irregularity would in effect disfranchise two hundred or more voters if the purpose is to annul the election in the aforesaid precinct. This is now the order subject of the present petition for certiorari.

It should be noted that the main ground of the opposition of protestant to the presentation of the evidence which protestee desires to adduce is the fact that the irregularity which is desired to be established has not been clearly and specifically set out in the answer, which vagueness or generalization makes the avernment utterly inadequate or insufficient to serve as basis for the presentation of evidence, even if at the trial counsel made a verbal manifestation as to the particular acts constitutive of the violation of law on which he bases his plea for the nullification of the election in precinct No. 6 of Pamplona. But it appears that such is not the ground entertained by the respondent Judge in ruling out the evidence, it being a matter which may be subserved with the mere amendment of the pleading, but rather his view, right or wrong, to the effect that such evidence could not serve any useful purpose for, even if it be allowed, it may not have the effect of nullifying the election as such would have the effect of disfranchising two hundred or more legitimate voters whose right has never been assailed. Such being the question before us for determination, we are of the opinion that the action taken by petitioner to correct the ruling of the court is not the proper one, it being a mere error of judgment which should be corrected by appeal, and not an act of lack of jurisdiction or grave abuse of discretion which is the proper subject of a petition for certiorari.

As a rule, the errors which the court may commit in the exercise of its jurisdiction are merely errors of judgment. In the trial of a case, it becomes necessary to distinguish errors of jurisdiction from errors of judgment. The first may be reviewed in a certiorari proceeding; the second, by appeal. Errors of jurisdiction render an order or judgment void or voidable, but errors of judgment or procedure are not necessarily a ground for reversal (Moran, Comments on the Rules of Court, Vol. 2, 1952 ed., p. 158). Again, a writ of certiorari will be denied where the appeal is an adequate remedy though less speedy than certiorari. "Mere possible delay in the perfection of an appeal and in securing a decision from the appellate court is no justification for departing from the prescribed procedure . . . ." unless "there was lack or excess of jurisdiction or abuse of discretion and the delay would work injustice to the complaining party . . ." (*Idem*, pp. 166, 167.)

The order complained of by petitioner is merely interlocutory or peremptory in character which is addressed to the sound discretion of the court. That order may be erroneous, but it is a mere error of judgment which may be corrected by appeal. This remedy is adequate enough, for whatever delay may be suffered in the proceeding would not work injustice to petitioner who sure enough is presently holding the office contested by respondent.

Wherefore, the petition is hereby denied with costs against petitioner.

The writ of injunction issued by this Court is hereby dissolved.

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

XXII

Lazara R. Bien, Petitioner-Appellee, vs. Pedro Beraquit, Respondent-Appellant, G. R. No. L-6855, April 23, 1954, Bautista Angelo, J.:

PLEADING AND PRACTICE; GRANTING EXTENSION OF TIME TO FILE ANSWER AFTER THE REGLAMENTARY PERIOD; DISCRETION OF THE COURT.—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 discretion of the court, and under the circumstances obtaining in the case, we find that this discretion has been properly exercised.

Delfin de Veva for appellant.
Ramon C. Fernandez for appellee.

DECISION

BAUTISTA ANGELO, *J.*:

This is an appeal from a decision of the Court of First Instance of Albay declaring respondent Pedro Beraquit ineligible to the office of mayor of the municipality of Malilipot, province of Albay, on the ground that he was not a resident of said municipality one year prior to the elections held on November 13, 1951.

A petition for *quo warranto* was filed by Lazara R. Bien to test the eligibility of Pedro Beraquit to be a candidate for the office of mayor of the municipality of Malilipot, province of Albay. It is alleged that the respondent was ineligible for that position because he was a resident of Baras, Catanduanes, and has not resided for at least six months in Malilipot, Albay, prior to the elections held on November 13, 1951, and that, notwithstanding his ineligibility, he registered his candidacy for that office and was proclaimed duly elected by the municipal board of canvassers on November 17, 1951. It is prayed that his election be declared null and void and the office be declared vacant.

The record shows that upon the filing of the petition for *quo warranto* on November 19, 1951, the court issued an order directing that summons be made immediately upon respondent giving the latter three days within which to answer from service thereof. The hearing was set for December 4, 1951. In compliance with said order, the clerk of court, on November 23, 1951, required the deputy sheriff of Catanduanes to serve the summons at respondent's residence in Baras, Catanduanes, and directed that another summons be served upon him at his residence in Malilipot, Albay. Neither of the summons was served either because of respondent's absence or because of the refusal of the persons found in his residence to accept the service. As a result, substituted service was resorted to as allowed by the rules by leaving a copy of the summons at the residence of respondent.

When the date set for hearing came, neither the respondent, nor his counsel appeared. He did not also file an answer as required by the court. Petitioner asked to be allowed to adduce evidence in the absence of respondent, but the court decided to transfer the hearing to December 7, 1951 in order to give respondent ample opportunity to appear and defend himself. In the same order, the court directed that another summons be served upon respondent. Again, the summons failed for the same reasons. And when the case came up for hearing for the second time, and respondent again failed to appear, the court decided to allow petitioner to present her evidence. Thereafter, a decision was rendered granting the petition. Copy of this decision was received by respondent on December 15, 1951 and on December 18, he filed a motion praying that the decision be set aside and the case be heard on the merits. This motion was granted and the court set the hearing on February 22, 23, and 25, 1952.

On February 22, 1952, petitioner presented four witnesses. On February 23, 1952, she presented one witness, and on February 23, 1952, she presented two more witnesses, plus eleven pieces of documentary evidence. Then she rested her case.

When the turn of respondent came to present his evidence,

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.

DECISION

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