counsel for petitioner made a manifestation whereby he made of record his objection to any and all evidence that respondent intends to present on the ground that it would be immaterial and irrelevant for the reason that he has failed to file an answer to the petition. At this juncture, counsel for respondent asked for an opportunity to file an answer, and instead of ruling on this request, the court allowed counsel to present evidence without prejudcie on its part to disregard it if should find later that the question raised is well taken. But after the presentation of one witness, and while the second witness was in the course of his testimony, the court suspended the hearing and required the parties to present memoranda to determine whether or not respondent may be allowed to file his answer and continue presenting his evidence. This was done, and on March 14, 1952, the court issued an order denying the request to file an answer and declaring the case submitted for decision. And on the same date, it rendered decision declaring respondent ineligible as prayed for in the petition. The case is now before us upon the plea that the question involved in this appeal is purely one of law.

The question posed in this appeal is whether the lower court erred in denying the request of respondent to be given an opportunity to file an answer to the petition and, in default thereof, in denying him the right to continue presenting his evidence notwithstanding the action of the court in setting aside its previous decision in order to give him an opportunity to appear and defend himself.

The reasons which the lower court has considered in denying the request of respondent to be given an opportunity to file an answer and to be allowed to present evidence in support of his defense are clearly stated in the decision. Said reasons are: "As above stated, respondent failed to file his answer and when his turn came, and he attempted to present his evidence, counsels for petitioner vehemently objected on the ground that he has not raised any issue. The court, after a careful consideration of all the facts and circumstances surrounding the case, was constrained to sustain the objection of petitioner, and barred respondent from presenting his evidence. For evidently, he is guilty of gross and inexcusable negligence. From the time he voluntarily appeared in court on December 18, 1951 when he filed the motion for reconsideration above adverted to, he submitted himself to the jurisdiction of the court. His voluntary appearance is equivalent to service. Consequently, he should have filed then his answer within the reglamentary period fixed by law, it being his legal duty to do so. At least, he should have filed his answer from the time he received the order setting aside the judgment—that is, on January 21, 1952, and before the 15 days period expired. When he entered trial on February 22, 1952, without filing his answer, there was no issue raised, and a summary judgment for petitioner may be rendered. Indeed, Section 8, Rule 9 of the Rules of Court provides, among others, that material averments in the complaint other than those as to the amount of damage, shall be deemed admitted when not specifically denied; and Section 10 states that defenses and objectoins not pleaded either in a motion to dismiss or in the answer are deemed waived."

We can hardly add to the foregoing reasons of the lower court which we find fully supported by the record. We can only state in passing that the granting of a motion to file an answer after the period originally fixed in the summons, or in the rules of court for that purpose had expired, is a matter that is addressed to the sound discretion of the court, and under the circumstances obtaining in the case, we find that this discretion has been properly exercised. The court has been most liberal to respondent such that it even went to the extent of setting aside its previous decision. And we don't believe that the interest of Justice will be jeopardized if the decision of the lower court is maintained for, while on one hand the evidence adduced by the petitioner appears to be strong, on the other, it does not appear that respondent has made any offer of the evidence he intended to introduce that might give an inkling that, if presented, it may have the effect of offsetting the evidence of petitioner. There is, therefore, no legal basis for concluding that the result of the decision would be changed has respondent been able to complete his evidence. And in the absence of this basis, respondent's plea for equity can deserve but scant consideration.

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

Paras, Bengzon, Reyes, Labrador, Pablo, Montemayor, Jugo; Concepcion, and *Diokno, J.J.,* concur.

XXIII

Antonio Mirasol, Petitioner, vs. Porfirio Gerochi y Gamboa, Mariano Gerochi y Gamboa, Juan Navajas y Gamboa, Saturnina Navajas y Gamboa and the Court of Appeals, Respondents, G. R. No. L-4929, promulgated July 23, 1953, Bautista Angelo, J.

LAND REGISTRATION; CERTIFICATE OF TITLE: WHEN PURCHASER IS NOT A "SUBSEQUENT PURCHASER OF REGISTERED LAND." — Where one purchases a registered land from a person who did not have any certificate of title in his name, his only evidence being the deed of sale in his favor, and its annotation on the certificate of title which still appears in the name of the previous owners, most of whom had already died, the purchaser is not a "subsequent purchaser of registered land who takes a *certificate of title* for value and in good faith" and who is protected against any encumbrance except those noted on said certificate, as provided for in Section 39 of Act No. 496.

Jose D. Evangeslista for petitioner.
Luis G. Hofileña and *Cesar T. Martin* for respondents.

D E C I S I O N

BAUTISTA ANGELO, *J.*:

This is a petition for review of a decision of the Court of Appeals rendered on June 14, 1951 wherein, among other things, the deed of sale executed by Saturnina Navajas in favor of Antonio Mirasol, petitioner herein, was declared valid in so far as the share and participation of said Saturnina in Lot No. 3760 of the cadastral survey of Iloilo City is concerned, which participation is one-half (1/2) of the undivided one-fourth (1/4) belonging to her mother Dionisia Gamboa; Juan Navajas was declared owner of one-half (1/2) of the same undivided share; and with regard to the cross-claim of Antonio Mirasol, Natividad Escarrilla was ordered to pay him the sum of ₱1,575. In the same decision it was ordered that the judgment be registered and annotated on the original Certificate of Title No. 1399 covering Lot No. 3760.

On July 30, 1946, two deeds of sale were executed, one by Filomeno Ledesma, who posed as only heir of the deceased Teodorica Gamboa, over one-fourth undivided share belonging to the latter in Lot No. 3760 of the cadastral survey of the City of Iloilo, which lot was covered by original Certificate of Title No. 1399, in favor of Salvador Solano, and another executed by Saturnina Gerochi, who posed as only heir of the deceased Dionisia Gamboa, over one-fourth undivided share belonging to the latter in the same Lot No. 3760, in favor of the same purchaser. These two deeds were annotated on the original Certificate of Title No. 1399, as well as on the owner's duplicate of the same title.

On August 1, 1946, Salvador Solano in turn sold with *pacto de retro* for a term of two years the portion bought from Saturnino Gerochi to Natividad Escarrilla for the sum of ₱3,500, and on

August 17, 1946, he sold to the same person and under the same terms the portion he bought from Filomeno Ledesma for the sum of ₱1,400, which was later increased to ₱3,150. These deeds were also annotated on the original as well as on the duplicate certificate of title of the property on September 14, 1946.

When Natividad Escarrilla became the absolute owner of the two portions mentioned in the preceding paragraphs, she transferred her interest, right and participation over one-half of the undivided one-fourth share which was originally acquired from Saturnina Gerochi to Antonio Mirasol for the sum of ₱3,150 on October 21, 1946, and the corresponding deed of sale was likewise annotated on the original and duplicate of the certificate of title of the property.

On October 8, 1947, Porfirio Gerochi, Mariano Gerochi, Juan Navajas and Saturnina Navajas began an action in the Court of First Instance of Iloilo against Natividad Escarrilla, Antonio Mirasol, Salvador Solano and Saturnina Gerochi for the annulment of the deeds above mentioned alleging, on one hand, that Porfirio and Mariano Gerochi were the only heirs of Teodorica Gamboa and, therefore, the owners of the one-fourth undivided share which had been sold by Filomeno Ledesma to Salvador Solano, and on the other, that Saturnina and Juan Navajas were the heirs of Dionisia Gamboa and, therefore, the owners of the one-fourth undivided share which had been sold by Saturnina Gerochi to Salvador Solano, and praying that said deeds be declared null and void and that the plaintiffs be declared respectively owners of the shares and interests therein mentioned.

The court, after receiving the evidence of both parties, dismissed the complaint, with costs against the plaintiffs. The court said that while "plaintiffs Mariano Gerochi and Saturnina Navajas themselves executed exhibits 5-Escarrilla and 8-Escarrilla and therefore are stopped from seeking their annulment on the grounds alleged in the complaint, the same cannot be said with respect to the plaintiffs Porfirio Gerochi and Juan Navajas. Their remedy, however, would seem to lie not in this action but under the provisions of Rule 74, et seq., of the Rules of Court.

Upon appeal taken by the plaintiffs, the Court of Appeals modified the decision appealed from in the following dispositive part:

> "FOR THE FOREGOING CONSIDERATION, the judgment appealed from is hereby modified, and we hereby declare (1) that by virtue of the deeds of sale and conveyance designated as Exhibits 4-Escarrilla and 5-Escarrilla, which we hereby declare valid and executed by Saturnina Navajas, and Annex F, defendant Antonio Mirasol is now the owner of the share and participation of Saturnina Navajas in Lot No. 3760 of the cadastral survey of Iloilo, which participation is one-half (1/2) of the undivided one-fourth (1/4) belonging to her mother Dionisia Gamboa; (2) that the deeds, Exhibits 8-Escarrilla, 7-Escarilla, and 6-Escarilla are null and void, and the annotations thereof on the certificate of title, Exhibit A, ordered cancelled; (3) that Porfirio and Mariano Gerochi continue to be and are the owners of the undivided one-fourth (1/4) share and participation of their deceased owner Teodorica Gamboa in said Lot No. 3760; and (4) that plaintiff Juan Navajas is the owner of one-half (1/2) of the one-fourth (1/4) undivided share and participation of the deceased Dionisia Gamboa in said Lot No. 3760, and we hereby order that this judgment be registered and annotated on Original Certificate of Title No. 1399. The action of the plaintiff-appellant Saturnina Navajas is hereby dismissed. Judgment is also hereby rendered in favor of defendant Antonio Mirasol on his cross-claim against his co-defendant Natividad Escarrilla, who is ordered to pay him the sum of ₱1,575.00. Judgment is also rendered on Natividad Escarrilla's cross-claim in her favor and against Filomeno Ledesma and Salvador Solano, jointly and severally, ordering the latter to indemnify her in the amount of ₱1,750. One-half of the costs shall be taxed against plaintiff-appellant Saturnina Navajas; the other half against defendants-appellants Salvador Solano and Filemon Ledesma."

The case is now before this Court by virtue of the petition for review interposed by Antonio Mirasol who now contends that the Court of Appeals, in deciding the issues involved and raised by the parties, has invoked the pertinent provisions of Act No. 496 and the several decisions of this Court which proclaim the indefeasibility of a torrens title and protect every subsequent purchaser of registered land who takes a certificate of title for value and in good faith against all encumbrances except those noted on the certificate of title. Petitioner claims that, having been found to be purchaser in good faith and for value of a registered land, the deeds of sale subject of the petition for review cannot be declared null and void to his prejudice.

One of the cases cited by petitioner in support of his contention is De la Cruz v. Fabie 35 Phil. 144, wherein it was held that, "even admitting the fact that a registration obtained by means of fraud or forgery is not valid, and may be cancelled forthwith, yet when a third person has acquired the property subject matter of such registration from the person who appears as registered owner of the same, his acquisition is valid in all respects and the registration in his favor cannot be annulled or cancelled; neither can the property be recovered by the previous owner who is deprived thereof by virtue of such fraud or forgery." (See Reynes v. Barrera, 68 Phil. 658.)

The doctrine laid down in the case of De la Cruz v. Fabie was reaffirmed in the subsequent case of Reynes, et al, v. Barrera, et al., 68 Phil. 656, wherein this Court made the following pronouncement:

> "There is no question that the defendant-appellant is a purchaser of Lot No. 471-b in good faith and for a valuable consideration. There was nothing in the certificate of title of Manuel Reynes, from whom she acquired the property, to indicate any cloud or vice in his ownership of the property, or any encumbrance thereon. Where the subject of a judicial sale is a registered property, the purchaser thereof is not required to explore farther than what the Torrens title, upon its face, indicate in quest for any hidden defect or inchoate right that may subsequently defeat his right thereto. If the rule were otherwise, the efficacy and conclusiveness of the certificate of title which the Torrens system seeks to insure, would entirely be futile and nugatory. 'Every applicant receiving a certificate of title in pursuance of a decree of registration, and every subsequent purchaser of registered land who takes a certificate of title for value in good faith, shall hold the same free of all encumbrance except those noted on said certificate x x x.' (Sec. 39, Act No. 496, as amended by Act No. 2011.) In De la Cruz vs. Fabie (35 Phil., 144), it was held that, even admitting the fact that a registration obtained by means of fraud or forgery is not valid, and may be cancelled forthwith, yet, when a third person has acquired the property subject matter of such registration from the person who appears as registered owner of same, his acquisition is valid in all respects and the registration in his favor cannot be annulled or cancelled; neither can the property be recovered by the previous owner who is deprived thereof by virtue of such fraud or forgery."

Petitioner herein cannot invoke in his favor the benefit of the salutary doctrine laid down in the cases above adverted to. His situation is different from that of Ramon Fabie in the case of

De la Cruz. In that case, it has been shown "that Ramon Fabie is an innocent holder of a certificate of title for value." Vedasto Velasquez, from whom he bought the property, not only had a title registered in his name, but the same was given to Fabie, who, together with the deed of sale, took it to the Register of Deeds, and obtained the issuance of a title in his name on the strength of said deed of sale, and so it was there declared that "in conformity of the oft-cited section 55 of Act No. 496, he is the absolute owner of the land mentioned in the complaint, and the action for recovery of possession, improperly brought against him, can in no wise prosper."

Antonio Mirasol is in a different predicament. He bought the property from Natividad Escarrilla, who in turn acquired it from Salvador Solano. The different deeds of conveyance were merely annotated on the original and duplicate certificates of title which appear in the name of the previous owners. Neither Solano, nor Escarrilla, nor Mirasol ever secured from the Register of Deeds the transfer of a new certificate of title in their names. In other words, the only picture Mirasol presents before us is that of a purchaser of registered land from a person who did not have any certificate of title in his name, his only evidence being the deed of sale in his favor, and its annotation on the certificate of title which still appears in the name of the previous owners, most of whom had already died. He is not therefore a "subsequent purchaser of registered land *who takes a certificate of title* for value and in good faith" and who is protected against any encumbrance except those noted on said certificate, as provided for in Section 39 of Act No. 496.

The case of petitioner falls squarely within the doctrine laid down in the case of The Director of Lands v. Addison, 49 Phil. 19, wherein this Court ruled that the entry of a memorandum of a conveyance in fee simple upon the original certificate of title without the issuance of a transfer certificate of title to the purchaser is not a sufficient registration of such a conveyance. The issuance of a transfer certificate of title to the purchaser is one of the essential features of a conveyance in fee by registration and in order to enjoy the full protection of the registration system, the purchaser must be a holder in good faith of such certificate. And elaborating on this point, and incidentally in drawing a striking contrast between the case above referred to and that of De la Cruz, this Court said:

"As will be seen, the issuance of a transfer certificate of title to the purchaser is one of the essential features of a conveyance in fee by registration and in order to enjoy the full protection of the registration system, the purchaser must be a holder in good faith of such certificate. This appears clearly from section 39 of the Land Registration Act which provides that 'every applicant *receiving a certificate of title* in pursuance of a decree of registration, and every subsequent purchaser of registered land who *takes a certificate of title* for value in good faith, shall hold the same free of all encumbrance except those noted on said certificate, and any of the following incumbrances which may be subsisting, namely: (enumeration of subsisting incumbrances).' In fact the register of deeds has no authority to register a conveyance in fee without the presentation of the conveyor's duplicate certificate unless he is ordered to do so by a court of competent jurisdiction (see Land Registration Act, section 55). As we have already shown, neither Pedro Manuntag nor Soledad P. Hernandez ever held a certificate of title to the land here in question and there had therefore been no sufficient legal conveyance in fee to them neither by deed nor by registration. The original certificate of title No. 414 in favor of the Angeles heirs has never been cancelled and is the only certificate in existence in regard to the property.

"In the case of De la Cruz vs. Fabie, *supra*, the situation was entirely different. There the registration of the property in question was decreed in the name of Gregoria Hernandez and a duplicate original certificate of title issued to her. She turned the duplicate certificate over to her nephew, the defendant Vedasto Velasquez, who forged a deed to himself of the property and presenting the same with the duplicate certificate of title to the register of deeds obtained a transfer certificate with its corresponding duplicate in his own name. He thereafter sold the land to his co-defendant Ramon Fabie to whom a transfer certificate of title was issued upon the cancellation of Velasquez' certificate. There was therefore a complete chain of registered title. The purchaser was guilty of no negligence and was justified in relying on the certificate of title held by the vendor. In the present case, on the other hand, the vendor held no certificate of title and there had therefore been no complete conveyance of the fee to him. The purchaser was charged with presumptive knowledge of the law relating to the conveyance of land by registration and, in purchasing from a person who did not exhibit the proper muniments of title, must be considered to have been guilty of negligence and is not in position to complain of his loss."

Wherefore, the decision appealed from is affirmed, with costs against petitioner.

Paras, Pablo, Bengzon, Padilla, Tuason, Montemayor, Reyes, and *Jugo, J.J.*, concur.

Mr. Justice Labrador took no part.

XXIV

Arsenio Algarin et al., Plaintiffs-Appellees,, vs. Francisco Navarro et al., Defendants-Appellants, G. R. No. L-5257, April 14, 1954, Labrador, J.

CIVIL PROCEDURE; SECTION 10 OF RULE 40 OF THE RULES OF COURT CONSTRUED AND APPLIED; CASE AT BAR.—Plaintiffs filed an action against the defendants to recover from the latter the amounts which the plaintiffs earned while working in the construction of defendants' house. The case was tried in the Municipal Court, and after the plaintiffs' had closed their evidence, one of the defendants filed a motion to dismiss, claiming that there is no contractual relation between him and plaintiff, and that as the latter have not shown that he had violated the provisions of Act 3959, he is not liable. The Municipal Court sustained this contention and dismissed the case. The plaintiffs appealed from this decision to the Court of First Instance of Cavite, which found the order of dismissal entered by the Municipal Court to be an error and reversing it and remanding the case to said Court for further proceeding under the authority of Section 10 of Rule 40 of the Rules of Court which states that "where the action has been disposed of by an inferior court upon a question of law and *not after a valid trial upon the merits*, the Court of First Instance shall on appeal review the ruling of the inferior court and may affirm or reverse it . . ." *Held*: There is no question that there was a trial. The trial was held after issues of fact had been joined by the filing of an answer. And the case was not terminated solely on a question of law, because the court found that the facts proved do not entitle the plaintiffs to recover. Moreover, the mere fact that the municipal court found that there was absence of allegations necessary to entitle the plaintiffs to recover, or evidence to establish said allegations of essential facts, does not mean that there was no valid trial upon the merits.

IBID; IBID.—What section 10 of Rule 40 considers as ter-