pearing that the actuations which are sought to be nullified took place more than ten years ago. As regards the ground that there is a prior judgment which bars the present action, the court ruled that the same cannot be entertained because it involves a question of fact which does not appear admitted in the complaint. The court expressed the opinion that no affidavit or evidence can be considered on a motion to dismiss because the sufficiency of a complaint should be tested on the basis of the facts alleged therein. The court, however, allowed the plaintiffs to amend their complaint within five days from receipt of the order in accordance with the discretion given to it by the rules of court.

Taking advantage of this grace, plaintiffs submitted an amended complaint wherein they reiterated the same facts with some clarifying modifications. Defendants reiterated their motion to dismiss on the same grounds. And finding no substantial difference between the original and the amended complaints, the court ordered the dismissal of the case without pronouncement as to costs. After the case had been taken to the Court of Appeals, it was later certified to this Court on the ground that the appeal involves purely questions of law.

A cursory reading of the amended complaint will reveal that the actuations of the clerk of court, as well as of the sheriff, which are sought to be nullified are: the writ of execution issued by the clerk of court on December 12, 1934, as well as the sales and other actuations executed by the sheriff by reason of said writ of execution; the decree of the clerk of court issued on May 21, 1936, as well as the sales and other actuations of the sheriff made in pursuance thereof; the decree of the clerk of court issued on July 7, 1938, as well as the actuations of the sheriff made in compliance with said decree; and the assignment made by Rafael Valcarcel of his right and interest in the land sold on February 17, 1941 to defendants Bonifacio Rigonan and Segundo Nacnac. And as a necessary consequence, plaintiffs also asked for the nullification of the order of the court dated July 18, 1941 placing Bonifacio Rigonan in possession of the land sold to him.

It appears from the above recital that the acts and decrees which are sought to be nullified took place more than ten years prior to the filing of the present action, and since under Article 44 of Act No. 190 an action of this nature prescribes in ten years, it follows that the action of the plaintiffs is already barred by the statute of limitations. If the aforesaid acts can no longer be nullified, it also follows as a legal consequence that no action can be taken on the order of the court issued on July 18, 1941 directing the sheriff to place Bonifacio Rigonan in possession of the parcel of land sold to him because of the principle that possession must follow ownership unless ordered otherwise.

As regards the second ground invoked in the motion to dismiss no affidavit or extraneous evidence can be considered to test the sufficiency of a complaint except the facts alleged in the same complaint. We hold that under Section 3, Rule 8, a motion to dismiss may be proved or disproved in accordance with Rule 123, Section 100, which provides: "When a motion is based on facts not appearing of record the court may hear the matter on affidavits or depositions presented by the respective parties but the court may direct that the matter be heard wholly or partly on oral testimony or depositions." And in our opinion the copy of the decision attached to the motion, which is not disputed, may be considered as sufficient evidence under the rule to prove the existence of a prior judgment between the same parties. In this sense, the second ground of the motion to dismiss may also be entertained to test the sufficiency of the cause of action of the plaintiffs.

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

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

XXI

DECISION

Salvador E. Bimeda, Petitioner, vs. Arcadio Perez and Hon. Jose T. Surtida, Judge of First Instance of Camarines Sur, 10 Judicial District, Respondents, G. R. No. L-5588, Aug. 26, 1953, Bautista Angelo, J.:

1. CERTIORARI; ERROR OF JURISDICTION DISTINGUISHED FROM ERROR OF JUDGMENT. — 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 viodable but errors of judgment or procedure are not necessarily a ground for reversal (Moan, Comments on the Rules of Court, Vol. 2, 1952 ed., p. 158).

2. IBID; WHERE APPEAL IS AN ADEQUATE REMEDY. — 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 appellant 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.

Dominador P. Padilla for petitioner.
Ramon Imperial for respondents.

DECISION

BAUTISTA ANGELO, *J.*:

This is a petition for certiorari and mandamus with preliminary injunction seeking to compel respondent Judge to allow petitioner to adduce evidence relative to an alleged irregularity committed by the board of inspectors of precinct No. 6, of Pamplona, Camarines Sur, during the election for municipal mayor held on November 13, 1951. The purpose of the injunction is to restrain respondent Judge from proceeding with the trial of the protest pending determination of the issue raised in this proceeding. This injunction was issued as prayed for.

Petitioner was declared elected municipal mayor of Pamplona, Camarines Sur, with the plurality of one vote, in the elections held on November 13, 1951. Respondent Arcadio Perez contested the election in due time.

In his answer, respondent set up a counter-protest averring, among other things, "That he impugns the electoral returns in Precinct No. 6 of Pamplona as well as the votes therein on the ground of wholesale irregularity, gross violation of the election law by the Board of Inspectors, and wanton disregard by said board of the right of some 20 or more voters in said precinct to vote for protestee; it follows that were it not for such irregularity and violation of law, protestee would have obtained 20 or more votes in his favor."

When trial came, and after protestant had concluded presenting his evidence, protestee proceeded to present his evidence to establish not only his special defenses but also his counter-protest relative to the irregularity which he claims to have been allegedly committed in Precinct No. 6 of Pamplona as stated in the preceding paragraph, but respondent Judge, sustaining the opposition of protestant, ruled out such evidence upon the theory that to permit proof of said

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,