[10] "The rule in some jurisdictions, applied to civil actions, that the violation of a statute is negligence per se is not applicable in a criminal prosecution for reckless driving where the issue, which is between the state and the accused, is confined to the conduct of the accused and contributory negligence is not involved." Am. Jur., Vol. 5A, Automobiles, § 1181.

JUDGMENT

The finding of the District Court for Truk District as to Count Two, Criminal Case No. 1267 is affirmed; the sentence is reduced to five days' imprisonment, suspended on the same conditions as applied to the original sentence of thirty days. The finding and sentence on Count Three are vacated, and a finding of not guilty entered.

NAORO and PIOS, Plaintiffs

v.

INEKIS H., Defendant

Civil Action No. 185

Trial Division of the High Court

Truk District

October 3, 1961

Action for determination of title to land on Fefan Island, in which plaintiffs claim land as heirs of former owner and defendant claims land as vendee from former owner. The Trial Division of the High Court, Associate Justice Paul F. Kinnare, held that evidence sustained valid sale of land and that title was in defendant.

1. Trust Territory—Land Law—Limitations

Twenty-year limitation on actions involving land or interests therein is not yet applicable in Trust Territory since, for purpose of computing time, any cause of action existing on May 21, 1951, is considered to have accrued on that date. (T.T.C., Sec. 324)

2. Courts—Judicial Notice

Courts will not ordinarily take judicial notice of value of real estate.

3. **Courts—Judicial Notice**
   Courts will take judicial notice of matters of common knowledge relating to value of real property generally.

4. **Courts—Judicial Notice**
   Courts will take judicial notice that certain amount of money was extremely low for sale of land at prior time.

5. **Evidence—Declaration Against Interest**
   Statement by vendor that he sold land rather than retained it is declaration against interest.

6. **Evidence—Declaration Against Interest**
   Declarations against interest are received in evidence, notwithstanding they are hearsay, since reliability of declarations is dependable because person does not ordinarily assert facts which are against his own pecuniary interest.

7. **Evidence—Self-Serving Declaration**
   Statements to plaintiffs outside of court may be self-serving declarations which are properly received in evidence, but they cannot be accorded same weight as declaration against interest.

8. **Real Property—Quiet Title—Presumption of Ownership**
   Long and undisturbed occupancy and use of land raise presumption of lawful origin of ownership.

KINNARE, *Associate Justice*

FACTS

This action involves the land Fannim, located in Saporelong Village on Fefan Island, Truk District. Both plaintiffs and defendant trace title from Tomas, the plaintiffs claiming as his heirs and the defendant as his vendee. The relationships involved are not important in this action.

The parties agree that at one time (plaintiffs allege about 1933—according to the defendant, in 1927) Tomas owed Kinsang eleven (11) yen. To pay this debt Tomas got eleven yen from Sopo, who advanced this sum from funds belonging to Inekis. The issue in this case is the agreement, of which Inekis was the beneficiary, made between Tomas and Sopo at the time the eleven yen changed hands.

Plaintiffs claim that Tomas agreed, in exchange for the eleven yen, that Inekis should have the use of Fannim until she had produced enough copra to repay herself. This, they assert, has happened long since and therefore they are now entitled to possession.

Defendant claims that Tomas agreed with Sopo that, in consideration of the eleven yen, Inekis was to have Fannim as her own.

There is no dispute between the parties that Inekis has been in possession of Fannim ever since Sopo advanced the money, and that she has worked the land since that time.

Tomas died about 1936 or 1937; Sopo died about 1948.

The exact size of Fannim was not brought out at the trial but defendant testified (and her testimony was not contradicted) that Fannim contained thirteen (13) or fourteen (14) coconut trees, and about ten old breadfruit trees.

Both plaintiffs testified that they had heard the terms of the agreement between Sopo and Tomas from Tomas about 1933, and that Tomas had told them, during his last illness, that they were entitled to recover Fannim from Inekis. Plaintiffs offered no evidence as to any action taken by Tomas during his lifetime to oust Inekis from Fannim, or that Tomas had ever made demand on the defendant to surrender the land.

Inekis testified that she learned of the agreement from Sopo in 1927. At first, when she learned that Sopo had given Tomas her eleven yen, she "was mad" but when Sopo went on to explain that Tomas had "given her Fannim for the money" she was no longer mad.

Sianiti, witness for the defendant, testified that he had learned of the agreement concerning Fannim in 1927 from Tomas, who was the younger brother of Sianiti's father, and that Tomas definitely stated that he had "sold Fannim

to Inekis". Sianiti testified that he lived in the same house with Tomas at that time, and that Tomas had stated several times that Inekis now owned Fannim.

There was sharp conflict in the testimony as to whether or not plaintiffs themselves had ever made demand on defendant to return Fannim to them. Naoro testified that he had sent a letter to Inekis "in Navy times" reminding her of the terms of her occupancy and demanding return of Fannim. Inekis stated she never got such a letter. Naoro further testified that he had often discussed the return of Fannim with Sianiti, a chief of Saporelong Village. Sianiti denied such conversations.

Pios testified that he had a conversation with Inekis at her house in 1948 and had demanded return of Fannim at that time. Inekis admitted the conversation, but stated that, instead of Pios making demand on her, he had told her "it was all right" for her to have Fannim. Inekis admitted receiving a letter from Pios demanding Fannim, but stated she received it only a short time before the institution of this action.

Naoro, on cross examination, testified that, although he spoke Japanese, he did not take up his claim against Inekis with the Japanese authorities because he had no confidence in the way they handled land disputes.

At the close of plaintiffs' case defendant moved for judgment on the ground that plaintiffs' claim was barred by the limitation of twenty years imposed by Section 316, Trust Territory Code, and the plaintiffs were not entitled to judgment even if all their evidence was taken as true. This motion was denied.

OPINION

[1] The provisions of Section 324, Trust Territory Code, preclude the application of the twenty year limitation on actions involving land or interests therein to this

case: "For the purpose of computing the limitations of time herein provided, any cause of action existing on May 21, 1951, shall be considered to have accrued on that date."

Therefore we reach the nub of the case: What agreement was made between Sopo and Tomas when Sopo advanced the eleven yen?

Plaintiffs argue: that eleven yen was such grossly inadequate consideration for the transfer of Fannim that to believe a sale was actually made is patently absurd, and that that fact, taken in consideration with all the other evidence, shows that their theory of the case is the true one.

[2–4] If this were the only point to be considered here plaintiffs' argument might well be persuasive. Courts will not, ordinarily, take judicial notice of the value of a particular piece of real estate, but they can, and do, take judicial notice of matters of common knowledge relating to the value of real property generally (see Am. Jur., Vol. 20, Evidence, § 213) and this court will take judicial notice of the fact that eleven yen was an extremely low price to pay for a piece of land on Fefan Island containing thirteen or fourteen coconut trees and ten old breadfruit trees in 1927 or in 1933.

[5–7] But this fact, important as it admittedly is, is only one of the facts bearing on the issue. Sianiti, the only witness not a party to the suit, testified that Tomas said he had sold the land to Inekis. This was clearly a declaration against interest.

"The theory under which declarations against interest are received in evidence, notwithstanding they are hearsay, is that the necessity of the occasion renders the reception of such evidence advisable and, further, that the reliability of such declarations is generally to be depended on, since a person does not ordinarily assert facts which are against his own pecuniary interest." American Jurisprudence, Vol. 20, Evidence, § 556.

Tomas' statements to plaintiffs were in the category of self-serving declarations. (Same article cited above, § 558.) These self-serving declarations were properly received in evidence, no better proof being available, and it is not implied here that they are without probative value. Nevertheless, under the circumstances of this case, such self-serving declaration cannot be accorded the same weight as that of a declaration against interest.

[8] A most important fact in this case, admitted by both sides, is the long and undisturbed occupancy and use of Fannim by defendant—from 1933, according to plaintiffs, from 1927, according to defendant. This occupancy and use, so long continued undisturbed, raise a presumption of lawful origin.

"The owners of property, especially if it be valuable and available, do not often allow it to remain in the quiet and unquestioned enjoyment of others. Such a course is not in accordance with the ordinary conduct of men. When, therefore, possession and use are long continued, they create a presumption of lawful origin; that is, that they are founded upon such instruments and proceedings as in law would pass the right to the possession and use of the property." *Fletcher v. Fuller*, 120 U.S. 534, 7 S.Ct. 667.

If the agreement with Sopo was that Inekis was to have a mere temporary use of the land, it is very hard to believe that Tomas would have stood idly by, making no effort to recover Fannim, during the years when defendant was making sole and exclusive use of it. Tomas' inaction, however, is completely understandable if the transaction with Sopo was an actual sale of the land.

Taking all of the above into consideration, we hold that plaintiffs have not sustained the burden of proof upon them.

JUDGMENT

It is ordered, adjudged, and decreed as follows:—

1. As between the parties, and all persons claiming

under them, the land known as Fannim, in Saporelong Village on Fefan Island, Truk District, is owned by the defendant Inekis.

2. This judgment shall not affect any rights of way there may be over the land in question.

3. No costs are assessed against any party.

ERMES PAUL, Appellant

v.

TRUST TERRITORY OF THE PACIFIC ISLANDS, Appellee

Criminal Case No. 124

Trial Division of the High Court

Truk District

October 5, 1961

See, also, 2 T.T.R. 603

Appeal from conviction in Truk District Court of embezzlement in violation of T.T.C., Sec. 393. Appellant contends that prosecution failed to show that he carried away money with intent to permanently convert it to his own use. The Trial Division of the High Court, Chief Justice E. P. Furber, held that where evidence is sufficient to establish embezzlement, accused's intention to return money to owner is not valid defense.

Affirmed.

1. **Embezzlement—Generally**

   Evidence of failure to report cash disbursements, and of unaccountable shortage from special and petty cash funds, is sufficient to establish intent to defraud government and to permanently convert money so withheld to accused's own use. (T.T.C., Sec. 393)

2. **Embezzlement—Generally**

   In criminal prosecution for embezzlement, it is not necessary for government to prove exact amount alleged in information has been embezzled. (T.T.C., Sec. 393)

3. **Embezzlement—Sentence**

   Although maximum penalty which is imposed for embezzlement depends on whether amount involved is less than or greater than fifty dollars, actual amount beyond fifty dollars is matter for court to consider in exercising discretion as to punishment to be imposed within limits of law. (T.T.C., Sec. 393)