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,

1941, by excluding therefrom the five years period from September 1 ,1942, to August 31, 1947, inclusive, with a consideration of ₱14,000.00 minus the amounts of ₱1,200.00, ₱1,277.70 and ₱600.00, the amount of ₱1,277.70 being additional advances received by the defendant Marasigan and the last amount of ₱600.00 being a reserve fund for the payment of the land taxes; and that the defendant Marasigan will assume his former position as assistant manager with a compensation of ₱60.00 monthly.

The contract of lease embodying the above conditions must be executed and ratified before a notary public within 10 days from the date this decision would become final.

The complaint against the other defendants is dismissed, without pronouncement as to costs.

The defendant Francisco Marasigan shall pay the costs of this action."

3. The case having been brought to the Court of Appeals, this court entered judgment on April 10, 1950 modifying the above judgment in some parts and affirming it as to all others, thus:

"WHEREFORE, the decision appealed from is hereby modified in the sense that defendant Marasigan shall not be compelled to assume his former position as assistant manager in the business of the plaintiff, unless he be willing to serve as such, with compensation at the rate of ₱60.00 per month. The decision is affirmed in all other respects, with the understanding, however, that defendant Marasigan shall pay to the plaintiff the damages that the latter may prove to have suffered if the provision regarding the execution of a new contract of lease of said land could not be carried out for any legal impediment. Without pronouncement as to costs in this instance."

4. After the return of the case to the Court of First Instance for execution and on August 1, 1950, plaintiff deposited the amount of ₱10,922.30 with the clerk of court, in compliance with the judgment, and asked for an order against the defendant to deliver the land immediately to him and execute the deed of lease provided for in the decision. This petition was granted on November 10, 1950 over the defendant's opposition.

5. On November 27, 1950 defendant submitted a draft of deed of lease, which he claimed to conform to the decision of the court, and on December 12, 1950 he was authorized to withdraw the amount deposited by plaintiff. But in an order dated January 18, 1951, the court disapproved the draft of the contract of lease submitted by defendant and approved another one, prepared by the sheriff. This contract merely recites the judgment, insofar as the term of the lease is concerned, but objection to it was interposed by plaintiff on the ground that under its term the duration of the lease would be limited to the period ending November 30, 1951 merely. According to the court, however, the period of lease is ten years from December 1, 1941, the date when plaintiff was placed in possession, excluding the period from September 1, 1942 to August 31, 1947 and, therefore, the lease should end on December 1, 1956 (Orders of January 18, 1951, as amended by order of March 13, 1951.)

6. Upon appeal against the above orders the Court of Appeals promulgated the decision, now appealed from, as follows:

"WHEREFORE, the orders of March 13 and April 19, 1951 are hereby set aside and the defendant Francisco Marasigan is hereby ordered to execute a contract of lease embodying the conditions set forth in the decision of the lower Court, with the understanding that the contract should be for a period of nine (9) years and three (3) months more, to begin from November 10, 1950, until said period is covered in full. If within ten (10) days from the receipt of the corresponding notice from the lower Court after this decision shall have become final the defendant fails to execute in favor of plaintiff Felicisimo Ronquillo the contract of lease herein provided, then, in pursuance of Section 10, Rule 39, of the Rules of Court, the Clerk of the Court of First Instance of Bulacan or any other person whom the lower Court may authorize, shall execute said deed of lease in the precise terms as specified in this decision. No pronouncement as to costs."

In arriving at the above judgment, the Court of Appeals reasoned, thus:

"Predicated on these reasons, we did not modify but affirmed the decision of the lower Court in so far as it refused to award damages to plaintiff. Anyway, and even assuming that we cannot clarify the scope of the decision of the lower Court as slightly modified by us, and that by such decision the contract of lease to be executed by the defendant in favor of the plaintiff should be as decreed in the appealed order of March 13, 1951, we shall not forget that Marasigan demanded and received the sum of ₱14,000.00 as payment in full of a whole term of ten years of lease, and even if by virtue of the decisions rendered in this case he could not be compelled to execute the lease contract for the remaining period of 9 years and 3 months, yet by his own act of withdrawing the sum of ₱10,922.30, which together with other sums previously received made the total of ₱14,000.00 which corresponds to the rentals for the entire period of ten years, he contracted the obligation, independently of said decision, to execute a deed of lease of the property in question for the unenjoyed term of 9 years and 3 months, as otherwise he would receive payment of rents for the period from September 1, 1947, to November 10, 1950, during which he (Marasigan) and not the plaintiff was in possession of the land in controversy and enjoying the proceeds thereof."

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. Thus, it has been held:

"The general power to correct clerical errors and omissions does not authorize the court to repair its own inaction, to make the record and judgment say what the court did not adjudge, although it had a clear right to do so. The court cannot under the guise of correcting its record put upon it an order or judgment it never made or rendered, or add something to either which was not originally included although it might and should have so ordered or adjudged in the first instance. It cannot thus repair its own lapses and omissions to do what it could legally and properly have done at the right time. A court's mistake in leaving out of its decision something which it ought to have put in, and something in issue of which it intended but failed to dispose, is a judicial error, not a mere clerical misprision, and cannot be corrected by adding to the entered judgment the omitted matter on the theory of making the entry conform to the actual judgment entered." (Freeman on Judgments, Sec. 141, Vol. I, p. 273.)

"But the failure of the court to render judgment according to law must not be treated as a clerical misprision. Where there is nothing to show that the judgment entered is not the judgment ordered by the courts, it cannot be amended. On the one hand, it is certain that proceedings for the amendment of judgments ought never to be permitted to become revisory or appellate in their nature; ought never to be the means of modifying or enlarging the judgment or the judgment record, so that it shall express something which the court did not pro-

nounce, even although the proposed amendment embraces matter which ought clearly to have been so pronounced." (Freeman on Judgments, Vol. I, Sec. 142, pp. 274-275.)

The change ordered by the Court of Appeals was made when the judgment was already being executed; and it can not be said to merely correct a clerical error because it provides for a contract of lease of nine years and three months duration, from November 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. The modification is, however, sought to be justified by two circumstances, namely, the withdrawal by the lessor of the amount of ₱10,922.30, which amount, together with sums previously received, total ₱14,000, and which is the rental for a full ten year term, and the injustice caused to lessee because he was not placed in possession from September 1, 1947 but only on November 10, 1950, when the court ordered the execution of the judgment.

The reasons given above are not entirely without value or merit; but while they may entitle the lessee to some remedy, the one given in the appealed decision flies in the teeth of the pro-procedural principle of the finality of judgments. When the decision of the Court of Appeals on the first appeal was rendered, modification thereof should have been sought by proper application to the court, in the sense that the period to be excluded from the ten-year period of the lease (fixed by the judgment of the Court of First Instance to begin on September 1, 1942 and end on August 31, 1947) be extended up to the date when the land was to be actually placed in the possession of the lessee. This full period should be excluded in the computation of the ten-year lease because the delay in lessee's taking possession was attributable to the lessor's fault. Whether the failure of the lessee to secure this modification in the original judgment as above indicated is due to the oversight of the party, or of the court, or of both, the omission or mistake certainly could no longer be remedied by modification of the judgment after it had become final and executory.

As to the acceptance by the lessor of the full amount of the price of the lease for a full ten year period, from which acceptance the judgment infers an acquiescence in a lease for fully ten years from November 10, 1950 (the date when lessee was placed in possession after judgment), it must be stated that as such act of acceptance was made after the date of the final judgment, it may not be permitted to justify its modification, or change, or correction. Said act of acceptance may create new rights in relation to the judgment, but the remedy to enforce such rights is not a modification of the judgment, or its correction, but a new suit or action in which the new issue of its (acceptance) supposed existence and effects shall be tried and decided.

The judgment appealed from should be as it hereby is, reversed, and the orders of the Court of First Instance of January 18, 1951 and March 13, 1951, affirmed, without costs.

So ordered.

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

XXVII

Robustiano Caragao, et als., Petitioners, vs. Hon. Cirilo C. Maceren et al., Respondents, G. R. No. L-4665, October 17, 1952, Labrador, J.:

1. CIVIL PROCEDURE; EXECUTION OF JUDGMENT PENDING APPEAL IN SPITE OF SUPERSEDEAS BOND. — The general rule is that the execution of a judgment is stayed by the perfection of an appeal. While provisions are inserted in the Rules to forestall cases in which an executed judgment is reversed on appeal, the execution of the judgment is the exception, not the rule. And so execution may issue only "upon good reasons stated in the order." The grounds for the granting of the execution must be good grounds. (Aguilos v. Barrios, et al., G.R. No. 47816, 72 Phil. 285.) It follows that when the court has already granted a stay of execution, upon the adverse party's filing a supersedeas bond, the circumstances justifying execution in spite of the supersedeas bond must be paramount; they should outweigh the security offered by the supersedeas bond. In this last case, only compelling reasons of urgency or justice can justify the execution.

2. IBID; IBID. — The "good reason" stated in the order subject of this proceeding is "the better preservation and protection of the property." But we find from the record that the properties are three parcels of land. And we are at a loss to understand how and why they could be better preserved if in the hands of the petitioners, who already have titles thereto, and as there is nothing to indicate that they were acquired in bad faith, the presumption arises that the purchasers are possessors in good faith. It seems, therefore, that the execution of the judgment, after the giving of the supersedeas bond, can not be justified, there being no urgent or compelling reasons for granting the same.

Jose P. Laurel and *Laurel & Salonga* *Arsenio Suazo* for petitiones.

Alex Albert, Margarito G. Añana and *Proculo B. Fuentes* for respondents.

DECISION

LABRADOR, J.:

This is a special action of certiorari to annul and set aside an order for immediate execution issued on March 3, 1951, by the Honorable Cirilo Maceren, judge of the Court of First Instance of Davao, in Civil Case No. 288 of that court entitled G. P. Sebellino, as Administrator of the Estate of Jose Caragao V. Robustiano Caragao, et al. In the jugdment rendered after trial the court found that petitioner herein Robustiano Caragao had secured the transfer to himself of three parcels of land, registered in the name of the intestate Jose Caragao under certificates of title Nos. 331, 608, and 2715, which he sold to his co-petitioners in this proceeding, the first to Isabel Garcia and Bartolome Hernandez, the second to Josefa Caragao, and the third to Gorgonia Jayme. As a result of the conveyances the lands, according to the decision, are now registered in the name of the purchasers under Transfer Certificates of Title Nos. 206, 207, and 208. The court, however, found that the intestate had left a daughter by the name of Laureana Caragao by his first wife named Catalina Baligya, and it, therefore, ordered the cancellation of the new transfer certificates of title in the names of the petitioners, and the issuance of new ones in lieu thereof in the name of Jose Caragao, deceased, and that defendants vacate the lands and pay Jose Caragao's share in the products thereof in the amount of ₱6,000. (Annex A.)

The judgment was rendered on December 28, 1950, and on January 6, 1951, the plaintiff moved for the immediate execution of the judgment (Annex B). Opposition to the motion was registered by the defendants (Annex C). On February 3, 1951, the court granted the motion for immediate execution, but upon motion for reconsideration, it set aside its first order by another dated February 10, 1951, which, in part, reads as follows:

> x x x. It appearing that the plaintiff offers no objection to the filing of the supersedeas bond to answer for damages, the order of the court dated February 3, 1951, is hereby set aside and defendants are ordered to file a bond of ₱6,000 to answer for damages.

The defendants seem to have filed the bond, but opposition to