

pied by the prior bona fide purchaser. 55 Am. Jur. 1118, Vendor and Purchaser, § 759.

III. JUDGMENT

It is therefore the judgment of this court that the title to the land Ilengelang (including therein the land Sankak), located in Koror Municipality, Koror Island, Palau District, is in Joseph C. Putnam, as Alien Property Custodian of the Trust Territory of the Pacific Islands, free and clear of any right, title, or interest therein on the part of appellants, or the parties whom they represent in this litigation.

It is further ordered that this judgment shall not affect any rights of way on, over, or across said above described lands. No costs are taxable against or in favor of any party hereto.

NIFORONGU, Appellant

v.

TRUST TERRITORY OF THE PACIFIC ISLANDS, Appellee

Criminal Case No. 90

Trial Division of the High Court

Truk District

December 30, 1958

Appeal from conviction in Truk District Court of petit larceny in violation of T.T.C., Sec. 397. Appellant contends that he openly took breadfruit from land belonging to his wife's family, and complainant contends that he warned appellant to desist from taking. The Trial Division of the High Court, Associate Justice Philip R. Toomin, held that appellant took breadfruit which he honestly believed belonged to his wife's family, that good faith under color of claim or title absolved felonious intent, and that criminal court was not proper place to adjudicate land dispute.

Reversed.

1. Larceny—Intent

One who takes property in good faith, under color of claim or title, honestly believing he is owner and has right to possession, is not guilty of larceny even though he is mistaken in such belief.

2. Larceny—Intent

Taking of property openly in honest belief of ownership absolves one from felonious intent.

3. Larceny—Generally

Criminal code should not be used to determine conflicting claims to property.

<i>Assessor:</i>	JUDGE UPULI
<i>Interpreter:</i>	MISAUO R. PETRUS
<i>Counsel for Appellant:</i>	ANDON L. AMARAICH
<i>Counsel for Appellee:</i>	FUJITA PETER

TOOMIN, *Associate Justice*

This is an appeal from a conviction of the offense of Petit Larceny and from the prescribed punishment of thirty days imprisonment, all of which was suspended. The complaint charged the defendant with unlawful picking of breadfruit on the property of the complainant, and its carrying away without the consent of the owner.

The facts are not disputed. Both the witnesses for the prosecution and the defendant testified he took breadfruit from the land Utunpuni during the daylight hours and in plain view of any onlooker. The complainant testified he had heard of defendant's action in taking breadfruit, and had warned him to desist. He admitted, however, that he had but recently acquired the land and that there was a dispute concerning the title.

Defendant testified he picked the fruit from land on which he was living with his wife's family, and that he had been requested to do so by his wife's brother. He also stated the land was owned by his wife's family, and that he had been working it for some two years. Since complainant acquired his interest in the land in November 1957, defendant's use ante-dated the acquisition by at least a year and a half.

Defendant's brother-in-law Nus (or Lus) also testified that the crops were picked at his direction from lands owned by his family, which they had occupied since German times. Also, that he had advised the seller to complainant, that he would not approve the sale and requested him to return the purchase price.

[1] Do these facts establish a case of larceny? Obviously not, since there was no showing of an intent to steal. It is a fundamental principle that one who takes property in good faith, under color of claim or title, honestly believing he (or whoever authorized the taking) is its owner, and has a right to its possession, is not guilty of larceny, even though he is mistaken in such belief, as in such case the felonious intent is lacking. 22 Am. Jur. 936, Larceny, § 41.

[2] It is well settled that the taking of property openly in the honest belief of ownership thereof, and of the right to take and retain it, absolves from a felonious intent. *Lechner v. Ebenreiter*, 292 N.W. 913.

[3] The criminal code is not to be used for the purpose of determining conflicting claims to property. There are ample procedures in the civil courts which will give the alleged owner all the protection he requires of any property rights possessed by him. It was unjustified under the facts of this case, to make a criminal complaint against defendant and to find him guilty of larceny.

For the reasons above stated, it is the conclusion of this court that the District Court erred in finding the defendant guilty of Petit Larceny, and in sentencing him to a term of imprisonment upon that finding. Accordingly, said judgment of the District Court is hereby reversed.