

## HERMENEGILDO CALO, ET AL., PETITIONERS, VS. THE COURT OF FIRST INSTANCE OF AGUSAN AND LUIS PEGGY, RESPONDENTS.

*G.R. No. L-8491. February 17, 1956*

Ponente: PARAS, C.J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/f5e0ed76035e/>

---

### PARAS, C.J.:

In Civil Case No. 313 the respondent Court, of First Instance of Agusan dismissed the appeal taken by the petitioners (plaintiffs below) on the ground that the notice of appeal and appeal bond were filed out of time. This dismissal assailed in the present petition for mandamus.

The last day w which to perfect appeal in question was October 5, 1954. The petition (which is under oath) alleges that counsel for petitioner sent to respondent court on Oct 2, by registered and special delivery mail, the necessary notice of appeal, record on appeal and appeal bond, all contained in one envelope identified as registered letter No. 927 of the post office of Carmen, Agusan; and that said letter was received in the respondent court assumed that the record on appeal was filed on October 2 (date of mailing), but drew the conclusion that the notice of appeal and appeal bond were filed October 7, from the mere fact the appeal bond is found in the record immediately following the notice of appeal, and that the property certificate of the bondsmen was issued only on October 4. The answer filed by respondent Luis Peggy (defendent below) is not under oath and simple follows the line of argument of the respondent court.

We are inclined to sustain the view that petitioners appeal was perfected on time. No positive showing has been made in support of the conclusion that the record on appeal, notice of appeal and appeal bond were not mailed together on October 2. Upon the other hand, it is alleged under oath by counsel for petitioners that said papers were so mailed, and he has presented (1) a certified true copy of the notice of appeal which contains on the upper left hand corner the note "Reg. No. 927, 10-2-54, ACR," and on the upper right-hand corner the note "Court of First Instance, October 7, 1954 at 8:40 a. m., Province of Agusan PCV," and (2) a certified true copy of the envelope showing the date of posting in Carmen, Agusan, as October 2, 1954. At any rate, the filing of the record on. appeal (admittedly on time). implies the filing of the notice of appeal and is 'equivalent thereto (Lopez vs. Lopez, 77 Phil., 133). Although the property certificate of the bondsmen was issued on October 4, it does not necessarily follow that the appeal bond, dated September 30 and sworn to on October 2, and much less the notice of appeal dated September 30, were mailed after October 4, or 5.

Wherefore, the petition for mandamus is granted and the respondent Court of First Instance of Agusan is hereby ordered to give due course to the appeal taken by the petitioners in Civil Case No. 313. So ordered with costs against respondent Luis Peggy.

Padilla, Montemayor, Reyes, A., Jugo, Bautista Angela, Labrador, Concepcion, Reyes, J. B. L., and Endencia,, JJ., concur.

**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.