property, it was demolished upon orders of the court. Subsequently, defendants submitted a plan for the construction of a residential house on their property as well as a wall to fence it, both of which were approved by the City Engineer. Thus plaintiff filed the present case to enjoin defendants from continuing and finishing the construction, on the ground that he has no adequate outlet from his own house to the street and that he has a real right therein which gives him the right to demand a legal easement of right of way over defendants' property. *Held*, the preponderance of evidence shows that plaintiff has an adequate outlet to four different city streets. Furthermore, his right to his land arises by virtue of a contract of lease with the city of Manila and he has acquired no real right at all over the property that would entitle him to claim an easement of right of way over any adjoining property. Under art. 649 of the New Civil Code, only the owners or any person who has a real right may cultivate or use any immovable surrounded by other immovables pertaining to other parties and without an adequate outlet to a public highway, and can demand a right of way through the neighboring estates. Authorities are of the opinion that while the word "owners" used in art. 649 should be extended to include usufructuary, the usuary, the emphytoucary, and any person who by virtue of a real right may cultivate or use the property, a lessee must be deemed excluded because he can look to the lessor to maintain him in the enjoyment of the tenement. A leasehold right, in order to have the category of a real right, must be for a term of at least six years. The lease contract upon which the plaintiff relies does not provide for a definite term and appears to be revocable at the will of the lessor. The fact that he was allowed or tolerated to remain in possession of the leased property for eight years does not make his contract one for a definite period, much less can it make it the foundation or source of a real right. VERGUNIA *v.* GARCIA, (CA) G.R. No. 12910-R, Oct. 8, 1955.

CIVIL LAW — TRUSTS — WHEN THE SUBJECT OF THE TRUST IS FUTURE REALTY, THE TRUST INSTRUMENT SHALL NOT TAKE EFFECT UNTIL SUCH REALTY IS SUBSEQUENTLY ACQUIRED AND TITLE IS VESTED IN THE TRUSTEE. — Defendant bought on installment plan a lot from the Philippine Realty Corp. and built a two-story house thereon. Later, she executed an instrument in which she conveyed all her rights and interests to the lot and all the improvements thereon to her common-law husband, Ng Kim Lai, to be reserved by him for their two minor children. Six years later, Ng Kim Lai sold all his rights and interests over the lot to plaintiff who brought this action for ejectment against the defendant. The court dismissed the complaint on the ground that the agreement entered into by the defendant and her common-law husband created a trust over the lot and that, as the plaintiff bought the lot with constructive notice of the breach of trust, he is charged with the equities of the beneficiaries and the sale may be set aside in an action to enforce the trust. *Held*, although the agreement entered into by defendant and her husband created an express valid trust, it, however, only covers the house existing on the lot and merely the right to finally acquire the absolute ownership of the lot, since at the time she conveyed it to her husband, she had not yet paid all the installments on its purchase price. Although there is no express provision in the New Civil Code or elsewhere that regulates the subject, it is well-settled in common-law jurisdictions that when the subject matter of a trust is future property, the trust instrument shall take full effect only if such property is subsequently acquired and title is vested in the trustee. Since Ng Kim Lai did not finally acquire full ownership of the lot in question and he sold his rights to purchase it before he completed payment of its purchase price, said lot is not deemed included in the trust. DY *v.* TAN, (CA) G.R. No. 8492-R, Nov. 23, 1955.

CIVIL LAW — MORTGAGES — A MORTGAGE CONTRACT INVOLVING A HOUSE AND THE LEASEHOLD RIGHT OVER THE LAND ON WHICH THE HOUSE STANDS, DULY REGISTERED IN THE REGISTER OF DEEDS, IS NOT A CHATTEL MORTGAGE BUT A REAL ESTATE MORTGAGE. — In August 1953, petitioners executed a mortgage on a house together with the lease right to the lot on which the house is built to guarantee the payment of a loan made to them by the Marcelo spouses. Failing to pay the debt on time, the Marcelos filed a complaint in the municipal court and got a judgment in their favor ordering the petitioners to pay the mortgage indebtedness. Later, however, they filed a motion to set aside said judgment saying that the complaint should be one for foreclosure of the real estate mortgage and not for the collection of a sum of money, and that said complaint was erroneously filed in the municipal court which had no original jurisdiction over foreclosure of real estate mortgages. This motion having been granted, they filed a complaint in the CFI against the petitioners for the foreclosure of the mortgage on the house. Failing to answer, petitioners were declared in default. Hence they filed this petition contending that the mortgage was one over personal property since the house was merely superimposed on the land and hence the CFI had no jurisdiction. *Held*, the respondent judge ordered an ocular inspection of the property to determine if it was really superimposed but the petitioners submitted the case for decision without such inspection. The judge must have found that the house adhered to the soil when it rendered a decision in favor of the Marcelos. The contract between the parties was a real estate mortgage. It was registered under Act 3344 affecting unregistered lands. The objects of the sale in favor of the Marcelos were the house and the leasehold right over the lot on which the house stood. Such leasehold right is an interest in real property, within the purview of § 44(b) of the Judiciary Act of 1948, as amended. Of necessity, the foreclosure proceedings involved not only the house but the leasehold right over the land on which the house was built. The respondent judge therefore did not lack jurisdiction in taking cognizance of the case. SUBA *v.* AMPARO, (CA) G.R. No. 15572-R, Oct. 19, 1955.

CIVIL LAW — QUASI-DELICT — AN EMPLOYER WHO LOANS HIS EMPLOYEE TO ANOTHER EMPLOYER REMAINS LIABLE FOR THE ACTS OF THE EMPLOYEE IF HE RETAINS THE CONTROL AND DIRECTION OF THE EMPLOYEE. — Defendant Bretanio was under the employ of the Talisay Milling Co. as a truck driver. He was loaned by said company to Ligares for the purpose of hauling the latter's sugarcane in his hacienda. While Bretanio was thus working for Ligares, he ran over and caused the death of the husband of the plaintiff. Thus the plaintiff widow brought this action for damages. The question was which employer, the Talisay Milling Co. or Ligares, is subsidiarily liable for the criminal act of Bretanio. *Held*, the test is whether Bretanio continued to be under the direction

and control of his original master or became subject to the control and direction of Ligares, the person to whom he was loaned. Bretanio seems to have remained under the direction and control of the Talisay Milling Co. because the company could have withdrawn him anytime from the services of Ligares without the latter's consent. LASTOA *v.* BRETANIO, (CA) G.R. No. 11321-R, Sept. 5, 1955.

CIVIL LAW — TORTS — NO MORAL DAMAGES CAN BE RECOVERED FOR MENTAL ANGUISH CAUSED BY INJURY TO PROPERTY EXCEPT WHEN THE INJURY WAS INSPIRED BY FRAUD, MALICE OR LIKE MOTIVES.—On Oct. 16, 1952, plaintiff's wife sent his wedding suit of Goodal Palmbeach to the defendant dry cleaners. When the date of delivery arrived and the suit was not yet delivered, plaintiff phoned the defendant company asking for it. Apprised of the apparent loss of the suit, an employee of the defendant brought a suit to plaintiff's house which apparently was not his wedding suit since it did not fit him, as the coat was too tight and the pants too short. Plaintiff thus brought suit for damages. *Held,* no moral damages would attach for the loss of plaintiff's wedding suit which is of ordinary make only and not of rare material. A double-breasted Goodal Palmbeach suit, similar to that of the plaintiff, is not unusual nowadays, and it is not out of place to wear it in any occasion, unlike of course a bridal "terno" which, by the nature of its style, is singularly for the wedding occasion. Such being the case, plaintiff could not rightfully claim that the lost suit was intended to be kept for posterity to remember his wedding. While it is true that according to art. 2218 of the New Civil Code that "in the adjudication of moral damages, the sentimental value of property, real or personal, may be considered," yet actions for torts purely to property are as common as those for ordinary business contracts, in that no damages for mental suffering are assessed, the usual reason given, being that such suffering is not a natural consequence of injury to property. Under ordinary circumstances there can be no recovery for mental anguish suffered by plaintiff in connection with an injury to his property. Where, however, the action is inspired by fraud, malice or like motives, mental suffering is a proper element of damages. ARNALDO *v.* FAMOUS DRY CLEANERS, (CA) G.R. No. 13334-R, Sept. 12, 1955.

COMMERCIAL LAW — INSURANCE LAW — REPEATED ACCEPTANCE OF OVERDUE PREMIUMS DOES NOT NECESSARILY DEPRIVE THE INSURER OF THE RIGHT TO CANCEL THE POLICY FOR DEFAULT IN PAYMENT OF SUBSEQUENT PREMIUMS. — On Jan. 1, 1949, defendant company issued a policy which called for a twenty-year endowment, five-year dividend plan, to insure the life of Vicente Collado, with plaintiffs as beneficiaries. The first annual premium was paid, but the premiums for the second and third years were paid on a quarterly basis, each time payment being made more or less a month after they were due. Because of the failure to pay the premium due on Oct. 1, 1951, the policy lapsed. However, on the basis of Collado's written request and his assurance that he was in good health, his policy was reinstated. On Feb. 4, 1952, the insured paid the first quarterly premium for that year. Three days later he died of cancer of the liver. Failing to recover on the policy in the trial court, plaintiffs appealed, claiming that the insurer had waived the right to rescind the contract in view of its acceptance of the payment of the premium due on Oct. 1, 1951, as well as other premiums which were likewise belatedly paid. *Held,* such conduct of the insurer does not necessarily deprive it of the right to cancel the policy in case of default by the insured in the payment of future premiums. The case would be different had the insured died at any time after the payment of overdue premiums but previous to the reinstatement of the policy for then the insurer, by its acceptance of such overdue premiums, is deemed to have waived its right to rescind the policy. In this case, the insurer had availed of the right to rescind the policy by notifying the insured that his policy had lapsed by his failure to pay the premium on Oct. 1, 1951, and by requiring, as a condition precedent to the policy's reinstatement, the health statement and payment of the unpaid premium. The two-year incontestability period provided by the Insurance Act does not apply in this case because the two-year period should be counted not from the date of the issuance of the policy but from the date of its reinstatement. A reinstated policy should be viewed as a new contract, and the period for contestability for fraud or breach of warranty in the application for reinstatement runs from the time of the reinstatement. VDA. DE COLLADO *v.* INSULAR LIFE ASSURANCE CO., (CA) G.R. No. 11809-R, July 23, 1955.

COMMERCIAL LAW — TRANSPORTATION — THE LIABILITY OF A CARRIER FOR LOSS OF BAGGAGE IS NOT DEEMED LIMITED TO THE AMOUNT STATED AT THE BACK OF THE TICKET ISSUED UNLESS EXPRESSLY CONSENTED TO BY THE PASSENGER. — Plaintiff Julita Dychangco brought this action to recover the value of a suitcase of clothes lost by defendant P.A.L. on a trip she took from Manila to New York. The court ruled in her favor and defendant appealed, claiming that the court should have limited their liability to ₱200, according to a clause printed on the ticket purchased by plaintiff which states that the liability of the carrier for loss or damage to baggage shall be limited to ₱200 unless a higher valuation is declared and additional charges paid. *Held,* plaintiff did not sign the ticket she was issued. It has not been proven in court that the clause printed in small letters at the back of the ticket was explained to her and accepted by her expressly and voluntarily. Not having given her consent clearly and expressly to said clause, the criterion prevailing in this jurisdiction is that such a clause does not limit the pecuniary liability of the defendant in case of loss of baggage. DYCHANCO *v.* PHILIPPINE AIR LINES, (CA) G.R. No. 11306-R, Nov. 28, 1955.

CRIMINAL LAW — VIOLATION OF THE REVISED ELECTION CODE — MISTAKING VALID BALLOTS AS SAMPLE BALLOTS AND FAILURE TO DEPOSIT THEM IN THE BOX FOR VALID BALLOTS WITHOUT CRIMINAL INTENT IS NOT A CRIME. — Defendants were the members of the Board of Inspectors of Precinct No. 13 of Navas, Capiz. They were given 350 official ballots but on their returns they certified that only 330 ballots were found in the box for valid ballots: 164 of which were used and 166 unused. It turned out that the 20 missing ballots were mistaken by the inspectors to be mere sample ballots and therefore were not placed in the box for valid ballots as required by § 155 of the Revised Election Code. Because of this, they were prosecuted. The lower court held that since the crime was *malum prohibitum,* the mere failure to put the unused ballots in the box for valid ballots constituted the crime and intent to commit the crime was immaterial. *Held,* if it is admitted, as the lower court does, that defendants were of the honest belief that the said series of unused ballots *were*

not official ballots but sample ballots, then for all intents and purposes of the law, in so far as defendants' actuation was concerned, they had not the obligation or were duty bound to deposit said series of unused official ballots in the box for valid ballots, because they were not official ballots but sample ballots which the law does not require to be deposited in the box for valid ballots. An honest mistake of fact destroys the presumption of criminal intent which arises upon the commission of a felonious act. If the courts are to afford full justice to the defendants, they should judge them not by the facts as they later turned out to be and as they now appear in the record. Rather, they should judge them by what they thought and believed to be the facts at the time of the offense and the conditions obtaining at that time. PEOPLE *v.* COCHING, (CA) G.R. No. 13276-R, Sept. 27, 1955.

CRIMINAL LAW — ESTAFA — TO CONSTITUTE ESTAFA BY SELLING ENCUMBERED REAL PROPERTY, THERE MUST BE A POSITIVE REPRESENTATION THAT THE PROPERTY WAS UNENCUMBERED. — The accused, owner of a house erected on a lot belonging to the Government, sold the house to Cubile with a right to repurchase. Having failed to repurchase it on time, Cubile brought suit but during the pendency of the case, he agreed to allow the accused to pay until January 29, 1949, with the house serving as a guaranty. Subsequently, the accused, without having paid Cubile, sold the house to Reboya, who then moved into it. On Jan. 29, Cubile went to the house and told Reboya that the house was being levied upon in execution since the accused had not yet paid. Since Reboya had already spent much for repairs on the house, he paid the amount and sued the accused for estafa claiming that he was not informed that the house was encumbered. Convicted, the accused appealed. *Held*, the crime of estafa punished under art. 316, par. 2 RPC has three essential elements: (1) that the thing disposed of be real property; (2) that he who disposes knows that the real property is encumbered; and (3) that the act of disposing of the real property be made to the damage of another or with intention of causing damage. The third element has not been fully established by the evidence. There is no showing that the accused practised fraud or deceit upon the offended party at the time of the sale of the house in question. In the deed of sale, no express mention of the existence of the encumbrance in question had been made. It may be concluded that it did not occur to the parties to discuss whether there were any encumbrance on said property, and that the accused did not disclose the existence of the encumbrance in question inasmuch as the offended party did not inquire about any encumbrance on the property. Under the facts therefore, it cannot be held that the accused was guilty of misrepresentation and fraud. Her passive attitude is insufficient to constitute fraud within the meaning of the law. The fraud contemplated in the law must be the result of some overt acts. There must be express representation that the real property is free from encumbrance. It cannot be deemed implied. PEOPLE *v.* DE BUENCAMINO, (CA) G.R. No. 12267-R, Aug. 24, 1955.

CRIMINAL LAW — VIOLATION OF THE CHATTEL MORTGAGE LAW — THE SELLER OR PLEDGOR IS CRIMINALLY LIABLE WHEN HE SELLS OR PLEDGES CHATTEL ALREADY MORTGAGED WITHOUT THE WRITTEN CONSENT OF PREVIOUS MORTGAGEES. — The accused was the owner of two trucks, one of which he mortgaged to La Tondeña, Inc. Subsequently, he mortgaged both trucks to Pedro Ruiz. All these were promptly registered in the register of deeds. Later, the accused courted the friendship and confidence of Yabes, and upon having won his trust, proposed to mortgage to him one of the trucks for ₱1,000. Relying on his word that the truck was free from all liens and encumbrances, and that all previous mortgages have already been cancelled, Yabes advanced the money. Needing more money, the accused again succeeded in mortgaging the other truck to Yabes for ₱2,800. Learning from friends that the accused had several previous cases, Yabes became suspicious. In the register of deeds of Pangasinan and La Union, he found that the mortgages in favor of Ruiz and La Tondeña Inc. were still subsisting. Upon his complaint, the accused was convicted of violating the Chattel Mortgage Law, art. 319 of the Revised Penal Code. He appealed, contending that the second mortgage in favor of Yabes was a liquidation of and substituted the first mortgage. *Held*, even if it is true that the second mortgage was only a liquidation and a substitution of the first mortgage, this does not and cannot have the effect of wiping out the accused's criminal liability for having mortgaged the two trucks after they had already been mortgaged to other parties without the latter's written consent to the later mortgages. This is true even where the purchaser or pledgee has knowledge of the fact that the things he bought or accepted as security for a loan are encumbered by a prior loan, for the seller or pledgor is criminally responsible where he sells or pledges the chattel without the written consent of the first mortgagee. PEOPLE *v.* FERRER, (CA) G.R. No. 13403-R, Aug. 17, 1955.

CRIMINAL LAW — BIGAMY — THE DEATH OF THE FIRST WIFE DURING THE PENDENCY OF THE CASE DOES NOT EXTINGUISH THE CRIME OF BIGAMY. — On Jan. 23, 1952, defendant Reyes married Josephina Ramos *in articulo mortis* at the San Lazaro Hospital where she was being confined because of tuberculosis. On April 17, 1953, while Josephina Ramos was still living, he married Angelita Tambanilla. On May 20, 1953, he was charged in the present case for bigamy. On Nov. 2, 1953, Josephina Ramos died. The case was called for trial only on September 1954. Convicted by the CFI, Reyes appealed, claiming that since his first wife was already dead when the case was tried, he should have been acquitted because, according to him, at that time there was no longer any impediment to his second marriage. *Held*, when Reyes contracted his second marriage, his first wife was still living and his marriage to her was still subsisting. Therefore, he committed then the crime of bigamy penalized by art. 349 of the Revised Penal Code. There exists no legal principle which extinguishes the criminal liability of a person accused of a crime of bigamy in case his first wife dies before the trial of the case. PEOPLE *v.* REYES, (CA) G.R. No. 12801-R, Nov. 29, 1955.

CRIMINAL LAW — GRAVE SLANDER — A PERSON WHO UTTERS SLANDEROUS REMARKS SOLELY TO HERSELF AND NOT PRINCIPALLY TO BESMIRCH ANOTHER'S REPUTATION IS NOT GUILTY OF SLANDER. — While displaying and peddling some jewelry pieces, Teodora Guevara lost a ring in the house of the Mendoza family in the presence of some relatives including the accused. She returned to the house again on a promise that she would be given the ring if it is found. On the last time, she demanded outright the return of the ring which resulted in a lively exchange of expletives and finally a physical showdown. The complainant thus went to the police officers and reported the incident, telling them

about the loss of the ring and her suspicion that the accused stole it. The accused, upon being summoned and apprised of the complaint, cried out: "She probably gave the ring to her paramour." Tried for grave slander because of this remark, the accused was convicted so she appealed. *Held*, the derogatory remarks must be viewed in its setting, and though it may imply that Teodora Guevara probably had a paramour, yet the answer of the accused on said point constitutes a relevant, indivisible, unguarded and spontaneous explanation that she offered in order to defend herself from the charge of theft for which she was actually being investigated. It was obviously to give such explanation credibility that she referred to the paramour of the complainant. The reference was merely incidental and descriptive. It is true that there is no evidence on record that the imputation was true but given the circumstances under which she made the statement, we can fairly conclude that her sole motive was to defend herself. The truth of the imputation need not be proven in addition to justifiable motives in order to constitute a complete defense. The existence of justifiable motives makes a complete defense to a prosecution for libel. PEOPLE *v.* MENDOZA, (CA) G.R. No. 12880-R, Dec. 8, 1955.

CRIMINAL LAW — LIBEL — THE CIRCULATION OF LIBELOUS MATTER NEED NOT BE EFFECTED IN A NEWSPAPER; ITS COMMUNICATION TO A THIRD PERSON IS SUFFICIENT. — Complainant was the JP of Pasuquin, Ilocos Norte, and as such she was authorized under R.A. No. 136, as representative of the Judge Advocate General's Office, to receive and deliver checks to heirs of deceased personnel of the Armed Forces of the Philippines or of the United States. On Oct. 31, 1950, complainant received a check for delivery to the accused. However, because the accused failed to present the required JAGO Form B, she was not able to secure the check. She even tried to solicit the intervention of complainant's landlady, promising to give ₱50 or even ₱100 provided the check could be delivered, but complainant did not agree to this proposition. Still unable to secure her check, the accused went to the JAGO and executed before the legal assistant thereof an affidavit alleging among other things that the complainant has been victimizing claimants by requiring them to pay a certain percent of their checks before they are released. A copy of said affidavit was read to several persons both by the accused and her husband. Convicted of libel in the CFI, accused now appeals, claiming that the affidavit was a privileged matter and that it was not published at all. *Held*, when a communication contains libelous matter, its author is not relieved from criminal liability or punishment just because under certain circumstances it might be considered as privileged. The privileged character simply does away with the presumption of malice, which the plaintiff has to prove in such a case. Furthermore, it is clear that the contents of the affidavit were unnecessarily published on two occasions, for the circulation of a libelous matter does not need to be effected in a newspaper. It is enough that the author of the libel complained of has communicated it to a third person. PEOPLE *v.* DE LA VEGA-CAYETANO, (CA) G.R. No. 12461-R, Aug. 26, 1955.

CRIMINAL LAW — TORTS — THE ESSENTIAL ELEMENTS OF AN ACTION FOR DAMAGES BASED ON MALICIOUS PROSECUTION. — While the plaintiff was with several persons concerning their program for the barrio fiesta, the defendant approached him and asked if it was true that he challenged him to a debate.

When the plaintiff answered in the affirmative, the defendant advanced towards him menacingly, but a fight was prevented by the intervention of the persons present. Thereafter, the defendant filed a criminal complaint for grave oral defamation against the plaintiff but he was acquitted. On the basis of this acquittal, plaintiff in turn filed this present action for damages for malicious prosecution. *Held*, to sustain an action for damages based on malicious prosecution, three elements must be established: first, the fact of the prosecution and the further fact that the defendant was himself the prosecutor, and that the action finally terminated with an acquittal; second, that in bringing the action, the prosecutor acted without probable cause; and third, that the prosecutor was actuated or impelled by legal malice. In the case at bar, it was proven that there had been an altercation during which the plaintiff uttered some defamatory words against the defendant. This justifies the view that the defendant instituted the criminal action for defamation with a probable cause — a legal phrase denoting "the existence of such facts and circumstances as would excite the belief in a reasonable mind that the person charged was guilty of the crime for which he was prosecuted." PERUA *v.* VERGARA, (CA) G.R. No. 12215-R, Sept. 24, 1955.

LABOR LAW — WORKMEN'S COMPENSATION ACT — FAILURE TO AVOID A KNOWN DANGER BY A LABORER ENGROSSED IN HIS WORK OR INTOXICATION WHICH DOES NOT INCAPACITATE HIM FROM FOLLOWING HIS OCCUPATION IS NOT NEGLIGENCE. — Plaintiffs were the parents of Lomocso, a driver of the defendant company who died in the line of duty. One stormy night, after discharging four passengers at Pier 4 in Manila, he took on another passenger into his taxi-cab. Since there were piles of lumber near the gate, he had to back up and while so doing, the taxi-cab fell into the sea. Lomocso was fished out of the water but died of broncho-pneumonia at the hospital. Extrajudicial attempts to recover compensation were refused by defendant so plaintiffs filed a complaint in court which rendered judgment in their favor. Defendant appealed, contending that the driver was notoriously negligent when he backed up and that he was also drunk. *Held*, the presumption is that the laborer, by his native instinct of self-preservation, takes precautions to avoid danger unless an intention is attributed to him to end his life, which is not the case here. Mere failure to avoid a known danger by a laborer engrossed in his work, who momentarily forgets it, is not negligence. Even assuming that the driver was in a drunken condition, it did not incapacitate him from discharging his duties. Intoxication which does not incapacitate the employee from following his occupation is not sufficient to defeat recovery of compensation, although the intoxication may be a contributing cause of his injury. Nothing in the record shows that the drunkenness or intoxication was the proximate cause of the death of the driver. BALBIJA *v.* TIME TAXICAB CO., (CA) G.R. No. 12219-R, Oct. 20, 1955.

LAND REGISTRATION — PUBLIC LAND LAW — A HOMESTEAD PATENT WHICH PURPORTS TO CONVEY LAND TO WHICH THE GOVERNMENT DID NOT HAVE ANY TITLE AT THE TIME OF ITS ISSUANCE DOES NOT VEST ANY TITLE IN THE PATENTEE AS AGAINST THE TRUE OWNER. — The property in question was originally owned by defendant. In 1941, he sold the same to plaintiffs who thereupon took possession of it until the outbreak of the war when they were forced to leave the property in the charge of *encargados*. When litigation arose as to

the ownership of the property, defendant sought to prove that he donated the property to his son in 1936. The latter applied for and was granted a homestead patent over the property in question. The issue is whether or not the sale of the property to the plaintiffs was rendered ineffective or void because of the issuance of the homestead patent in favor of defendant's son. *Held*, proceedings for the acquisition of a homestead patent are not proceedings *in rem* and when a homestead patent is issued, the same is deemed subject to any and all vested and accrued rights. The issuance of a patent does not at all vest any title to the patentee as against the true owner when the property subject of the patent could not have been lawfully conveyed by the government. VASQUEZ *v.* SUBPA TATO, (CA) G.R. No. 10775-R, Sept. 29, 1955.

LAND REGISTRATION — PUBLIC LAND LAW — A HOMESTEADER HAS AN UNQUALIFIED RIGHT TO REPURCHASE HIS HOMESTEAD WITHIN A PERIOD OF FIVE YEARS FROM THE TIME OF THE SALE. — Plaintiff was the owner of a homestead. On April 4, 1944, in consideration of the sum of ₱1,500, paid to him by defendant, plaintiff sold and conveyed to the latter the whole homestead. On June 30, 1948, plaintiff offered to repurchase the homestead but defendant refused, contending that the right granted to homesteaders, their widows, or legal heirs under § 119 of C.A. No. 141 is not an absolute right, but one that could be invoked only when the repurchase of the homestead is proper and that it has not been shown that that is the case. *Held*, the right to repurchase granted the homesteader, his widow or legal heirs within a period of five years from the time of the conveyance provided in § 119 of C.A. No. 141 is unqualified and it is deemed a part of every agreement whereby homesteads are sold and conveyed. Plaintiff having offered to repurchase within five years after the conveyance of the homestead, defendant cannot legally refuse. SUMAUANG *v.* ALIPIO, (CA) G.R. No. 8673-R, Dec. 28, 1955.

POLITICAL LAW — CONSTITUTIONAL LAW — THE SALE OF A RESIDENTIAL LOT BY A FILIPINO TO AN ALIEN, PROHIBITED UNDER THE CONSTITUTION, MAY BE VOLUNTARILY SET ASIDE BY THE PARTIES WHO THEREAFTER ARE RESTORED TO THEIR FORMER STATUS. — A certain Verzosa sold a residential lot to a Chinese. However, upon learning of the decision in the *Krivenko* case holding that sales of residential lots to aliens are null and void, Verzosa and the Chinese executed a document rescinding the former contract of sale, Verzosa getting back the lot and the Chinese the purchase price which he paid. Thereafter, Verzosa sold this same lot to plaintiff. In the meantime, the Chinese who first bought the land died and in action by defendant against the Chinese's widow for the collection of a sum of money, the lot in question was ultimately sold at public auction to defendant. Both plaintiff and defendant now claim ownership of the property, the latter contending that the document of rescission between Verzosa and the Chinese was void and that the lot still belonged to the Chinese's wife which could validly be sold to pay her debts. *Held*, the rescission was validly made as the parties, upon learning of the contract's illegality, set it aside in good faith. The rule of *pari delicto* cannot apply to their case as neither of them is seeking to maintain action in court regarding the illegal contract. The agreement of rescission was not against the law, morals, good customs, public order, or public policy and was therefore one which the parties could legally stipulate. UY *v.* MIRANDA, (CA) G.R. No. 12392-R, Aug. 6, 1955.

POLITICAL LAW — CONSTITUTIONAL LAW — THE OWNER OF PROPERTY CONDEMNED THRU EXPROPRIATION PROCEEDINGS HAS THE RIGHT TO RECOVER IT IF JUST COMPENSATION IS NOT PAID. — Defendant municipality sought to expropriate a parcel of land owned by the estate of Candida Chavez, of which plaintiff is the administratrix, for the purpose of building a public market thereon. Defendant was authorized to take and did take full possession of the property. After due trial, defendant was authorized to expropriate the property and ordered to pay plaintiff just compensation. When said order became final and executory, the corresponding writ of execution was issued which however was returned unsatisfied because defendant municipality had no leviable property. Thus the present action was brought to recover possession of the property. On appeal, defendant contends that the present action was barred by the judgment rendered in the condemnation proceedings. *Held*, this contention is untenable because the present action is not intended to reverse or modify the executory judgment rendered in said case. Its primary purpose is to recover from defendant the property which was the subject of the condemnation because of its failure to pay the just compensation. Upon the failure of the expropriating party to pay the just compensation determined by final judgment of the Court, it is the clear and undisputed right of the owner to recover his property, together with damages. Undoubtedly, the Court has legal authority to render a judgment for whatever amount may be found to be the true market value of the property, but it is also true that the right of the latter to acquire the property depends absolutely upon the payment of compensation by him, and if possession had been obtained prior to the rendition of judgment, as authorized by law, it is provided that such possession should be restored to the owner if the proceeding is voluntarily abandoned before the expropriation is completed or the expropriator becomes or turns out to be insolvent. Title, therefore, notwithstanding possession prematurely obtained by the expropriator, does not actually pass to him until payment of the amount awarded by the Court and the registration of the judgment in the Office of the Register of Deeds. CUENCA *v.* MUNICIPALITY OF BACOOR, (CA) G.R. No. 13103-R, Nov. 22, 1955.

REMEDIAL LAW — CIVIL PROCEDURE — FAILURE TO STATE IN THE PLEADING THE SUBSTANCE OF THE ACTIONABLE DOCUMENT AND TO ATTACH THE ORIGINAL OR A COPY THEREOF DOES NOT BAR ITS ADMISSION. — On Jan. 1, 1949, defendant company issued a policy which called for a twenty-year endowment, five-year dividend plan, to insure the life of Vicente Collado, with plaintiffs as beneficiaries. The first annual premium was wholly paid, but the premiums for the second and third years were paid on a quarterly basis, each time payment being made more or less a month later that they were due. Due to the failure to pay the premium due on Oct. 1, 1951, the policy lapsed. However, Collado wrote defendant company a letter seeking reinstatement of the policy together with his personal health statement. Having been thus assured that the insured was still in good health, his policy was reinstated. On Feb. 4, 1952, the insured paid the first quarterly premium for that year. Three days later he died of cancer of the liver. Plaintiffs thus brought suit to recover on the policy. Receiving unfavorable judgment, they appealed, contending that the lower court erred in admitting as evidence the letter and health statement of the insured asking for reinstatement, on the ground that it is an actionable document and should have been adduced in accordance with § 7 of Rule 15. *Held*, the insurer's defense is not predicated upon an actionable document, since the health state-

ment of the deceased is not the basis but merely the evidence of its defense. Furthermore, § 7 of Rule 15 seeks to require the pleader both to state in his pleading the substance of the actionable document and to attach to his pleading either the original or a copy of the document; or the pleader may with similar effect set forth entirely in the pleading the contents of the document. There is, however, no specific provision in this section which prohibits the admission in evidence of an actionable document in the event a party fails to comply therewith. If, in fact, a party's action or defense is based on an actionable document, the adverse party could, in the event of the former's failure to comply with the requirements of this section, compel the production of the desired document. VDA. DE COLLADO *v.* INSULAR LIFE ASSURANCE CO., (CA) G.R. No. 11809-R, July 23, 1955.

REMEDIAL LAW — CIVIL PROCEDURE — THE SURETIES ON A REPLEVIN BOND ARE NOT AUTOMATICALLY RELEASED BY THE MERE FACT THAT THE PROPERTY IS SUBJECTED TO SEIZURE BY THIRD PERSONS. — Defendants Santiago and Subido asked plaintiff in this case to file in behalf of the Manila Post Publishing Co. a bond in the sum of ₱94,000 in Civil Case No. 4112 entitled Manila Post Publishing Co. v. Pascual and Doe, to secure the delivery to said company of the personal properties sought to be replevied in that civil case. Herein defendants, in the surety contract, promised to pay a premium of ₱1,800 per year during the duration of the contract. This bond was filed in that civil case, and on the strength thereof, most of the personal properties involved in that case were placed in the possession of the Manila Post Publishing Co. Before the case was heard, however, the properties seized from Pascual were claimed by the China Banking Corp. as judgment creditor in a foreclosure suit it filed against the Manila Post Publishing Co. Because of the company's failure to put up the necessary bond, these properties were turned over to the China Banking Corp. Despite this incident, Civil Case No. 4112 was given due course and the court ordered Pascual to deliver the properties to the Manila Post Publishing Co. and cancelled the bond filed by the plaintiffs in that case. During the pendency of that case, the defendants in this case, Santiago and Subido, paid only one year premium; failing to pay three years premium notwithstanding repeated demands. Plaintiff thus brought this case and the trial court ordered defendants to pay. They appealed, contending that since the personal properties seized under said bond were delivered to the China Banking Corp., the liability of the bond ceased as of that date and their liability to pay further premiums likewise ceased. *Held*, the rights of the parties affected by a bond are governed by the terms thereof, and the liability of the surety thereon subsists until the terms of the bond are fulfilled, or the parties protected by it released the same, or it is cancelled by a competent court. And it is well-settled that the rules governing the discharge of sureties generally are applicable to sureties in replevin and redelivery bonds, and that the surety is not released where the property was subjected to seizure by third persons. During this three year period, therefore, notwithstanding the delivery of the properties seized under the bond to a third party, the bond was in force and the surety was not yet discharged and its right to collect premiums is unquestionable. ALTO SURETY & INS. CO. *v.* SANTIAGO, (CA) G.R. No. 9323-R, Dec. 29, 1955.

REMEDIAL LAW — CIVIL PROCEDURE — A COURT MAY RENDER JUDGMENT ON AN ISSUE, THOUGH NOT EXPRESSLY RAISED IN THE PLEADINGS, WHICH WAS TRIED BY MUTUAL CONSENT OF THE PARTIES. — Defendant contracted with a certain contractor for the construction of a building. Though there was no privity of contract between plaintiff and defendant, plaintiff supplied the materials for the building while the contractor did the construction job. Later, the contractor, in a letter (Exh. "H"), authorized the defendant to deduct a certain amount of the payment due to him, the same to be given to the plaintiff as compensation for the materials supplied by him. Defendant however paid whole compensation to the contractor, and when plaintiff brought an action for the collection of the money and the aforementioned letter was presented as evidence for the plaintiff, defendant failed to object thereto. When the lower court rendered a decision favorable to plaintiff, defendant appealed, claiming that the lower court erred in having taken into consideration Exh. "H" as that issue was not put up by the parties in their pleadings. *Held*, issues are not strictly confined to the pleadings presented. They may be broadened by consent of the parties, similar to what was done by the parties in this case, when defendant failed to object to the presentation of Exh. "H". FLORES *v.* RUELO, (CA) G.R. No. 13905-R, Sept. 29, 1955.

REMEDIAL LAW — CIVIL PROCEDURE — JUDGMENTS IN CASES OF SUPPORT ARE NOT FINAL AND MAY BE MODIFIED AT ANY TIME UPON PROPER APPLICATION TO THE COMPETENT COURT IN PROPER PROCEEDINGS. — Defendant, pretending to be single, courted and had amorous relations with plaintiff which resulted in the birth of two children. Subsequently, she found out that defendant was a married man with legitimate children of his own. Consequently, she filed an action to compel defendant to support their two children in the sum of ₱50 a month. The lower court rendered judgment in her favor but ordered defendant to pay only ₱30 a month. She appealed, contending that the court erred in granting a fixed amount of ₱30 as support claiming that it should be subject to justifying circumstances of increasing needs of the minors and of increased income of defendant. *Held*, it is not necessary to provide in the judgment in a case for support that the amount therein fixed therefor shall be increased or reduced proportionately in accordance with the increased or decreased needs of the party entitled to support or of the means of the giver. Judgments in cases for support are never final. They may be modified at any time upon proper application to the competent court in proper proceedings as may be warranted by varying conditions affecting the needs of the recipient and the ability of the obligor. Moreover, the pretension would destroy the essence of a valid judgment. A judgment should be self-sufficient, complete in itself, and contain in its four corners the mandate of the court, without reference to extrinsic facts and without leaving open any judicial question to be determined by others. It may not rest on conjectures and speculations. It must specifically fix the amount to be recovered, without leaving the sum to be thereafter ascertained by a ministerial officer. VICTORINO *v.* NORA, (CA) G.R. No. 13158-R, Oct. 26, 1955.

REMEDIAL LAW — PROVISIONAL REMEDIES — ONLY ACCRUED RENTALS WHICH HAVE NOT YET BEEN PAID, AND NOT CONTINGENT RENTALS, CAN BE THE SUBJECT OF GARNISHMENT. — Plaintiff became the judgment creditor of defendant

to the amount of ₱104,000. Since only ₱58,000 had been paid, leaving a balance of ₱46,000 unsatisfied, writs of garnishment were served on different entities holding credits belonging to defendant. A writ of garnishment was served on Barredo, which was later embodied in a court order, requiring him to pay the rentals on a crane he was leasing from defendant "from and after February 11, 1953 and thereafter at the end of each and every week as long as the lease shall be in force and subsisting." Having paid only ₱1,800 and not the balance of the rentals for his use of the crane for 84 days after the court's order, Barredo was found guilty of contempt of court. He appealed. *Held*, under § 8 of Rule 59, the credits and other personal properties belonging to the judgment debtor and found in the possession or control of another must be in existence at the time of the service of the garnishment. The rule in Anglo-American law is that such rentals which have accrued but which have not been paid, are subject to garnishment or attachment; by the same token, such rentals which are not yet due and have not yet accrued are considered as contingent and therefore not subject to attachment or garnishment. The order of the court directed Barredo to pay not only the rentals accumulated from February 11, 1953, but also such rentals which at the time of the issuance of the writ of garnishment had not yet accrued and were not yet demandable. The object of the writ, which was to reach out for future rentals which would purportedly accrue from February 11, 1953, is not valid since rentals, to be considered proper objects of garnishment, must be due and payable at the time of the service of the writ. BAUTISTA *v.* PHIL. READY-MIX CONCRETE CO., (CA) G.R. No. 13307-R, Aug. 6, 1955.

REMEDIAL LAW — PROVISIONAL REMEDIES — BEFORE GRANTING ALIMONY PENDENTE LITE WHERE RELATIONSHIP IS DENIED, EVIDENCE OF RELATIONSHIP, THOUGH NOT EXHAUSTIVE AND CONCLUSIVE, MUST BE CLEAR AND SATISFACTORY. — Enrico Clemente filed an action for support against defendant, petitioner in this case, together with a petition for support pendente lite. Defendant having denied filiation with Enrico and claiming that his civil status must first be determined before support may be granted, respondent judge set the case for hearing to receive evidence regarding the petition for support. The first day of hearing was held at 2:30. The second was scheduled at 2:00 but only Enrico appeared, offered several documents as exhibits, and closed his evidence. Defendant appeared at 2:36, alleging that he thought the hearing was at 2:30 as on the previous one and that he was caught by the traffic jam in Manila. Denying his petition to present evidence, respondent judge issued an order granting support pendente lite. His motion for reconsideration of said order being denied, defendant filed this petition. *Held*, considering that the order granting alimony pendente lite contains no express finding of filiation; that defendant-petitioner was not given an opportunity to present his evidence from which, together with the evidence of plaintiff, the court could find out "the necessities of the applicant, the means of the adverse party, the probable outcome of the case and such circumstances as may aid in the proper elucidation of the issue involved" as required by § 5 of Rule 67; that the delay of defendant, only a matter of minutes, was caused by an honest mistake of the time and the congested condition of the traffic on the streets, the order granting the support constitutes an abuse of discretion. When the status or juridical relation alleged by the applicant as a ground of his right to support is denied by the adverse party, the evidence thereon should be clear and satisfactory and if no proof of that matter is given the order granting alimony pendente lite will be in excess of jurisdiction. CLEMENTE *v.* IBAÑEZ, (CA) G.R. No. 16098-R, Dec. 29, 1955.

REMEDIAL LAW — SPECIAL CIVIL ACTIONS — AN EXPROPRIATING POWER MAY NOT RECOVER ANY INDEMNITY FOR IMPROVEMENTS CONSTRUCTED ON THE PROPERTY IT FAILED TO CONDEMN.—The Municipality of Bacoor instituted expropriation proceedings against a parcel of land to be used for a market site and was able to take immediate possession thereof. After the trial, the Municipality was ordered to pay the just value of the land, but having failed to do so, the plaintiff brought the present action to recover possession of the land plus damages. In its answer, the Municipality set up counterclaims amounting to ₱44,584 consisting of expenses incurred by it in filling up the condemned property, in building a concrete market building, and a slaughterhouse and in setting up an artesian well. The court ruled for plaintiff and dismissed the municipality's counterclaim. Hence this appeal. *Held*, the amount allegedly spent by the Municipality in filling up the land sought to be expropriated in order that a public market may be constructed thereon is not recoverable, for, as was held in *City of Manila v. Corrales*, 32 Phil. 85 (1915), the owner of a property sought to be expropriated should not be charged with the expenses necessary to put the property in the condition in which the expropriator or the public desires to use it. Likewise, the amounts spent for constructing the market, the slaughterhouse and the artesian well are not chargeable against the owner. It must be borne in mind that the possession obtained by the Municipality in accordance with the laws governing expropriation proceedings is of a precarious nature, not being that of an absolute owner. Therefore, if he builds thereon, his case will not be that of a builder in good faith and he will not be entitled to recover any indemnity, especially where what he constructed was not necessary for the preservation and the upkeep of the property. CUENCA *v.* MUNICIPALITY OF BACOOR, (CA) G.R. No. 13103-R, Nov. 22, 1955.

REMEDIAL LAW — CRIMINAL PROCEDURE — SUSPENSION OF THE CIVIL ACTION PENDING DECISION OF THE CRIMINAL ACTION IS DISCRETIONARY WITH THE COURT. — Piaintiffs instituted a civil action in the CFI of Manila to recover damages resulting from the death of one Laya occasioned by the negligent driving of defendant. Thereafter, a motion to suspend the proceedings in the abovementioned civil case was filed by plaintiffs on the ground that there was pending at that time a criminal case for homicide and physical injuries thru reckless imprudence against the same defendant. Respondent judge denied this motion holding that the Civil case for damages was one arising from "physical injuries" under art. 33 of the New Civil Code and that therefore it could proceed independently of the criminal action. Plaintiffs appealed. *Held*, the civil case for damages being an independent civil action in accordance with art. 33 of the New Civil Code, which may proceed independently of the criminal action, the trial of said civil action is a matter purely discretionary with the court where the same is pending. LAYA *v.* PARAS, (CA) G.R. No. 15229-R, Sept. 13, 1955.