

ROTAN TITO AND OTHERS v. SIR ALEXANDER WADDELL & OTHERS
(RE-PLANTING ACTION)

SUMMARY OF PROCEEDINGS, FRIDAY, 7 NOVEMBER 1975.

1. Mr MacDonald (Counsel for the Banabans) continued his submissions concerning the "benefit and burden of contract". He argued that the Commissioners had enjoyed the benefit of access under the 1913 Agreement and were therefore bound by the global obligation to re-plant which the agreement contained. In respect of the A and C deeds, he said, they had enjoyed the benefit in three ways:

- (a) The right to mine specific plots;
- (b) Access to those specific plots and adjacent plots;
- (c) Possession of the plots.

Mr Justice Megarry said that it was not clear from Mr Macdonald's submissions whether the plaintiffs considered it necessary for the Commissioners to have positively accepted the benefits or merely to have enjoyed them. The matter was therefore deferred for further consideration.

2. Mr Macdonald then turned to the question of Banaban land titles since the defendants do not admit that the plaintiffs are in all cases the owners of the land in question.

Mr Macdonald said that title could be shown in four ways:

- (a) The evidence of Mr Rotan Tito;
- (b) Banaban family trees which showed that the present plaintiffs were the descendents of the original land owners;
- (c) the oral evidence of the plaintiffs with regard to what they had been told by their predecessors;
- (d) Banaban land records.

These consisted mainly of the three books held by Mr Kaiekieki since other Banaban land records had been destroyed by enemy

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action during the War.

3. Mr Macdonald said there was sufficient evidence to show that all the plaintiffs were either the legal owners or at least had a share or interest in the plots in question.

4. Mr Browne-Wilkinson (Counsel for the BPC) intervened to point out that in the case of shared plots, unless all the landowners concerned were joint in the action, the plaintiffs could not demand specific performance since some of the relevant parties had never requested it, and that if damages were to be awarded it would be necessary for the plaintiffs to demonstrate not only their title to the plot or plots concerned but the extent of their particular share in that plot. The defendants would, he said, oppose any application to join the names of further landowners to the existing list of plaintiffs at this late stage in the proceedings.

5. Mr Justice Megarry pointed out that the need for the plaintiffs to establish title of ownership or part ownership in the case of every single plot could considerably lengthen the proceedings and he suggested that Counsel for the BPC indicate to Mr Macdonald those plots which the defendants, while not admitting Banaban title, could not bring evidence to contest it. The hearing was then adjourned until Monday, 10 November.

Pacific Dependent Territories Department
Foreign and Commonwealth Office