

ESTANISLAO FERMIN, PETITIONER, VS. THE COURT OF APPEALS AND GAUDENCIO EUGENIO, RESPONDENTS.

G.R. No. L-2243. September 08, 1949

Ponente: PADILLA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/89d67ce23a26/>

PADILLA, J.:

This is a petition for a writ of prohibition.

In civil case No. 96 of the Court of First Instance of Ilocos Norte entitled "Estanislao Fermin, plaintiff versus Gaudencio Eugenio, defendant," for ejectment, the court rendered judgment declaring that the estate of the late Fausto Diaz, of which Estanislao Fermin, the plaintiff therein, was the administrator, is the owner of the two parcels of land involved in that litigation and directed the defendant to deliver the possession thereof to the plaintiff (Appendix A). On 12 August 1947 the attorney for the defendant therein was notified of the judgment. On 28 August the defendant therein filed a motion for new trial couched in the following terms:

Defendant, Gaudencio Eugenio, By his undersigned counsels, respectfully prays this Honorable Court to set aside its decision in the above-entitled case, dated July 16, 1947, and grant a new trial therefor on the ground that

1. The decision is not supported and justified by the evidence.
2. The decision is contrary to law and facts.

WHEREFORE, it is respectfully prayed that the decision in the above-entitled case be set aside and the new trial sought for be granted. (Appendix B.)

On 22 September the attorney for the defendant was notified of the order denying the motion for new trial (Appendix C). On 29 September the defendant filed a notice of appeal; on 2 October, the record on appeal; and on 4 October, the appeal bond. Despite objection to the allowance of the record on appeal and motion to dismiss the appeal, the court allowed it (Appendix D). On 17 April 1948, the day following the forwarding of the record on appeal and before it was docketed in the Court of Appeals, the plaintiff therein filed a motion for dismissal of the appeal on the ground that the appellate court acquired no jurisdiction over the same, it having been filed beyond the reglementary period (Appendix E). On 17 May the plaintiff therein was notified of the Court of Appeals resolution denying the motion for dismissal (Appendix F).

Upon the foregoing facts the petitioner, plaintiff in the court below, prays that the Court of Appeals be commanded to desist from proceeding further with the appeal.

The respondent Gaudencio Eugenio, defendant in the court below, admits the facts averred in paragraphs from 1 to 6 and denies those set forth in paragraphs from 7 to 9. He claims that he had paid the docketing fee and the estimated cost of printing the record on appeal and the appeal is now pending in the Court of Appeals; that the petition for prohibition is not the adequate remedy for the grounds thereof may be raised in the Court of Appeals and that the attorney for the petitioner is disqualified from acting as such because he is at present the second

assistant provincial fiscal of the province of Ilocos Norte.

The only question to determine is whether the motion for new trial filed on 25 August 1947 suspended the running of the period within which an appeal should be taken. The motion being pro forma, because it does not "point out specifically the findings or conclusions of the judgment which are not supported by the evidence or which are contrary to law, making express reference to the testimonial or documentary evidence or to the provision of law alleged to be contrary to such findings or conclusions" (section 2, Rule 37), as that provision of the rule was construed in the case of *Alvero versus de la Rosa et al.* G. R. No. L-286, decided 29 March 1946, 42 Off. Gaz., 3161,[1] did not suspend the running of the period within which an appeal should have been taken. Such being the case, the filing of the notice of appeal, the record on appeal and the appeal bond on 29 September, 2 October and 4 October, respectively, was beyond the reglementary period of thirty days from notice of judgment.

The writ is granted. The respondent Court of Appeals is hereby enjoined from proceeding further with the appeal taken by the respondent Gaudencio Engenio in civil case No. 96 of the Court of First Instance of Ilocos Norte, the judgment therein rendered having become final and executory. Without costs.

Moran, C.J., Ozaeta, Paras, Feria, Bengzon, Tuason, Montemayor, Reyes, and Torres, JJ., concur.

[1] 75 Phil., p. 428.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.