trial and/or determination of any of the issues of fact raised in the pleadings. Thus, if the hearing is had merely on the lack of jurisdiction or improper venue, without introduction of evidence on the merits, or on the issues of fact which entitle the plaintiff to recover or the defendant to be absolved from the action, there would not be a valid trial on the merits. As stated by Justice Moran, the said section is a restatement of the rulings laid down by the Supreme Court. He cites as example of the application of the rule a case where there is no trial in the inferior court and the case is disposed of upon a question of law, such as the lack of jurisdiction to try the case. In this instance, upon appeal to the Court of First Instance, the only question to be decided in the appeal is the jurisdiction of the inferior court, and if the Court of First Instance finds that the municipal court has jurisdiction, the case is remanded thereto for trial upon the merits, otherwise the dismissal is affirmed. Another example is where the inferior court sustains a motion to dismiss on the ground of failure of plaintiff's complaint to state a cause of action, in which case the appellate power of the Court of First Instance is to review the order of the inferior court sustaining the motion. And if the Court of First Instance finds the order to be wrong, the case has to be remanded to the inferior court for trial upon the merits. (I Moran, 1952 Rev. ed., pp. 889-890.)

It is pertinent to add, by way of clarification, that the existence of a trial on the merits is the determining factor for the application of the rule. Even if the case is decided on a question of law, i.e., lack of jurisdiction, provided there was a trial, the case may not be remanded to the inferior court.

In the case at bar, there was a trial upon the issue as to whether or not the plaintiffs should be entitled to recover. Even if the defendants did not present their evidence for the reason that the court found that the plaintiffs had failed to establish a cause of action, it does not mean thereby that the case was terminated on a question of law, and that there was no valid trial upon the merits. There was a valid trial, only that the court found that the trial was of no advantage to the plaintiffs, because they failed to prove the facts necessary to entitle them to recover. The mere fact that the defendant did not present his evidence, because the court found it unnecessary, is no reason for holding that there was no valid trial at all. As the trial on the merits was held, no matter what the result thereof may have been, whether the court rendered judgment for plaintiff or absolved the defendant or denied the remedy to the plaintiff, as the court has considered the evidence on the merits of the case, there was a valid trial on the merits within the meaning of Section 10, Rule 40, of the Rules of Court, and the case may not be remanded for trial.

It will be noted that the purpose of Section 10 of Rule 40 is to prohibit the trial of a case originating from an inferior court by the Court of First Instance on appeal, without the said inferior court having previously tried the case on the merits. If there was no such trial on the merits, the trial in the Court of First Instance is premature, because the trial therein on appeal is a trial *de novo*, a new trial. There can not be a new trial unless a trial was already held in the court below. It might happen that after the trial on the merits in the lower court the parties may be satisfied with its judgment. So the evident purpose of the rule is to give the opportunity to the inferior court to try the case first upon the merits, and only thereafter should the Court of First Instance be allowed to retry the case, or to conduct another trial thereof on the merits.

FOR THE FOREGOING CONSIDERATIONS, the order appealed from should be, as it is hereby, reversed, and the Court of First Instance of Cavite is hereby ordered to proceed with the trial of the case by virtue of its appellate jurisdiction.

Paras, Pablo, Bengzon, Montemayor, Reyes, Jugo, Bautista Angelo, Concepcion, and *Diokno, J.J.*, concur.

XXV

The People of the Philippines, Plaintiff-Appellee, vs. Adelo Aragon, Defendant-Appellant, G. R. No. L-5930, February 17, 1954, *Labrador, J.*

CRIMINAL PROCEDURE; PREJUDICIAL QUESTION DEFINED.—Prejudicial question has been defined to be that which arises in a case, the resolution of which (question) is a logical antecedent of the issue involved in said case, and the cognizance of which pertains to another tribunal (Cuestion prejudicial, es la que surge en un peito o causa, cuya resolucion sea antecedente logico de la cuestion objeto del pleito o causa y cuyo conocimiento corresponda a los Tribunales de otro orden o jurisdiccion. — X Enciclopedia Juridica Española, p. 228). The prejudicial question must be determinative of the case before the court; this is its first element. Jurisdiction to try said question must be lodged in another tribunal; this is the second element. In an action for bigamy, for example, if the accused claims that the first marriage is null and void and the right to decide such validity is vested in another tribunal, the civil action for nullity must first be decided before the action for bigamy can proceed; hence, the validity of the first marriage is a prejudicial question.

IBID.; THERE IS NO PREJUDICIAL QUESTION IN THE CASE AT BAR.—Defendant is charged of the crime of bigamy for having contracted a second marriage with the complainant on September 21, 1947, while his previous valid marriage with Martina Godinez which was still subsisting had not been dissolved. The information is dated May 22, 1951. On October 11, 1951, while the case was pending trial, complainant filed a civil action in the same Court of First Instance of Cebu against the accused, alleging that the latter "by means of force, threats and intimidation of bodily harm, forced plaintiff to marry him," and praying that the marriage on September 21, 1947 be annulled. Thereupon on April 13, 1952 the accused filed a motion on the criminal case of bigamy praying that the criminal charge be provisionally dismissed on the ground that the civil action for annulment of the second marriage is a prejudicial question. HELD: There is no question that, if the allegations of the complaint are true, the marriage contracted by defendant-appellant with Efigenia G. Palomer is illegal and void (Sec. 29, Act 3613 otherwise known as the Marriage Law). Its nullity, however, is no defense to the criminal action for bigamy filed against him. The supposed use of force and intimidation against the woman, Palomer, even if it were true, is not a bar or defense to said action. Palomer, were she the one charged with bigamy, could perhaps raise said force or intimidation as a defense, because she may not be considered as having freely and voluntarily committed the act if she was forced to the marriage by intimidation. But not the other party, who used the force or intimidation. The latter may not use his own malfeasance to defeat the action based on his criminal act. It follows that the pendency of the civil action for the annulment of the marriage filed by Efigenia C. Palomer, is absolutely immaterial to the criminal action filed against defendant-appellant. This civil action does not decide that defendant-appellant did not enter the marriage against his will and consent, because the complaint does not allege that he was the victim of force and intimidation in the second marriage; it does not determine the existence of any of

the elements of the charge of bigamy. A decision thereon is not essential to the determination of the criminal charge. It is, therefore, not a prejudicial question.

Amadeo D. Seno for appellant.

Assistant Solicitor General Francisco Carreon and *Solicitor Ramon L. Avanceña* for appellee.

DECISION

LABRADOR, *J.*:

The defendant in the above-entitled case is charged in the Court of First Instance of Cebu with the crime of bigamy, for having contracted a second marriage with one Efigenia C. Palomer on September 21, 1947, while his previous valid marriage with Martina Godinez was still subsisting and had not been dissolved. The information is dated May 22, 1951. On October 11, 1951, while the case was pending trial, Efigenia C. Palomer filed a civil action in the same Court of First Instance of Cebu against the defendant-appellant, alleging that the latter "by means of force, threats and intimidation of bodily harm, forced plaintiff to marry him," and praying that their marriage on September 21, 1947 be annulled (Annex A). Thereupon and on April 30, 1952, defendant-appellant filed a motion in the criminal case for bigamy, praying that the criminal charge be provisionally dismissed, on the ground that the civil action for annulment of the second marriage is a prejudicial question. The court denied this motion on the ground that the validity of the second marriage may be determined in the very criminal action for bigamy. Against this order this appeal has been presented to this Court.

It is contended that as the marriage between the defendant-appellant and Efigenia C. Palomer is merely a voidable marriage, and not an absolutely void marriage, it can not be attacked in the criminal action and, therefore, it may not be considered therein; consequently, that the civil action to annul the second marriage should first be decided and the criminal action, dismissed. It is not necessary to pass upon this question because we believe that the order of denial must be sustained on another ground.

Prejudicial question has been defined to be that which arises in a case, the resolution of which (question) is a logical antecedent of the issue involved in said case, and the cognizance of which pertains to another tribunal (Cuestion prejudicial, es la que surge en un pleito o causa, cuya resolucion sea antecedente logico de la cuestion objeto del pleito o causa y cuyo conocimiento corresponda a los Tribunales de otro orden o jurisdiccion.—X Enciclopedia Juridica Española, p. 228). The prejudicial question must be determinative of the case before the court; this is its first element. Jurisdiction to try said question must be lodged in another tribunal; this is the second element. In an action for bigamy, for example, if the accused claims that the first marriage is null and void and the right to decide such validity is vested in another tribunal, the civil action for nullity must first be decided before the action for bigamy can proceed; hence, the validity of the first marriage in a prejudicial question.

There is no question that, if the allegations of the complaint are true, the marriage contracted by defendant-appellant with Efigenia G. Palomer is illegal and void (Sec. 29, Act 3613 otherwise known as the Marriage Law). Its nullity, however, is no defense to the criminal action for bigamy filed against him. The supposed use of force and intimidation against the woman, Palomer, even if it were true, is not a bar or defense to said action. Palomer, were she the one charged with bigamy, could perhaps raise said force or intimidation as a defense, because she may not be considered as having freely and voluntarily committed the act if she was forced to the marriage by intimidation. But not the other party, who used the force or intimidation. The latter may not use his own malfeasance to defeat the action based on his criminal act.

It follows that the pendency of the civil action for the annulment of the marriage filed by Efigenia C. Palomer, is absolutely immaterial to the criminal action filed against defendant-appellant. This civil action does not decide that defendant-appellant did not enter the marriage against his will and consent, because the complaint does not allege that he was the victim of force and intimidation in the second marriage; it does not determine the existence of any of the elements of the charge of bigamy. A decision thereon is not essential to the determination of the criminal charge. It is, therefore, not a prejudicial question.

There is another reason for dismissing the appeal. The order appealed from is one denying a motion to dismiss and is not a final judgment. It is, therefore, not appealable (Rule 118, Secs. 1 and 2).

The order appealed from is hereby affirmed, with costs against defendant-appellant.

So ordered.

Paras, Pablo, Bengzon, Padilla, Montemayor, Reyes, Jugo, and *Bautista Angelo, JJ.*, concur.

XXVI

Francisco Marasigan, Petitioner, vs. Felicisimo Ronquillo, Respondent, G. R. No. L-5810, January 18, 1954, *Labrador, J.*:

1. CIVIL PROCEDURE; FINAL JUDGMENT; AMENDMENT. —The rule is absolute that after a judgment becomes final, by the expiration of the period provided by the rules within which it so becomes, no further amendment or correction can be made by the court except for clerical errors or mistakes.

2. IBID; IBID.—The change ordered by the Court of Appeals was made when the judgment was already being executed; and it cannot be said to merely correct a clerical error because it provides for a contract of lease of nine years and three months duration, from Nov. 10, 1950, which is different from one of ten years from December 1, 1941, excluding the period from September 1, 1942 to August 31, 1947.

Rosendo J. Tansinsin for petitioner.

M. G. Bustos, Ubaldo T. Caparros, Pastor G. Bustos, Teodorico R. Nunga and *Expedito B. Yumul* for respondent.

DECISION

LABRADOR, *J.*:

This is an appeal by certiorari against a decision of the Court of Appeals, in C. A. — G. R. No. 7853-R, Felicisimo Ronquillo, plaintiff-appellant, and Francisco Marasigan, defendant-appellee. The circumstances leading to the appeal may be briefly stated as follows:

1. On April 10, 1943 Ronquillo brought action against Marasigan to compel him to deliver a parcel of nipa land which the latter had agreed to lease to Ronquillo for a period of 10 years and to execute the corresponding deed of lease therefor.

2. After trial and on September 1, 1947, the Court of First Instance rendered judgment ordering,

> "That the defendant Marasigan deliver immediately the possession of the land described in the amended complaint to the plaintiff Ronquillo; that the defendant Marasigan execute a contract of lease covering the said land for a period of 10 years in favor of the plaintiff Ronquillo, as of December 1,