

**GO CHI GUN ALIAS CHIPBUN GOCHECO, GO AWAY ALIAS LIM KOC
AND FEDERICO M. CHUA HIONG, PLAINTIFFS AND APPELLEES, VS.
CO CHO, GO TECSON, DONATO GO TIAK GIAP, CESAREO GO TEK
HONG, AL...**

G.R. No. L-5208. February 28, 1955

Ponente: LABRADOR, J.

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LABRADOR, J.:

From the certified copies of documents (Appointments of Administrator and Partition in Civil Case No. 115888, entitled Intestate Estate of Go Checo, Court of First Instance of Manila, and Letters of Guardianship and court orders in case No. 1407 of the same court, entitled in the Guardianship Proceedings of the Minors Go Tua Tia, Go Pan Gui, Go Tua Ting, Go Chi Gun, Go Away, et al.) existing in the Office of the Register of Deeds of Manila, the following facts appear: Go Checo, a chinaman, died in Saigon, Indo China, on February 19, 1914, leaving real and personal properties in the Philippines. On March 7, 1914, his son Paulino Gocheco instituted judicial proceedings for the distribution of his estate in the Court of First Instance of Manila. The intestate left children by two marriages. In the first marriage with Ong So, who died in 1908, he was survived by his children Paulino Gocheco, 26 years, Go Tua Tia, 20 years, Go Pan Gui, 18 years, Go Tua Ting, 16 years, Go Chi Gun, 14 years, and Go Away, 8 years. By his second marriage with Yu Ui, who survived him, he left two, Go Cheng Siu, 7 years and a child 20 months old. The estate left by the intestate was, according to assessments made by the commissioners on appraisal, valued at P44,017.00. Each of his children received properties or cash amounting to P3,995.56. The project of partition is signed by one Joaquin A. Go Cuay--as guardian ad litem of the minors and was approved by the court on May 11, 1916. Upon the termination of the intestate proceedings, Paulino Gocheco instituted guardianship proceedings for his minor brothers and sisters, and he was appointed guardian for their persons and properties on May 20, 1916. These guardianship proceedings continued until September 15, 1931 when all the wards had become of age. The proceedings were closed on said date and the guardian relieved of liability as such.

Paulino Gocheco died on April 24, 1943, and on January 10, 1944 his eldest son instituted intestate proceedings for the settlement of his estate. These were terminated on March 23, 1947.

The present action was instituted by Go Chi Gun and Go Away on July 31, 1948. Their amended complaint, among other things, alleges (1) that plaintiffs were purposely kept in complete and absolute ignorance of the intestate proceedings of their deceased father Go Checo, instituted by Paulino Gocheco, and were not informed by the latter of the existence of a guardian ad litem appointed for them to protect their hereditary interests; (2) that Paulino Gocheco caused Joaquin A. Go Cuay to be appointed as commissioner on claims and appraisals and the latter in obedience to instructions from said Paulino Gocheco, appraised the real properties of the estate at their assessed value and not at their market value; (3) that Paulino Gocheco caused Joaquin A. Cuay to be appointed guardian ad litem of the plaintiffs without informing the latter of such step; (4) that Paulino Gocheco caused the age of Go Chi Gun to appear as 14 years only, in order to obviate the necessity of notifying her of the hearing of

the project of partition; (5) that in conspiracy with Joaquin A. Go Cuay, the latter signed his conformity to the project of partition and kept the plaintiffs completely and totally ignorant of everything that took place in the proceedings; (6) that subsequently Paulino Gocheco instituted guardianship proceedings and had himself appointed as guardian of the persons and properties of the plaintiffs without giving information whatsoever thereof to them; (7) that Gocheco caused Go Away to come to the Philippines under the assumed name of Lim Koc, purportedly the daughter of a Chinese merchant Lim Tui, for the purpose of making her believe that their common father had died without leaving any properties, as well as to prevent her from making inquiries of her mother; (8) that notwithstanding the fact that Go Away had reached the age of majority, Gocheco did not keep her informed of such fact; (9) that the plaintiffs only learned of the fact that their deceased father had left valuable properties in Manila in the month of April, 1948, when a friend of theirs accidentally found the papers connected with the intestate proceedings for the settlement of the estate of their deceased father. On the basis of the above facts, plaintiffs claim that Paulino Gocheco by fraudulent means obtained the properties adjudicated to him in the project of partition and so he acquired same in trust for their (plaintiffs' and defendants') common benefit; and that the properties and business conducted by the said deceased Paulino Gocheco in his lifetime were owned in common by them with the deceased, in the proportion of 1/3 for each of the plaintiffs and 1/3 for the deceased Paulino Gocheco. In consequence they pray that the project of partition submitted in case No. 11588 in the proceedings for the settlement of the estate of the deceased Gocheco and the order of the court of May 11, 1916 approving the partition, be declared null and void as a result, of fraud, collusion and connivance of Paulino Gocheco and Joaquin A. Go Cuay, and that the properties adjudicated to Paulino Gocheco, Go Chi Gun and Go Away in the project of partition be declared as their joint properties.

Upon being summoned, the defendants promptly filed a motion to dismiss the amended complaint on two grounds, namely: (1) that the action is barred by the statute of limitations, and (2) that the complaint states no cause of action against the defendants. This motion was denied, so the defendants presented an answer (1) denying specifically each and every one of the allegations of fraud supposed to have been committed by Paulino Gocheco; (2) alleging, by way of special defense, that the cause or causes of action which plaintiffs may have had are barred both by the statute of limitations and the statute of non-claims; and (3) alleging that the properties now being claimed by the plaintiffs have been acquired by prescription by defendants by actual and adverse possession, and as immediate successors in interest of their father, publicly, notoriously and adversely for more than 32 years. By way of counterclaim, they allege that they have incurred expenses consisting of counsel's fees amounting to P50,000; in consequence they pray that the action be dismissed and that plaintiffs be ordered to pay P50,000 and P20,000 as punitive damages. Before the trial of the case Gocheco Brothers;- Incorporated, and Go Tecson were allowed to intervene. In their answers these intervenors made specific denials of the supposed frauds committed by the deceased Paulino Gocheco and set up the same special defenses that the defendants have put up in their answer.

On the issues set forth above, the parties went to trial and thereafter the Court of First Instance found the allegations of the complaint to have been established by a preponderance of the evidence. Therefore, it annulled the project of partition in the intestate proceedings of the deceased Gocheco, as the same was found to have been procured through fraud, collusion and connivance to the prejudice of the plaintiffs; declared that the properties obtained by the deceased Paulino Gocheco in the said partition proceedings are the common properties of plaintiffs Go Chi Gun and Go Away and the deceased Paulino Gocheco in the proportion of 1/3 for each of them; and ordered defendants to render a correct and detailed accounting of the said properties and business interest of said deceased Paulino Gocheco to the plaintiffs from 1916 up to the present. It also dismissed the defendants' counterclaim. Against the above decision the defendants and intervenors have appealed to this Court.

It is contended in this appeal that the trial court erred (1) in allowing the plaintiffs to testify as to an alleged

fraudulent statement by the deceased Gocheco to them; (2) in declaring the fraud alleged in the complaint to have been proven; (3) in failing to declare that the action of the plaintiffs for the annulment of the judicial partition, if it ever existed, has prescribed; and (4) in not declaring that plaintiffs are guilty of laches.

The first error involves the competency of the plaintiffs Go Chi Gun and Go Away to testify as to a supposed statement, made to them by the deceased Paulino Gocheco during his lifetime, to the effect that their common father Go Checo had not left any properties. When the plaintiffs were called upon to testify to these supposed statements, counsel for the defendants immediately objected on the ground that plaintiffs were incompetent to testify thereto under the provisions of Section 26 (c) of Rule 123 of the Rules of Court which provides:

"Sec. 26. Persons who cannot testify generally, or because of certain relations to parties the following persons cannot be witnesses:

* * * * *

(c) Parties or assignors of parties to a case, or persons in whose behalf a case is prosecuted against an executor or administrator or other representative of a deceased person, or against a person of unsound mind, upon a claim or demand against the estate of such deceased person or against such person of unsound mind, cannot testify as to any matter of fact occurring before the death of such deceased person or before such person became of unsound mind;"

The court allowed the testimony over the objection, holding that as the action is brought against the defendants in their personal capacity, and the claim is not directed against the estate of Paulino Gocheco but against the latter personally, the rule invoked is not applicable.

The above ruling of the court is sought to be supported before us by the decisions of the Supreme Court of California in *Myers vs. Reinstein*, 67 Cal. 89, 7 Pac 192-194 and *Bollinger vs. Wright*, 143 Cal. 292. Support for the theory of the trial court is also sought in *Moran's Commentaries*, where it is stated that the word "representative" used in the rule refer to heirs and legatees when they are sued in their representatives capacity and before the estate of the deceased is distributed among¹ them, but not after the distribution. It is contended in this Court that since the properties subject of the action had already been distributed among the defendants when the action was brought, said properties no longer belong to the deceased Paulino Gocheco, and therefore the defendants are sued in their personal capacity, not as representatives of the deceased.

The case cited by plaintiffs-appellees and by Justice Moran to support the contention that the rule is not applicable in case the successor of a deceased person is sued not in his representative, but in his personal capacity, is that of *Myers vs. Reinstein*, *supra*. In that case plaintiff sought a decree establishing a trust in his favor, alleging that the interest in the land sued for was not part of Reinstein's estate, but was held in trust by him (Reinstein) for Collins or his assigns, and after his death, by defendants, his devisees and successors. The defendants asserted that no such trust existed but that Reinstein held the land in his own right. The question at issue, therefore, was whether or not the interest sought to be recovered was a part of Reinstein's estate. The court held that to hold that the claim or demand sought to be enforced is part of the estate, and thus render the witness incompetent, would be to determine in advance the very question to be determined at the trial of the action. So the court held that the witness or the plaintiff should be allowed to testify because to refuse him that privilege would be to assume the very question to be tried.

It must be noted, in contrast to the case at bar, that the action in *Myers vs. Reinstein*, *supra*, was against a defendant who claimed the land in his own right; but here the action is not against the defendants in their own right, but is based on an alleged fraud committed by the deceased, and the defendants are sued because they are now in possession of the properties. The title of the defendants is not in issue; it is the title of their father, Paulino

Gocheco, who, according to the contention of the plaintiffs, had been guilty, of fraud.

The word "representative" in the statute has been explained thus: "If a party is so placed in a litigation that he is called upon to defend that which he has obtained from a deceased person, and make the defense which the deceased might have had, if living, or to establish a claim which the deceased might have been interested to establish, if living, then he may be said in that litigation to represent a deceased person; but where he is not standing in the place of the deceased person, and asserting a right of the deceased which has descended to him from the deceased (that is, where the right of the deceased himself, at the time of his death, is not in any way involved), and the question is not what was the right of the deceased at the time of his death, but merely to whom has the right descended, in such a contest neither party can be said to represent the deceased," (McCoy vs. Conrad, 64 Neb. 150, 89 N. W. 665 quoted in Sorensen vs. Sorensen, 68 Neb. 483, 103 N. W. 455.)

The action of plaintiffs is based on a supposed fraudulent act of the deceased Paulino Gocheco, and its purpose is to allow plaintiffs to share in his estate. That Paulino Go Checo had died some 10 years ago and his properties are now in the hands of his children can not make the action one against his heirs in their personal capacity because their right or title to said properties is not in issue, but the right, the exclusive right thereto of their deceased father. The defendants can not, therefore, be said to be sued in their personal capacity.

It should also be noted that in order that the rule may apply the action must be one which is "a claim or demand against the estate of a deceased person" and that the action is against the "executor, administrator, or representative" of such deceased person. The California statute does not use the word "representative," which our Rule has used; so under it, it might be plausible to contend that when an estate has passed to an heir, as the action is not against an executor or administrator, the prohibition is no longer applicable. It is evident to us that the insertion of the word "representative" after the words "executor or administrator," was made precisely to include specific cases, like the present, where the properties of a decedent have already passed from the hands of an executor or administrator to those of his heirs. For there is no reason why the prohibition is applicable when the estate is still under administration, but not when the administration has already ceased, or when there was no administration at all and the estate has passed to the heirs if the right questioned is that of the predecessor and not of the heirs. This view is supported by the Supreme Court of the United States in the case of Whitney vs. Fox, 166 U. S. 637, 41 L. ed. 1145, which has held that the interpretation of the Rule by the Supreme Court of Utah is more in consonance with the interpretation given it by the Supreme Court of California in Myers vs. Reinstein, supra. In said case, Whitney brought the action to establish the existence of a trust in his favor over certain real estate and stock, which he had entrusted to Lawrence, deceased. At the hearing of the case, Whitney sought to introduce a deposition that he had made in a previous case against Lawrence and another. The trial court ruled that the deposition was not admissible in evidence on the ground that Whitney could not testify as to any fact occurring before the death of Lawrence which is equally within the knowledge of himself and the decedent. The Supreme Court of Utah held that the claim was against the estate of the deceased Lawrence and to say that no claim or demand was asserted against his estate would be to defeat the manifest object of the statute. On appeal to the Supreme Court of the United States, the case of Myers vs. Reinstein, supra, was invoked. In affirming the action of the Supreme Court of Utah, sustaining the incompetency of Whitney to testify as a witness, the Supreme Court of the United States said:

"We concur in the interpretation placed upon the Utah statute by the supreme court of Utah, as one required by the obvious meaning of its provisions, and we do not feel obliged, by the above rule, to reject that interpretation because apparently the highest court of the state from which the statute has taken has, in single decision taken a different view. We therefore hold that to the extent indicated by the court below Whitney was an incompetent witness as to any fact occurring before the death of Lawrence and equally within the knowledge of both."

In the case at bar, the testimonies of the plaintiffs as to the alleged statements of the deceased to him are well within the purpose and intent of the prohibition. The reason for the rule is that if persons having a claim against the estate of the deceased or his properties were allowed to testify as to the supposed statements made by him (deceased person), many would be tempted to falsely impute statements to deceased persons as the latter can no longer deny or refute them, thus unjustly subjecting their properties or rights to false or unscrupulous claims or demands. The purpose of the law is to "guard against the temptation to give false testimony in regard to the transaction in question on the part of the surviving party." (Tongco vs. Vianzon, 50 Phil., 698.) The administration of the properties of plaintiffs' father was judicially made, and the existence thereof and of the properties he left were in public records. For 40 years during which Paulino Gocheco was living, plaintiffs herein had remained silent and had done nothing to check the truth of the supposed statements of their deceased brother, which could easily be done because the facts they had interest in were in public records. It was only after Go Checo had died, such that he can no longer deny their statements, and after all possible witnesses or papers or circumstances have already gone beyond recall because of the destruction of the public records, that the supposed statement is now brought forth and made the basis of the plaintiffs' action. We cannot help but induced to believe that it is the death of the decedent, and the latter's inability to deny the supposed statement made by him, as well as the destruction of the records of the judicial proceedings, that must have tempted plaintiffs to bring the action. The case clearly falls within the spirit and terms of the prohibition contained in the rule. We find, therefore, that the trial court committed an error in allowing the plaintiffs-appellees, over the objections of the attorneys for the defendants-appellants, to testify as to the supposed statements made to them by the deceased Paulino Gocheco.

We are aware of the existence of an exception to the rule, where the decedent had been guilty of fraud. The rule has been adopted to promote justice and not to shield fraud. We have so held in the case of Ong Chua vs. Carr, 53 Phil. 975. But in that case, before the testimonies of witnesses were allowed to be introduced, the fraud perpetrated by the deceased had been established beyond all doubt, not by mere preponderance of the evidence alone. In the case at bar, no such amount of proof of the supposed fraudulent acts on the part of the deceased was introduced by the plaintiffs, so there was no showing made to bring the case within the exception enunciated in the case of Ong Chua vs. Carr, *supra*. Has this defect been cured by the subsequent evidence submitted by the plaintiffs? We will now proceed to answer this question.

Plaintiffs-appellees claim that there was fraud because the properties assigned to the deceased Paulino Gocheco were assessed at their tax value, not at their market value. This is no proof of fraud. To raise even a suspicion of fraud, it must be proved to the satisfaction of the court that the personal properties assigned to the plaintiffs-appellees were overvalued. Nothing to this effect was submitted. Assuming, for the sake of argument, that the adjudication to the deceased of the real estate at their assessed value, as against plaintiffs-appellees who were assigned shares of stock and cash, is unfair, this circumstance also cannot by itself prove or even insinuate fraud. The fact that the plaintiffs were in China and were minors at the time of the partition must have induced or necessitated adjudication of cash, or property easily convertible to cash, to them. Land is not productive unless buildings are constructed thereon, but these are expensive and require investment of capital, and the returns thereon are relatively the lowest. Then there is the Chinese custom—insinuated but not proved at the trial of giving less or no inheritance to daughters. Even among Filipinos, sons are generally given more substantial shares than daughters. All of these circumstances could have induced the assignment of real properties to the deceased Paulino Gocheco and personal properties and cash to the plaintiffs-appellees. They explain the reason for the difference in the inheritance received and exclude the probability of fraud. In any case, the partition was given the stamp of judicial approval, and as a matter of principle and policy we should sustain its regularity, in the absence of such cause or reason that the law itself fixes as a ground for invalidity.

Claim is also made that the deceased Paulino Gocheco connived with the guardian ad litem of the minors in

keeping the latter ignorant of his appointment as guardian ad litem, of all the proceedings in the distribution and guardianship, and in assessing the properties at low prices in connivance with the deceased. The rule is that fraud is not presumed. As fraud is criminal in character, it must be proved by clear preponderance of evidence. (37 C.J.S. 393) There is absolutely no evidence in the case at bar that the plaintiffs have not been advised of the pendency of the administration proceedings or of the appointment of the guardian ad litem, and the incidents thereof, except the testimonies for the plaintiffs with regard to the supposed statements, of Paulino Gocheco, which have been discarded as incompetent. Neither is there any iota of evidence to support the supposed connivance between the administrator and the guardian ad litem.

It is also suggested that the fact that the deceased caused plaintiff Go Away to enter the Philippines under the name of Lim Koc and as a daughter of a merchant by the name of Lim Tui is a badge of the fraud perpetrated by the deceased. We can not agree to this conclusion. Go Away was born of Chinese parents and could not be allowed entry in the islands. In Order to secure her entry, it was necessary for her to assume another name and pretend to be the daughter of a Chinese resident merchant. Go Away was already approaching 21 years of age at that time and should have known that that was the real reason; she must have been party to the fraud herself, not its victim. In any case, the fraud could not have been used to hide the existence of the properties left by his deceased father Go Checo, which were available in public records (judicial records of the intestate and guardianship proceedings). What makes the plaintiffs' claim of supposed fraud on the part of the deceased suspicious is the fact that they brought the action only after the death of Paulino Gocheco and after all the judicial records of the intestate and guardianship proceedings had already been destroyed. It is to be noted that since the liberation and as many judicial records have been destroyed, cases have arisen induced by the destruction of said records. This circumstance and the length of time that had elapsed since the making of the supposed statements should put us on our guard and recall what we have said in the case of *Sinco vs. Longa*, 51 Phil., 507:

In passing upon controversies of this character experience teaches the danger of accepting lightly charges of fraud made many years after the transaction in question was accomplished, when death has sealed the lips of the principal actors and changes effected by time may have given a totally different color to the cause of controversy. * * *.

" 'But length of time necessarily obscures all human evidence; and as it thus removes from the parties all the immediate means to verify the nature of the original transactions', it operates by way of presumption, in favor of innocence, and against imputation of fraud. It would be unreasonable, after a great length of time, to require exact proof of all the minute circumstances of any transaction, or to expect a satisfactory explanation of every difficulty, real or apparent, with which it may be incumbered. The most that can fairly be expected, in such cases, if the parties are living, from the frailty of memory, and human infirmity, is, that the material facts can be given with certainty to a common intent; and, if the parties are dead, and the cases rest in confidence, and in parol agreements', the most that we can hope is to arrive at probable conjectures, and to substitute general presumptions of law, for exact knowledge. Fraud, or breach of trust, ought not lightly to be imputed to the living; for, the legal presumption is the other way; and as to the dead, who are not here to answer for themselves, it would be the height of injustice and cruelty, to disturb their ashes, and violate the sanctity of the grave, unless the evidence of fraud be clear, beyond a reasonable doubt.' (*Prevost vs. Gratz*, 6 Wheat. [U. S.] 481, 498)." (Italics supplied.)

Aside from the fact that fraud must be proved as a fact by a clear preponderance of evidence, because fraud is a criminal charge, there is an added ground in the case at bar for requiring a high quantum of proof of the fraud, i.e., the fact that the proceedings which are supposed to have been fraudulent are judicial proceedings which by legal provision (Sec. 69, sub-secs, m, o, and ee, Rule 123 of the Rules of Court) are presumed to be fair and regular. Public policy demands that judicial proceedings may not lightly be considered; it is necessary that full faith and credit should be given thereto in order that matters settled thereby may no longer be subject to doubt or question.

The evidence that was necessary to be introduced by plaintiffs to support their cause of action was not, as the trial court has found it to be, a mere preponderance of evidence; a clear preponderance is demanded as it must overcome the presumption of good faith and regularity with which judicial proceedings are clothed.

We find, therefore, that excluding the testimonies of the plaintiffs on the supposed statement of the deceased Paulino Gocheco to them, which statements we have declared inadmissible as testified to by incompetent witnesses, there is no proof sufficient in law to prove that the deceased committed fraud in the distribution of his father's estate as to plaintiffs' share therein.

The third assignment of error refers to the defense of Statute of Limitations and the fourth, to the defense of laches, both of which were overruled by the trial court. The defenses are similar in nature, but we prefer to base our decision on the second, that of laches, as it is better fitted to the circumstances of the case than the other, which is a legal one. This defense of laches is an equitable defense. A suit barred on the ground of laches is oftentimes called a "stale demand," and the bar has been held to require four elements: (1) conduct on the part of the defendant, or of one under whom he claims, giving rise to the situation of which complaint is made and for which the complaint seeks a remedy; (2) delay in asserting the complainant's rights, the complainant having had knowledge or notice of the defendant's conduct and having been afforded an opportunity to institute a suit; (3) lack of knowledge or notice on the part of the defendant that the complainant would assert the right on which he bases his suit; and (4) injury or prejudice to the defendant in the event relief is accorded to the complainant, or the suit is not held to be barred. (19 Am. Jur., 343-344.)

The existence of the second element is the most important issue in the case at bar. As the administration proceedings ended in the year 1916, the guardianship proceedings in 1931, and the action was brought only in the year 1948, more than 32 years from the time of the distribution and 27 years from the time of the termination of guardianship proceedings, had elapsed when this action was brought. In order to get around this defense, plaintiffs-appellees resorted to the claim of fraud, which, however, we have dismissed because not supported by sufficient evidence. The important point to determine, therefore, is whether plaintiffs-appellees may be said to have had knowledge of the intestate proceedings and the guardianship proceedings within the meaning of the second element set forth above.

It is a general rule that actual knowledge on the part of the plaintiff of the existence of a cause of action against the defendant, is not necessary or essential, but that it is enough if such knowledge may be imputed to him (plaintiff) by reason of the existence of opportunity of his part to acquire such knowledge, or because of circumstances of which he was cognizant. (Graham vs. Boston, H. & E. R. Co., 118 U.S., 161, 30 L. ed. 196, 6 S. Ct. 1009, cited in 19 Am. Jur. 350.) In the case at bar, the plaintiffs-appellees, upon reaching the age of majority which took place at least 22 years before the action was brought, could have easily obtained information and knowledge about the properties that have been left by their deceased father Go Checo. Constant communication between Manila and Amoy, China has always been maintained between Chinese residents of the Philippines and their relatives in China and if the plaintiffs-appellees had only taken the trouble to find out if their deceased father had left properties and the nature thereof, information would have been obtained by them very easily since the facts they were interested in appear in public judicial records. We can not reconcile ourselves to the belief that plaintiffs-appellees had not received information about the properties left by their deceased father; but assuming that they had no such knowledge, yet their inaction or ignorance in no wise saves them from the defense of laches. It has been said that knowledge of facts and circumstances necessary to warrant the imputation of laches is such as might have been acquired by the exercise of due diligence. Ignorance which is the effect of inexcusable negligence is no excuse for laches; and therefore, where the essential facts might be learned by due diligence, ignorance thereof will afford no excuse. (19 Am. Cases, 113.) As to matters complained of as fraud, which are

evidenced by public records, it has been held that in order to avoid the effects of such notice, one must show something more than concealment by mere silence—some affirmative act of deception; some misleading device or contrivance on the part of the party charged with fraud, intended to exclude suspicion, prevent inquiry and the institution of adequate measures of redress. (*Lant vs. Manley*, 71 Fed., 7, cited in 19 Ann. cases, 113.) Concealment could not have been imputed to the deceased Paulino Gocheco, because the partition of the properties of his deceased father was through judicial proceedings before the courts of justice. Plaintiffs-appellees should have known that something must have been done about the properties that their deceased father may have left upon his death. They should, therefore, have made the necessary inquiries in relation thereto. This they failed to do. And even if they were actually ignorant of the existence of such judicial proceedings, which we doubt, such ignorance is not a bar to the defense of laches (19 Ann. Cases, 113), because no excuse was offered therefor and ignorance without justifiable excuse is neither a defense. (*Bausman vs. Kelley*, 38 Minn., 197, 36 N. W. 333, 8 Am. St. Rep. 661, cited in 19 Ann. Cases, 112). There, certainly, was no justifiable excuse, if the plaintiffs-appellees have not received any share or any just share in the inheritance of their deceased father, for them to have remained quiet and silent. In the eyes of the law and under the circumstances of the case, knowledge of the judicial proceedings is imputable to them.

The evidence for the plaintiffs-appellees shows that Go Away came to the Philippines in the month of May, 1926. Her husband was a merchant who used to come often to the City of Manila, staying at the house of Paulino Gocheco, who had a lumber business and had many other forms of business activity. If she had not actually received any amount as her share in the inheritance, which she does not state and about which she is silent, the fact that her brother had extensive business interests in Manila should have caused her to investigate the source or origin of such properties and interests. We can not believe her statement that her immediately going to the provinces actually could have prevented her from making inquiries about the properties left by her deceased father. Her husband was a frequent Manila visitor and he could have made the proper inquiries for her. In any case, the law imputes to her actual knowledge of the judicial proceedings, or inexcusable negligence in not making inquiries or ascertaining from judicial records the supposed illegal acts committed by her brother.

The existence of the fourth element is apparent. Ever since Paulino Gocheco received his properties, he, had dealt therewith in the ordinary course of business—a portion of the parcel of land that he had inherited had already been assigned to the City of Manila as early as November 10, 1916. (Exh. I.) Many of his properties have already been transferred before his death—Chiang Kai Shek High School, (Exh. O.) The lumber business must have been conducted for so long a time that it would now be impossible for the defendants to comply with the judicial order of rendition of accounts from 1916. These circumstances make the action unjust, unfair and inequitable and would prejudice third persons who may have acquired rights and interests in the properties in the ordinary course of business, as well as the decedent himself and his heirs, who have been in continuous enjoyment of the inheritance for a full period of 32 years without any interruption or objection on the part of the plaintiffs-appellees. So the fourth element of laches has been fully satisfied. We, therefore, find the trial court also erred in overruling the defense of laches opportunely presented by the defendants.

For the foregoing considerations, the judgment appealed from should be, as it is hereby, reversed, and the action dismissed, with costs against the plaintiffs-appellees. So ordered.

Paras, C.J., Padilla, Montemayor, Jugo, Bautista Angelo, Concepcion, and Reyes, J.B.L., JJ., concur.

Judgment reversed.

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