

**EMILIA DIVINO, AS GUARDIAN OF THE MINORS BIENVENIDO
ESPERANZA AND NARCISO SURNAMED LOO TAN Y DIVINO,
PETITIONER, VS. CEFERINO HILARIO, JUDGE OF THE COURT OF
FIRST INSTANCE OF DA...**

G. R. No. 44658. January 24, 1936

Ponente: IMPERIAL, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-44658/>

IMPERIAL, J.:

This petition for certiorari was filed by the petitioner, as guardian of the minors Bienvenido, Esperanza and Narciso, surnamed Loo Tan y Divino, to the end that this court should set aside and nullify the order issued by the respondent judge on August 24, 1935, that the respondent municipality of Guianga, Province of Davao, should return and deposit with the clerk of court the sum of P5,000, that the above-named minors should be declared heirs of the deceased Tan Chay entitled to inherit in equal share said amount of money, and that they should be granted such other remedy as may be just and equitable.

In the Court of First Instance of Davao, Tan Kui Sing began the intestate of the deceased Tan Chay, special proceeding No. 314, stating in the petition filed by him that the deceased was a party in civil cause No. 1147 of the same Court of First Instance the judgment of which was appealed to this court, and asking that, while his properties are yet unknown, a special administrator be appointed to duly represent said deceased in the appeal. In an order of November 5, 1932, the court appointed Ang Liongto special administrator. The latter qualified, and on April 9, 1934, he filed an inventory of the properties left by the deceased Tan Chay wherein he stated that he had left P5,000 in cash in the possession of the Philippine Foreign Trading & Company and P390 as rents of a house. On July 6, 1935, the respondent judge ordered that the petition of Tan Kui Sing be set for trial. On the 9th of the same month, the clerk of court set the trial of the petition on August 24, 1935, at 8.30 a. m., and ordered that the notice of trial be published in the newspaper *El Magindanaw*, published in Davao, once a week for three consecutive weeks. It does not appear that the notice was actually published. On August 24, 1935, the court called the petition for hearing, and after the presentation of the evidence declared that Tan Chay, had died intestate, that he left no legal heirs, that he left as his only estate the sum of P5,000 deposited with the Philippine Foreign Trading & Company, and decreed the escheat of said funds to the municipality of Guianga, Province of Davao. Thereafter the municipal president of Guianga took charge of the funds. On October 16, 1935, the petitioner, in the same capacity as guardian, appeared in the case and through her attorneys filed a motion to set aside the decree escheating the P5,000 to the municipality of Guianga, to declare the minors the only heirs of Tan Chay, and, finally, to adjudicate to them share and share alike the sum of P5,000. The motion was based on the allegation under oath that the minors were the only legitimate nephews and niece left by the deceased and that the latter had not been survived by another near relative with a better right. On the 21st of the same month, the respondent judge denied the motion on the ground that the decree of reversion was already irrevocable and that, in any case, the minors could avail themselves of the procedure under section 752 of the Code of Civil Procedure. On the 24th of the same month, the petitioner excepted in writing to the said resolution. It does not appear that the

petitioner eventually appealed from the order of August 24, 1935, and from the resolution of October 21 of the same year denying the motion, nor does it appear that an appeal is pending.

Sections 750 and 752 of the Code of Civil Procedure, applicable to the case, provide as follows:

"SEC. 750. Procedure when person dies intestate without heirs.—When a person dies intestate, seized of real or personal property in the Philippine Islands, leaving no heir or person by law entitled to the same, the president and municipal council of the municipality where the deceased last resided, if he was an inhabitant of these Islands, or of the municipality in which he had estate, if he resided out of the Islands, may, on behalf of the municipality, file a petition with the Court of First Instance of the province for an inquisition in the premises; the court shall thereupon appoint a time and place of hearing, and deciding on such petition, and cause a notice thereof to be published in some newspaper of general circulation in the province of which the deceased was last an inhabitant, if within the Philippine Islands, and if not, in some newspaper of general circulation in the province in which he had estate. The notice shall recite the substance of the facts and request set forth in the petition, the time and place at which persons claiming the estate may appear and be heard before the court, and shall be published at least six weeks successively, the last of which publications shall be at least six weeks before the time appointed by the court to make inquisition."

"SEC. 752. Right of heir, and so forth, subsequently appearing.—If a devisee, legatee, heir, widow, husband, or other person entitled to such estate, within seventeen years from the date of such decree, appears and files a claim with the court to such estate, he shall have possession of the same, or if sold the municipality shall be accountable to him for the avails, after deducting reasonable charges for the care of the estate; but if a claim is not made within the time mentioned, it shall be forever barred."

Section 750 provides how the Court of First Instance may acquire jurisdiction over the properties left by a deceased who resided in the Philippine Islands and may decree its escheat to the municipality where he resided. It provides that the municipal president and the municipal council may file a petition to that effect, whereupon the court shall set the same for hearing and shall cause the latter to be published in a newspaper of general circulation in the province where the deceased had resided, or in default thereof, in some newspaper of general circulation in the province in which he had estate, for a period of six successive weeks, the last of which publications shall be at least six weeks before the time appointed for the trial. Section 752 provides that any heir or legatee may appear in the proceeding within 17 years, and after establishing his hereditary right, it shall be the duty of the court to order the municipality to which the estate was escheated to return the same for adjudication to the former, and in case it had been sold the municipality shall return its avails after deducting charges for its care.

In the case under consideration, the procedure fixed by section 750 has neither been followed nor complied with, wherefore, we hold that the respondent judge and the Court of First Instance of Davao did not acquire jurisdiction either to take cognizance of the escheat case or to promulgate the order of August 24, 1935, whereby the sum of P5,000 was escheated or adjudicated to the municipality of Guianga. No petition was filed either by the municipal president or by the municipal council, nor was the required publication made which was the essential step which should have conferred jurisdiction.

As the special proceeding No. 314 has been instituted, neither could the petitioner resort to the remedy granted by section 752, because if the respondent judge and the Court of First Instance of Davao never acquired jurisdiction to take cognizance of the escheat case, it is clear and logical that they neither have jurisdiction to grant the aforesaid remedy. As we have seen, the only petition which conferred jurisdiction over the estate of the deceased Tan Chay was that filed by Tan Eui Sing, which was for the sole purpose of appointing a special administrator to represent the deceased in the appeal interposed in civil cause No. 1147 of the Court of First Instance of Davao. If another petition for the appointment of a regular administrator had been filed, it should have been incumbent on the court to follow the entire procedure in intestacy in order to determine the heirs and to distribute finally the

estate among them.

In view of the foregoing, the petition is granted, and the order of August 24, 1935 as well as the resolution of October 21 of the same year are set aside.

The respondent judge or the presiding judge of the Court of First Instance of Davao is instructed to immediately order the municipal president and the municipal council of the municipality of Guianga, Province of Davao, to return forthwith the sum of P5,000 and deposit the same with the clerk of said court for distribution among the legal heirs of the deceased Tan Chay. This is without prejudice to the petitioner's right, in her capacity as administratrix, to present in the special proceeding No. 314 an amended petition for the appointment of a regular administrator and that the amount of P5,000 with other properties left by the deceased Tan Chay be distributed among his heirs, upon payment of his legal debts that might be established and other expenses of administration.

The costs of this proceeding shall be assessed against the respondent municipality of Guianga. So ordered.

Avanceña, C. J., Abad Santos, Hull, Vickers, Butte, Goddard, and Diaz, JJ., concur.

Villa-Real and Recto, JJ., concur in the result.

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.