

**EFREN A. ANTONIO, ADMINISTRATOR OF THE ESTATE OF THE
DECEASED LIM HEH CHIO, PETITIONER, VS. WISE & COMPANY,
INC., AND PEDRO CONCEPCION, JUDGE OF FIRST INSTANCE OF
MANILA, RESPON...**

G. R. No. 34335. January 26, 1931

Ponente: OSTRAND, J.

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OSTRAND, J.:

On September 9, 1926, Wise & Company brought an action in the Court of First Instance of Manila against Lim Heh Chio and his apparently nearest relations, Lim Ching Can, Raymtindo Lim, and Vicente Lim, for the recovery of the sum of P1,718.52. It was alleged in the complaint that the defendants were residents of Masbate, except Lim Heh Chio, whose residence was unknown. Summons were issued, and the provincial sheriff served the necessary copies by leaving them with Lim Lio, a Chinese who seems to have been residing in the defendants' usual place of abode. Lim Heh Ohio could not then be found, and the sheriff stated that he was informed that Lim Heh Ohio was dead. There was, however, no definite knowledge of his death, and he was thereupon summoned by publication.

None of the defendants appeared in the case, and judgment was rendered by default. Thereafter execution of the judgment was levied upon two camarines or warehouses which at the execution sale were sold to Wise St Company, the plaintiff in execution.

The sons of Lim Heh Chio made several futile efforts to dispossess the plaintiff in execution of the properties purchased at the sheriff's sale, and finally, in October, 1930, the present proceeding was instituted by one Efren A. Antonio, who had been appointed administrator of the estate of Lim Heh Chio at the instance of the tatter's sons.

The proceeding is based on section 513 of the Code of Civil Procedure, and it is too evident for argument that an action under that section will not lie in this case. The section mentioned provides that the party who seeks relief under that section must present his petition to the Supreme Court within sixty days after he first learns of the rendition of the judgment of which he complains and not thereafter. The heirs of Lim Heh Chio are the main parties in interest, and it is evident that they for several years have been cognizant of the rendition of the judgment in question. The administrator and herein petitioner does not deny that he was also informed of the judgment, but it is argued that he could not intervene in the case until he had been appointed administrator and that therefore the sixty days for presenting the petition must be counted from the date of his appointment. We have not been informed of any law to that effect and, in our opinion, the subterfuge of appointing a stranger as administrator does not alter the situation. In the circumstances of the case, the administrator can only be regarded as a representative of the heirs for the purpose of reopening the aforesaid judgment. If we were to sanction such a proceeding, there might be no end to similar litigations.

The petition is denied with the costs against the petitioner. So ordered.

Avanceña, C. J., Johnson, Street, Malcolm, Villamor, Johns, Romualdez, and Villa-Real, JJ., concur.

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