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-

mination of a case without a valid trial upon the merits is a dismissal without 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.

IBID; IBID.—The existence of a trial on the merits is the determining factor for the application of the rule (Sec. 10, Rule 40). 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.

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 plaintiff, 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.

IBID; PURPOSE OF SECTION 10 OF RULE 40.—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.

Augusto de la Rosa for appellant.
Roberto P. Ancog and *Atanacio A. Mardo* for appellees.

DECISION

LABRADOR, *J.*:

This action originated in the municipal court of Cavite City, where the plaintiffs-appellees filed an action against the defendants to recover from the latter the amounts which the planitiff, who are laborers, earned while working in the construction of the house of defendant Francisco Navarro from September, 1950, to October, 1950. The other defendant, Francisco Legaspi, was the building contractor employed by Navarro. Defendant Francisco Navarro alleges in his answer that he did not enter into a contract with the plaintiffs, nor did he authorize his co-defendant to employ them. As special defenses he asserts that the allegations of the complaint do not constitute a cause of action against him, and that the complaint is premature. The record fails to show whether defendant Francisco Legaspi filed an answer.

The case was tried in the municipal court, and after the plaintiffs had closed their evidence, the defendant Francisco Navarro filed a motion to dismiss, claiming that there is no contractual relation between him and the plaintiffs, and that as the plaintiffs have not shown that he had violated the provisions of Act 3959, he is not liable. The municipal court sustained the contention of the defendant Francisco Navarro that there is no evidence to prove the facts required in Sections 1 and 2 of Act 3959, because it was not shown that the defendant Francisco Navarro did not require the contractor Francsico Legaspi to furnish the bond in an amount equivalent to the cost of labor, and that Francisco Navarro had paid the contractor Legaspi the entire cost of labor without having been shown the affidavit that the contractor had paid the wages of the plaintiffs.

The plaintiffs appealed from this decision to the Court of First Instance of Cavite. There was no trial in that court; it only reviewed the record. Thereafter it rendered judgment finding 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 proceedings under the authority of Section 10, Rule 40, of the Rules of Court. In reversing the order of dismissal the court reasoned:

> x x x. From this discussion, this Court has reached the conclusion that under the proven facts of the case as shown by the plaintiffs evidence, the order of dismissal rendered by the Municipal Judge of the City of Cavite is an error and since the dismissal was prompted by a demurrer to the evidence defendant Francisco Navarro is precluded from introducing evidence in his defense when this case is remanded to the Municipal Court of Cavite City for further proceedings.

Against this order of remand, the defendants have filed on appeal directly to this Court.

Section 10, Rule 40, of the Rules of Court, upon the authority of which the case was dismissed and remanded to the municipal court, provides as follows:

> Sec. 10. *Appellate powers of Courts of First Instance where action not tried on its merits by inferior courts.* — 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, as the case may be. In case of reversal, the case shall be remanded for further proceedings. (Underscoring ours)

Th issues involved in this appeal, therefore, are: (1) Was the action disposed of in the municipal court upon a question of law? and (2) Was there a valid trial upon the merits in the municipal court, as defined in the above-quoted section? There is no question that there was a trial. That trial was held after issues of fact had been joined by the filing of an answer. And the case was not termintaed 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.

What Section 10 of Rule 40 considers as termination of a case without a valid trial upon the merits is a dismissal without

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