

EVIDENCE 25  
(A.M.)

1971 R. No. 3670

IN THE HIGH COURT OF JUSTICE  
CHANCERY DIVISION  
GROUP B

Royal Courts of Justice,  
Thursday, 1st April, 1976

Before

THE VICE-CHANCELLOR

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ROTAN TITO

and

THE COUNCIL OF LEADERS

-v-

HER MAJESTY'S ATTORNEY GENERAL

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(Transcript of the Shorthand Notes of The Association of Official Shorthandwriters Limited, Room 392, Royal Courts of Justice, and 2, New Square, Lincoln's Inn, London, W.C.2.)

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MR. W.J. MOWBRAY, Q.C., MR. J.R. MACDONALD, MR. L.A. TUCKER and  
MR. C.L. PURLE (instructed by Messrs. Davies, Brown and Co.)  
appeared on behalf of the Plaintiffs.

MR. J.E. VINELOTT Q.C., MR. P.L. GIBSON and MR. D.C. UNWIN (instructed  
by the Treasury Solicitor) appeared on behalf of the Defendants.

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EVIDENCE

DAY TWENTY-FIVE

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MR. MOWBRAY: My Lord, there are some corrections to corrections in evidence ay 24 (AM). On page 4 just above D in the middle line of the paragraph there it should be "Broken Hill South", not "Hills".

At page 5 just below B at the end of the paragraph it should read: "I think what I heard was 'which is out of kilter' , not "out of tune".

THE VICE-CHANCELLOR: And I used that word at C.

MR. MOWBRAY: Yes.

THE VICE-CHANCELLOR: It is actually the correction I made in Day 23.

MR. MOWBRAY: Then just below E there is a paragraph beginning: "Page 40 there is a slip". That should have been attributed to Mr. Vinelott, so one has to insert: "MR. VINELOTT" there.

In fact just above that there is a paragraph beginning "I am told there is another" and that should also be attributed to Mr. Vinelott. The following remarks attributed to me further down the page should also be attributed to Mr. Vinelott.

THE VICE-CHANCELLOR: You were running on with all those, were you, Mr. Vinelott?

MR. VINELOTT: Yes.

MR. MOWBRAY: On page 7 there is a spelling mistake just about C where there is reference to two islands. It should be "Kuria". It occurs again two lines later at the end of the line.

MR. VINELOTT: My first correction is on page 7 just below the second Kuria correction, in the third line on, which begins: "introduce this custom" and then it should be "to bowi." He had referred to that custom a bit earlier.

In the question beginning at F the last word of the question should have been something like "land holding," not "retention". It must have been something of that nature.

THE VICE-CHANCELLOR: Let us make it "land holding".

MR. VINELOTT: At page 9 in the last line of the answer at D delete the words "stock pile" and insert the word "babai". They are pits. Perhaps the witness can be asked about that in the examination.

MR. MOWBRAY: We will ask him in cross-examination.

MR. VINELOTT: At page 10 at G in the fourth line of the question delete "Mipanau" and insert "Nikanau".

At page 11 in the second line of the question at B the reference is not to P.17 but to D.17.

At page 18 in the question just below D it should read: "...you went to Tarawa to the islet of Betio". Tarawa, as the witness has explained, is a sort of necklace of islets round a lagoon.

My instructing solicitor has prepared a brief summary setting out simply the periods that Professor Maude spent on Ocean Island and on Rabi.

THE VICE-CHANCELLOR: That can be attached to D.17 and we will call it D.17A

(Table marked D.17A)

MR. VINELOTT: We will prepare a similar one for Mr. Macdonald which will in due course become D.17B.

A THE VICE-CHANCELLOR: Mr. Mowbray, I take it this is simply information compiled from D.17 and does not require formal proof.

MR. MOWBRAY: No. I think it is compiled from that and what the witness has said.

B PROFESSOR HENRY EDWARD MAUDE: recalled  
CROSS-EXAMINATION BY MR. MOWBRAY CONTINUED

C Q Will you look at the transcript of yesterday's evidence, day 24 AM. (Copy handed to the witness). Will you turn to page 9. This is something you probably heard us discussing. Do you see, just above letter D, the end of the answer reads: "I do not think there has ever been any question of that even to the digging of the pits for the sort of" - something - "that they build." What should that something really have been? - "Bob" something? A. Babai - that is the form of coarse taro which they have in the Gilbert Islands.

Q Coarse kind of ....? A. Coarse kind of taro - colocasia esculenta, I think it is, but I cannot remember for sure.

Q It is a kind plant, is it? A. Yes, it is a plant.

D THE VICE-CHANCELLOR: You said in the answer "the digging of the pits for the sort of babai that they build" - if it is a plant, you do not build it.  
A. If I said "build" I made a mistake.

Q No, what should it have been? A. They dig pits for growing the taro in in the Gilbert Islands, not on Banaba.

E Q So it should be "digging of the pits for the sort of babai that they grow".  
A. Yes.

Q "Grow" instead of "build" - would that make sense? A. Yes, because the babai will only grow on a water basis, so it will not grow on the surface so that the pits are dug down to water level.

THE VICE-CHANCELLOR: I think "grow" instead of "build", Mr. Mowbray.

F MR. MOWBRAY: Yes, my Lord.

G Q Thank you, that has cleared up that little mystery. Now, you remember we were going to look at a couple of photographs yesterday. I think we have got them out now. Will you take this bundle and look at the photographs numbered 3, 4 and 5. (Bundle of photographs handed to the witness). Would you tell us what is on the back of those photographs? A. "1901, early workings"; "1901, three early workings"; "1907, early workings."

Q They show a considerable depth of workings, do they not? A. Yes, they do - at least 1907, certainly.

H Q And they would be before the P & T deeds started to be granted. A. I would say yes, because they would be the actual purchased land by Sir Albert Ellis, some of which he purchased, I understand, before the Colony was declared - if I am right.

Q You are using "purchased" with inverted commas, I can tell from the way you say it. A. Well, because later on it was denied, was it not, whether it was purchased or not purchased. Sir Albert Ellis maintained he had purchased the freehold of the land and I think it was held in question.

THE VICE-CHANCELLOR: 1901 would be before the P & T deeds, but 1907 ..?

A

A. No, that was after.

Q That was after the P & T deeds? A. Yes.

MR. MOWBRAY: I beg your pardon.

THE VICE-CHANCELLOR: The P & T deeds started in 1903, I think.

B

MR. VINELOTT: I think what my friend said - it was merely a slip - that he referred to 1902 and that may be what the witness had in mind.

MR. MOWBRAY: Yes.

THE WITNESS: It is in my memorandum, I think.

C

MR. MOWBRAY: Yes. I was taking a false point there.

THE VICE-CHANCELLOR: Photograph No.5 is 1910, is it not?

MR. MOWBRAY: Yes.

THE VICE-CHANCELLOR: What was on the back of photographs 4, 5 and 6?

A. Shall I read them again?

D

MR. MOWBRAY: Yes. A. Photograph 4 says: "1907, early workings." Photograph 5 - did you say photographs 4, 5 and 6?

Q I said 3, 4 and 5, I think. A. No. 3 says "1901 - three early workings".

Q Now will you take bundle 4 and turn to the last page. This is a P & T deed. It is page 191 of the bundle. A. With the letter 'B' at the top?

E

Q Yes. That says: "This deed is to record that in consideration of payment by the Pacific Phosphate Company, Ltd. of London and Melbourne, to the undersigned Nei Ema, a native of Ocean Island, the sum of £5 sterling, payment of which is hereby acknowledged, the said native does hereby sell to the said company all the coconut trees, pandanus and all other trees now growing, or that shall be grown, and all the rock and alluvial phosphate that may be found (with the right to remove and ship the same within the next ten years on that piece of land situated at Buakonikai, Ocean Island, the dimensions being as described in plan on back of this deed." Then it gives the area. There is no limit on the depth that the BPC could dig, is there? A. No, I think not.

F

Q A lot of those deeds were granted and they did not seem to think there was anything wrong with the landowner granting that kind of right to the BPC. A. Who is "they", may I ask?

G

Q The landowners who granted those deeds. A. The landowners who granted them?

Q Yes. A. They certainly granted them, but not, if you will follow my remark, I merely said that in 1931 they expressed the opinion that it would be appropriate if the phosphate was considered to be at that time held in common by the island. But I never denied I was fully aware of the fact that they had granted many lands previous to that and they had dug down, particularly when they got the machinery to do so, well below.

H

Q I think you said that the very people to whom you were talking probably had granted some P & T deeds. A. I would say that was quite possible, yes.

- A Q Is this what they were saying to you in 1930 or 1931 or 1932, that it would be a good idea if the community as a whole got the benefit from the phosphate?  
A. My conception was that the idea had come about after 1913 rather than before 1913.
- B Q But have I got the conception right: was it more a question of "It would be a good idea if this were done with the royalties in future" rather than a question of "The landholding custom is such and such"?  
A. It surely had already, to a certain extent, been done in the 1913 Agreements. Could I again look at my memorandum, perhaps?
- C Q Please do, yes. The 1913 Agreement is in paragraph 8. Is that a help?  
A. Yes, at (c) I think there was a royalty of 6d. a ton on phosphate shipped which was to be divided up to form a Banaban fund and this to be used for the benefit of the existing Banaban community in any way which might be recommended by them.
- D Q That was during 1913 and during 1914?  
A. Yes, and after that it was to be distributed among all Banabans who leased land to the Company in the proportions recommended by themselves. This really I am referring to as in 1931 they considered - well, appropriate - they had no objection to that then.
- E Q Then in the second (b) in paragraph 8 of your memorandum, that was being divided among the landowners, was it not - the Banabans who leased land to the Company?  
A. Yes.
- F Q In the proportions agreed by themselves?  
A. Yes.
- G Q And you say that was an appropriate method?  
A. Because in 1931 it was again changed and it was divided out among the whole people.
- H Q Under the lease it was and under the Ordinance it was not, you remember?  
A. It was not. When I spoke to the people it was subsequent to that time, it was fresh in their minds. I did not mean, if I ever had expressed the opinion that in 1905 and 1910 that they had not leased land on an individual basis or sold land on an individual basis. I did express the opinion, I remember, that if they had actually sold land completely this would be absolutely contrary to native custom, but to lease land would have been a different matter. I merely said that they did mention to me that they considered that if they had leased land in the early days they had no idea how deep the phosphate was going to go at that time.
- I Q That would have been the very earliest days, would it not?  
A. In the earliest days, yes. Later on, presumably, I do not know to what extent they were leasing land, but they certainly leased land which went down further than that. I think if they were offered inducements sufficient they would, as I would consider, break their own customs to do so, but I did not suggest that this was an immemorial Banaban custom at all, but merely was an expression of an opinion that what had been done by, shall we say, the Government was not inappropriate under the circumstances.

11 an

H

- A Q I follow, thank you. That is what I was trying to get at really. Just to finish this part about the customs and the title, have you got there the P.D. bundle? Would you look at page 103. This is the 1947 Agreement.  
A. That is the final one of the lot.
- B Q There was another one in 1973 which dealt with some operating land, some land that had got missed out. You did not know about that one. Anyway, this was the one in 1947 that you thought was going to cover the whole island.  
A. Yes. It was my recommendation which should finalise everything.
- Q Do you see that it says it is made between the Banaban landowners of Ocean Island and the British Phosphate Commissioners? A. I see that.
- Q And at the end on the next page it is signed by Mr. Maynard for the British Phosphate Commissioners and then by a dozen or more Banabans for the Banaban landowners of Ocean Island. A. Yes.
- C Q So it looks as though it was the landowners who were granting the phosphate rights in 1947? A. The landowners? What do you mean?  
Q Yes. A. The Landowners to this particular land, I suppose.  
Q Yes. A. Yes, well ....
- D Q You see the thought that is in my mind, that if the community owned the phosphate ...? A. But this concerns two things too, does it not? It concerns the surface rights as well as the phosphate. You mean that there should have been two agreements, one for surface rights and one for phosphate rights.  
Q If the community owned the phosphate you would think there would be a grant by the community of the phosphate rights.. A. Perhaps legally. I do not think it ever occurred to the Banaban people.
- E Q No, well ---? A. But it is a legal point which I agree with, but I do not think that they had ever thought it out like that. But in any case by 1947 their conceptions may have been very different to their conceptions in 1931.
- F Q Yes. I was going to ask you about that. You said that in 1931 the land was used for subsistence. A. Hardly by then I think; it was beginning to change then. I forget the exact date on which copra ceased to be exported for instance from Ocean Island, which might be the date at which we could take subsistence as having ceased, but I think it was about 1913, was it not?
- G Q We do not know, but at any rate when the Banabans went to Rabi they still had a great sentimental interest in their land but their business interest was really a money interest, was it not? A. They had changed from a predominantly, shall we say, or partially subsistence economy to a mainly monetary economy by that time.
- H Q Do you think that by 1947 the landowner might have been by Banaban custom considered the owner of the phosphate under his land? A. This is a point which I thought I brought out in the examination in chief, that I felt that it was a matter for ascertainment at this time, and I have strongly supported at all times that as the society changes customs should change too, and it may very well be that by now the Banabans regard the phosphate as individually owned or owned by some other method than it was in 1931, because custom is continually changing; and I would hope that it was not going to stay still because if it was it was going to be an incubus on the development of the community.

- A Q When you say "by now" do you mean by 1976 or by 1947? A. It seems to me that they really became more developed onto a monetary basis when they went to Rabi Island.
- B Q So what you are saying would date back to 1947? A. Yes.
- B Q Or a little earlier, when they arrived. A. When they arrived. I would say it is continually changing all the time. If one could predict for another ten years I would say it would be wholly on a monetary basis except for the land on Rabi, which may again produce money. It would not be so much for food as for the sale of copra on the market, although a certain amount is used for gardening of course, as with us.
- C Q There is one thing I really should ask you about and perhaps it confirms what you have been saying this morning. Would you again look at bundle 39 and at your despatch which starts on page 89. Do you remember this is the despatch in which you forwarded to the Acting High Commissioner the copy of the final statement of intentions of the Government. We looked at a bit of it before. Look at paragraph 9 on page 90. That says: "Regarding royalties (whether new or already invested in the Royalty Trust) the Banaban argues, as he has always done, that all under surface rights belong absolutely to the owners of the surface rights and that the Government has no right to withhold his royalty payments, which should be paid to each individual landowner and not diverted to communal use." Is that what the Banabans were saying in 1947? D A. I would not say all of them, but a large number of them, and a greater number of them than were saying it in 1931. My only anxiety is to stress that custom changes all the time and should be allowed to change all the time and I am only pleading that we should recognise the right of the people to choose their own customs. But when I said - and I have been very conscious of this here, if I may say so - that it was always done, this was done in a casual moment and I should have put a qualifying adjective here. It was not done in E 1900, you will appreciate that.
- E Q Obviously not, no. A. No.
- F Q You remember you said that in 1946, and I think wrote in 1946, that the royalty ought to be increased to take account of inflation? A. Yes, this has been my opinion.
- F Q And I think you told us yesterday that you thought it ought to take account of the inflation since 1930 and ought to correspond in value to the 10<sup>1</sup>/<sub>2</sub>d that was fixed then. A. Only in the event of the unfortunate circumstances that negotiations between Mr. Maynard, or rather the BPC, and the Banabans broke down I thought we should then go back to 1931 and up-date it in accordance with the fall in the value of money. If we could turn to that paragraph perhaps, I think it is quite clear.
- G Q It is in your memorandum, is it not? A. It is in my memorandum here.
- G Q Let us look at that. It is in paragraph 73. Perhaps we had better look at paragraph 19 first just for the sake of completeness. That says: "In March, 1946, however, the representative of the British Phosphate Commission again approached the Banabans regarding the acquisition of the new area but was informed that owing to the change in monetary value since 1940 the Banabans now required a payment of £225 per acre for surface rights and 1s.6d. per ton royalty, the proportion to be credited to the Royalty Trust and Provident Funds being unspecified. It is understood that the British Phosphate Commissioners are unlikely to accept these revised terms but no request has so far been received to have to land compulsorily taken over from the owners and leased to them."
- H



Then in paragraph 73 you say what should happen if that did come about:  
"It has been stated in paragraph 19 that the Banabans and the Commission are at present unable to agree to the terms on which any further lands should be acquired and it is possible that the Government will be compelled to resume land again under the Mining Ordinance of 1928 and 1937. I recommend that in this event the Government should (a) urge that the resumption should be a final one, including all lands required by the Commission (see paragraphs 70 and 71) and (b) require that the terms offered for the acquisition should be at least as favourable as those offered in the case of the 1931 areas, due account being made for the fall in the value of money." A. That is so.

Q You would have been the man to fix the royalty, would you not, as the Resident Commissioner? A. I would not have thought that I was necessarily the man to fix the royalty, but .....

Q The 1928 Ordinance says that the royalty shall be what the Resident Commissioner determines. A. I am sorry. Have I said that in my memorandum?

Q I do not think so. A. Because I was not aware of the fact, I am afraid. I should have been. I imagine that in the case of the 1931 resumption that an independent man had been brought up from Tonga, in this case, I think a Mr. Neill, and he had fixed this matter.

Q He fixed the surface payment. A. The surface payment, yes.

Q But Mr. Grimble fixed the royalty. A. I do not think I stated that in my memorandum.

Q No, but that is what happened all right. A. Yes, I will take your word for it that that is so.

Q Thank you. We can take it, at any rate, that if it had fallen to you to fix a royalty in 1947 you would have fixed something which was equal in purchasing power to the 10<sup>1</sup>/<sub>2</sub>d. as it was in 1931. A. So in other words I was recommending the Secretary of State what he should tell me to do.

Q Yes, that is it. A. Yes.

Q You agree with what I asked you? You agree with that question I asked? A. If I am the person that had to do it and I have certainly recommended that this was my viewpoint, I would have, of course, had to reconsider the matter, but it would have been consonant with my thought at the time I wrote that.

Q I do not know whether you were in court when Mr. Silcock gave us some figures about the value of the 1921 10<sup>1</sup>/<sub>2</sub>d. Perhaps you would take a copy of D.16. (Copy handed to the witness). These are some figures got out by Mr. Silcock and in the top left-hand corner you will see reference to 1928 and then following that there is 1930/31 and he has got the royalty level as 10<sup>1</sup>/<sub>2</sub>d. Then in the right-hand column opposite that he has 5.8. At the top of that column with the 5.8 in it he is saying, "That is the royalty level in 1914 pence," so he has reduced everything to a common value, the value of a penny in 1914, and he is saying that the 10<sup>1</sup>/<sub>2</sub>d in 1930/31 was worth the same as 5.8d in 1914 pence - the value that the penny had in 1914. Are you with me so far? A. Yes, I think I am. Really I am not too not on figures, but I think I am with you.

Q Just a couple more now. In the bottom line there you have got 1946/47 with 1s.3d. on the left. Do you see that? A. Yes.

Q In the right-hand column he has got 4.6 in 1914 pence, so Mr. Silcock is saying

A that the 1s.3d. royalty that was agreed in 1947 was worth 4.6 and the 10 $\frac{1}{2}$ d royalty that was fixed in 1931 was worth 5.8d.

MR. VINELOTT: All this, of course, is expressed in terms of sterling and the difficulty is we just do not know what the price in Australian money in the Pacific was except by reference to figures, which I think appear in correspondence, obtained by Mr. Vaskess.

B MR. MOWBRAY: We will come to that, or my friend can put it in re-examination.

MR. VINELOTT: I do not think it right that the witness should be asked questions about the depreciation of an Australian royalty by reference to internal sterling prices.

C THE VICE-CHANCELLOR: Mr. Vinelott, I have on several occasions, I think, when reference has been made in this case to the value of money, insisted that this was the internal purchasing power of sterling. In fact I inserted the word "internal" just immediately after the asterisk on this page, so I have that point very much in mind.

MR. VINELOTT: I am sure your Lordship has, and I remember your Lordship drawing attention to it, but I was not so sure that the witness quite understood the basis on which the question was being put.

D MR. MOWBRAY: Mr. Silcock did this, as one would expect, in quite an intelligent way, because he took the level and converted it first in the fourth column to sterling, so he has taken account of the difference in rate of exchange between Australian and UK money from time to time.

E THE VICE-CHANCELLOR: Yes, but the point is not what Mr. Silcock did but how far this witness has followed what Mr. Silcock did, because he has expressed some diffidence in dealing with matters of figures and equivalents of money. That is the point.

THE WITNESS: Thank you, my Lord. I am a bit at sea.

F THE VICE-CHANCELLOR: I do not know if this will help you at all. You see a column headed "Royalty level"? The date is the first column and then the second column is "Royalty level" and that is the royalty expressed in Australian currency. You follow that there was in 1928 a royalty of 10 $\frac{1}{2}$ d. and in 1930/31 it was 10 $\frac{1}{2}$ d. and in 1940 there was the 1s. offer and in 1946/47 there was the 1s.3d. settlement, all in Australian currency. You follow that?  
A. Yes, I do.

G Q What this table is trying to do is to give some account of, first, the change in value of Australian money in relation to the pound sterling, because there was an Australian devaluation as against sterling - do you follow that?  
A. Yes.

Q And secondly to try and get some sort of comparison between the different sums of money when converted into sterling. If you look at the column headed "Royalty level" in sterling that is simply turning Australian money into English money as it were. You see the column headed "Royalty level in sterling"  
A. Yes.

H Q That is saying, for example, that in 1928 the 10 $\frac{1}{2}$ d. royalty in Australian money was the same as 10 $\frac{1}{2}$ d. royalty in English money. A. Yes.

Q By the time you get to 1930/31 the Australian 10 $\frac{1}{2}$ d has become 9.1d in English money. That is the middle column. A. I see, 9.1d.

A Q And when you get down to 1946/47 the 1s.3d. Australian has become 12d. in English money. Do you follow that part of it? A. I follow this part.

B Q And then the last column is turning everything into terms of 1914 English money so that like can be compared with like. That is probably the part that you do not follow - is that it? A. My Lord, with all deference, the part which I do not quite follow is that it seems to be a suppositious thing - I was making a preliminary recommendation to the Secretary of State on a thing which he might or might not have brought before me. If he had I would have presumably then had to make an adjudication taking all sorts of factors into account, and I do not know what those factors are at the moment. I am being asked at the moment to be a judge now of what I would have done in suppositious circumstances.

C  
(Continued on next page)

Q You are being asked about one of those factors, namely, the change in the value of money. A. Yes.

A

Q Because your recommendation was that effect should be given to the fall in the value of money and that that ought to be reflected in any royalty payments. Is that right? A. What I am asked to state is that if my recommendations were accepted and all other circumstances were equal this would have been the difference in the value of money that would have been taken into account.

B

MR MOWBRAY: No, Professor Maude, I was not going to ask you that exactly. I was going to ask you to agree with Mr Silcock that what was agreed in 1946 or 1947 was worth less than the 10<sup>1</sup>/<sub>2</sub>d. which had been fixed in 1930/31, on his figures.

MR VINELOTT: That raises exactly the same problem. Worth less in terms of what? Converted into sterling and then converted for the internal purchasing power, yes, but it is a very different thing, or may be a different thing if you go elsewhere, and the question simply is not precise enough.

C

MR MOWBRAY: In terms of 1914 sterling pence it was less, was it not?  
A. The value of money had fallen.

D

Q Yes. A. I would have thought the value of money certainly had fallen, but I have absolutely no idea as to how much it had fallen or of Mr Silcock's competence to decide how much it had fallen by. Nor have I any idea whether my recommendation in paragraph 73 would have been accepted and, if it had been accepted, what directions I would have received or anything on this matter.

E

Q You would have expected to receive some directions about the royalty to fix, would you? A. No, not that, but I would have expected to obtain advice as to how the matter should be brought about, because it would surely depend on factors like the market price of phosphate at any particular time, for instance, the expectations of profit of the Commission and various factors which had still got to be brought into mind. I mentioned one point there because it had occurred to me as a fair thing, but I have not brought a judicial mind to adjudicate in advance as to what my final decision would have been. It might not have been, as you are suggesting, that it would have been 12d. or whatever it would have been.

F

11.30

THE VICE-CHANCELLOR: Let me see if I follow this. This may help. You recognise that between 1930/31 and 1946/47 there had been a fall in the value of money? A. Very definitely.

Q You are not at all sure how much that fall was? A. No.

G

Q And anyway, the fall in the value of money would only have been one of the factors. A. One factor.

Q One of the factors that you would have to take into account in fixing the royalty. Other factors would be matters such as the price of phosphate, and so on. A. Yes.

H

Q Is that a fair summary of your view? A. That is a very fair summary, my Lord.

MR. MOWBRAY: The price of phosphate and the profits that could be made by the Commission. A. Well, really I have not gone into all the questions. You are asking me to give a judicial decision off the cuff, if I may use a colloquial expression.

A Q We will not ask you any more about that. You said that one reason why you thought the Government ought to stay out of the negotiations - the reason the Government ought to stay out of the negotiations in 1947 - was that you did not want anything to happen like what happened in 1930 and thereabouts. We know Mr. Grimble ended up in a very difficult and embarrassing position in those earlier days. A. Yes.

B Q Could you tell us what particular factors you had in mind about 1931 time when you thought it was undesirable that that should happen again? A. I was doing the Lands Commission just about that time or just after it and just speaking around with the people I saw that they had, shall I say, a traumatic shock that the adjudication had been done, as it were, over their heads. They had always in the past imagined that free agreements between the Phosphate Commission and the Banaban community would take place and this is their land, and that they were free to get rid of their surface rights as they thought fit. But here a superior power had taken over and they were psychologically unhappy about it.

C Q I wonder if I could show you something that Mr. Rotan said and see if you think he is saying the same as you are saying now. It is in Day 7 and I want to start at the bottom of page 7. I was asking Mr. Rotan a question at the bottom of the page where it says: "(Q) Now I am going to ask you something different. When you came back from the Gilberts in 1926 Mr. Grimble was the Resident Commissioner. How did you think of Mr. Grimble then? (A) I think of him as I think of Mr. Elliot, the Resident Commissioner who looked after Banabans, and also that he is the one to look after the interests of the Banabans. But something happened between us. This particular thing came about over the acquiring by force, in a forceful way, our 150 acres. From then on I looked upon him as one who had betrayed the Banabans. (Q) What do you say about your power to hold on to your land after that happened? (A) I firmly believe that in Britain (literally he said 'in Britain') he would not do such a bad thing to the Banabans. It is because of this that I asked to come to see the High Commissioner in Fiji, and also even to come as far as here, because I felt that it could possibly be that it is only these people who come out to our place that do these unfavourable things to us, and our search and fight for the truth has brought us this far. (Q) When the land was taken in 1930, did that affect your feelings about your power to hold on to the land, or your authority to hold your land? (A) I think I have made it clear what was in my heart about how we stood under the 1913 agreement. Under that 1913 agreement we had the freedom of choice whether to give our land or not to give our land. Each landowner had that right to decide. I think that is freedom, as we know it. And this was, of course, also in harmony with the one Britain sent over, Mr. Elliot, who arranged for this.

G "At that time the BPC, the company, stood by itself, and the Government also stood by itself between the company and the people. In 1930 the company was not there - this is what Mr. Rotan literally says; it has the sense of - the company was not acting in any way, but the Governor was acting for the company and he did not allow us the freedom on our own land. From then on the Government has killed our hearts, our freedom to decide over our land. This happened in 1930 and was repeated in 1947, and, alas, Ocean Island is totally gone."

H Now, is that really the same ideas that you were expressing? A. In broad outline, yes. There are certain parts I do not quite understand here, but it certainly expresses the sense of shock that was felt by the people at the time, that the 1913 agreement had always been, to my recollection of how they used to express it, considered quite a fair one, but that they had not the same feeling about it. They had come to an agreement with the

A Company and they had a great deal to say as to how their money was to be spent afterwards, but in the 1931 agreement they felt that there had been a resumption - it is a different thing to a free agreement and I do not think that they had really believed that this was going to come about. When it did come about it was traumatic, I cannot express it differently.

B Q Now I am going to ask you about something quite different, that is, about Sir Murchison Fletcher's policy about the ownership of the phosphate. Was it your understanding that it was Sir Murchison Fletcher's firm policy to assert a Crown ownership of the phosphate? A. I have read that he did express his view that the Crown owned the phosphate. I have never discussed the matter with him, naturally - he would not have regarded me as anything more than quite insignificant.

C Q I see, so it<sup>is</sup> only what you have read about it really. A. It is only what I have read on the matter. I was a junior officer and he was the High Commissioner for the Western Pacific and also we were many miles apart from each other. I have read that he expressed the viewpoint and I have not only read it, but I heard it from Mr. Grimble too, that this was the view of Sir Murchison Fletcher. I doubt if it was Mr. Grimble's view.

D Q But he felt he had to abide by Sir Murchison's view? A. There was not much option, was there? I think he expressed his views as far as he could and he had done as far as he could to help the Banabans. I always found him personally very sympathetic towards the Banabans and I lived with him for a year in his house.

Q He was put in a very difficult position, was he not? A. Yes. He did what he could. He was a sick man at the time and he had amoebic dysentery and he fought for the Banabans, in my opinion.

E Q He did try quite hard to get them to agree to the 10 $\frac{1}{2}$ d. royalty, did he not? A. He did so, but I do not think he thought it was unfair at the time. What I am saying is in part of this Mr. Rotan appears to be rather hard on Mr. Grimble.

Q You do not agree with that part about Mr. Grimble? A. Not entirely, no.

Q The 10 $\frac{1}{2}$ d. had been discussed in London, had it not? A. I do not know these things.

F Q You remember when you spoke of the idea that the Crown owned the phosphate you told us that you had persuaded successive Resident Commissioners that the Crown did not own the phosphate. A. I said that we used to have talks about the subject and I expressed my view and they may have already held that particular view - I am not saying that my poor efforts had any effect on them, but I certainly have always expressed that view, not only on that, but on what, except for the Banabans, was a more important question, the question of the reef rights.

G Q You said when you were telling us about those conversations that the Resident Commissioners were not quite sure what the Secretary of State would say. A. Did I?

Q Yes. I suppose if he took a particular view about it that would conclude the matter. Is that right? A. If the Secretary of State did?

H Q Yes. A. The Secretary of State would no doubt have listened to the Resident Commissioner and the Resident Commissioner would deal through the High Commissioner with the Secretary of State. The relations between them

A I do not know, but all I can say is when I became Resident Commissioner my relations with the Secretary of State passed through the High Commissioner, but I cannot recollect an occasion on which the Secretary of State did not accept my viewpoint.

Q We have seen one or two examples in the documents where the Secretary of State did not agree. A. In the earlier days?

Q In the earlier days. A. Yes, maybe.

B Q Not in your time! A. The Secretary of State in my opinion, in my experience did not give orders. He made suggestions, shall we say?

Q As a matter of fact, he had asked to be informed about the royalty negotiations in 1947, had he not? Do you remember that? A. I think I have seen something in the bundles about that.

C (Continued on next page)

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A Q And then by an over-sight that was not done. A. No, I do not remember that part of it. If it is in the bundle then I would have seen it. You say he was not informed by an over-sight ?

Q Yes. A. Could be.

B Q If the Secretary of State asks to be informed about something before a final decision is made, or a final agreement is reached, I suppose he is reserving the right to make some suggestions or give some orders after he has seen what has been provisionally agreed ? A. In my time he would certainly make suggestions. I can only think of the question as to liquor, as to whether they would allow alcoholic consumption in the Gilbert Islands, and this matter went from me to the Secretary of State and he came back and said I might consider experience on Tanganyka and certain experience in West Africa and things, and he sent me correspondence on that so that I would be able to take all these factors into account. What I am trying to say is he did not say "No, you cannot do that" or "Yes, you do that", he said "I think perhaps it might be convenient if you took these factors into consideration".

C Q And did that tell you what you were thinking of doing ? A. It helped me a great deal as to what I was thinking of doing, because I saw what they had done in these other territories; in other words, they had legitimised or legalised the local tippie, as you might say, but not imported spirits, which I had not realised before.

D THE VICE-CHANCELLOR: Will you help me on one thing which has come up on a number of occasions earlier. In some cases the Resident Commissioner seems to have referred something to the High Commissioner and then the High Commissioner sometimes referred it to the Secretary of State ? A. That is so.

E Q On other occasions the Resident Commissioner has communicated direct with the Secretary of State sending a copy to the High Commissioner. A. I never occurred in my time, my Lord, not that I can recollect at any time. All the communication was from the Resident to the High Commissioner and from the High Commissioner to the Secretary of State. I should have thought the High Commissioner would have taken exception had a communication gone straight over his head to the Secretary of State.

F MR MOWBRAY: I think some of the communications my Lord is referring to were at a fairly early stage when communications were difficult ? A. Oh, that is very possible, yes.

G THE VICE-CHANCELLOR: The normal channel of communication, in your time at all events, was through the High Commission ? A. That is so, my Lord.

H Q From you to the High Commissioner and the High Commissioner, if necessary, to the Secretary of State ? A. Yes, my Lord. When Sir Alexander Grantham appointed me as High Commissioner he told me "Your's is a semi-autonomous command".



A Q When Sir Alexander appointed you as what ? A. I informed me that the Secretary of State had appointed me as Resident Commissioner.

Q When he appointed you to be what ? A. Resident Commissioner for the Gilbert Colony, he said "Your's is a semi-autonomous command" and I think that expressed it.

B MR MOWBRAY: Do you have Bundle 39 there, and would you go to page 111. You see the telegram from the Secretary of State to the High Commissioner of the Western Pacific, and he sets out the terms of the 1947 agreement and then at 5, at the bottom of the page: "In view of paragraph 4 of my telegram No.2 which asked that I should be consulted before any final settlement is reached, I should be glad to know the present position and, if settlement has in fact been reached on the above basis, whether you have consider its terms are satisfactory".  
C A. I am sorry, page 111 you say ?

Q I am afraid there are various page numbers at the bottom because it has been re-numbered at different times, and I see some of yours are falling out. A. 111 is a draft code telegram.

Q That is the one.

D THE VICE-CHANCELLOR: If you look at the bottom of that, the last four lines. A. Yes, my Lord.

E MR MOWBRAY: "In view of paragraph 4 of my telegram No 2 which asked that I should be consulted before any final settlement is reached, I should be glad to know the present position and, if settlement has in fact been reached on the above basis, whether you consider its terms are satisfactory." A. Yes.

F Q Then would you go to page 115, which is the reply: "I confirm that agreement has been reach between BPC and Banaban land-owners for transfer to former of 291 acres on Ocean Island at £200 Australian per acre and 380 acres at £65 per acre. Arrangements as paragraphs 2, 3 and 4 of your telegram also agreed. The matter was discussed between Grantham and Gaze in February when proposed terms regarded reasonable. Necessity for consulting you before final settlement was overlooked. Agreement was reached on 10th April and I regard terms as very satisfactory for Banabans", and then something else which I need not read. It looks there, does it not, as though that first telegram from the Secretary of State was a bit of a rap over the knuckles for not consulting him inthe way he had asked ? That was page 111. A. Yes, I am just reading it again, if I may. It looks as if that is saying "Why on earth did you not do this thing". That seems the English of it.  
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H THE VICE-CHANCELLOR: If it was a rap over the knuckles one would expect at the least the reply to include some expression of regret that it had been over-looked but it is just a flat statement that it was over-looked. A. Is there nothing here to say "I regret" ?

THE VICE-CHANCELLOR: I do not think so.

PROF. H.E MAUDE  
Cross-examined:

A MR MOWBRAY: No, there is not. A. It is very difficulty with the Secretary of State to know when he is rapping one over the knuckles or when he is not, because he is invariably polite.

THE VICE-CHANCELLOR: It would not have been very polite on the High Commissioner's part.

B MR MOWBRAY: I suppose Sir Alexander Grantham had been away from his headquarters, had he not, and I suppose that was a kind of explanation. A. If he had been away from his headquarters it would very possibly have been sent by somebody else.

C Q When the Secretary of States says "I want to be consulted before something is finally agreed" and then he is consulted and he says "That seems all right to me", or something like that, he is taking the responsibility, is he not? A. Yes, in a sense he is taking the responsibility. I do not know whether he would consider that he is taking the responsibility or whether he has advised and you have taken the responsibility. He certainly wants to be advised. Frequently I felt that he wanted to be advised of a certain position in order that he should be able to put to you all the factors in the case, but the ultimate responsibility very often lay on the man on the spot because he knew the local conditions not the Secretary of State. But there were occasions, admittedly, when the Secretary of State felt he had particular knowledge which the local person did not possess, and then he would -- he would never say "Do this", he would give a strong recommendation and one used to read between the lines.

D Q If you had asked him what to do, then you would really be throwing the responsibility on him? A. If you asked him what to do? It could be that you were going to take his advice, but there have been occasions when you felt very strongly but on those occasions I feel one would normally go back to him with a further statement as to why you considered that it would be better, under the circumstances, not to do this. It is always a difficult position with the Secretary of State and the High Commissioner, and also High Commissioner and Resident Commissioner, because of the distances between the two. If they could meet together and settle it over a table it is always so much easier.

E Q The negotiations the Banabans undertook in 1947 were very important negotiations from their point of view, were they not? A. Yes.

F Q The whole island was going to be covered, was going to be dealt with? A. I think so. That was my recommendation.

G Q That was your recommendation; in fact it was, as far as they knew, the whole island? A. Yes. You did mention there was some part, a minor part.

H Q Yes. Would you look at page 27 of yesterday's transcript, Day 24. Mr Vinelott asked you something about possible

PROF. H.E MAUDE  
Cross-examined:

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- variable royalties that went up and down, and then just above G he asked you: "What about 1947? Do you think you would have been better able to explain it to them then? (A) I think in 1947 they would have been able to understand that money did not buy as much as it did in 1940 or 1930, but I do not think they would have understood how market prices were fixed for phosphate". A. This is the first time that I had ever heard about this going up and down and I was rather at a loss to know what it all meant.
- Q I was really thinking about the Banabans' knowledge of market prices of phosphate. They had no knowledge about that, had they? A. Very little I think, very kittle about the world phosphate prices, no.
- Q You said that if you had been put in that judicial position in 1947 you thought one of the things you would have had in mind would be the prices of phosphate? A. I would have had very little knowledge; I would have obtained expert advice on that subject.
- Q Do you not think the Banabans should have had expert advice on that subject? A. Well, if it had been an an initio thing I would have given this matter some considerable thought, but they had made an afreement in 1940 and it seemed to be a question of the difference in the value of money between 1940 and 1947. This is what I had got fixed in my mind and I brought before Sir Albert Ellis. I felt that the Banabans, in their negotiations which were about to take place with the Phosphate Commission, should certainly take into account changes in the value of money.
- Q The Banabans had not had any advice in 1940 either, had they? A. No, but they were the ones that made a willing agreement between the two. They could have asked for advice but they did this between them and, so far as I knew, it was a fair free seller free buyer bargain between them. I had no reason to suppose that in the 1940 negotiations they were suffering from any particular disability, as it were. They had had other negotiations with the Phosphate Commissionrrs and they seemed to be quite successful.
- Q I am not asking these questions in criticism of you, Professor Maude, because it was not your job, was it? A. It was not my job, no.
- Q You came to talk to them about the pølitical settlement. A. Entirely, yes. In fact, I was told to kēep right out of the phosphate negotiations, that they were no concern of mine in 1947 when I went there to do the statement of intentions.
- Q You were told that, were you? A. I was told that if the matter was brought up, it was not my function to deal with that, nor was it within my competence, to be perfectly truthful to you. I knew very little about the phosphate negotiations. I was up at Tarawa Island, I flew down from Tarawa Island and All I knew about it was this question of Rabi and Ocean Island, which occupied all my thoughts.

- 12.00
- A Q Well, if you had been going to advise the Banabans about the other negotiations with the BPC, you would have wanted to know about phosphate prices and all kinds of things you did not know about; is that right? A. This is supposition, really. I have never been asked to interfere in any of these sort of negotiations. I was the Lands Commissioner and I dealt with native customs, on which I feel rather sure of myself; but
- B on the questions which you are mentioning I am not sure of myself, It is rather out of my competence.
- Q We will leave that. You said the Banabans could have had a lawyer in 1947. A. Oh yes, I am quite sure of that.
- Q And I noticed you stressed once or twice, when you were saying that - and I think it was about 2.15 or so yesterday, my Lord. No, Professor, it is not in the transcript because we have not got the afternoon's transcript yet, we have only got the morning. My learned Junior's note suggests that when you said they could have asked for a solicitor in 1947, you said that at a later stage they did ask for a solicitor and then you said "There would have been no objection to their having had a solicitor or advise at that stage of 1947". A. Yes.
- C Q I thought you perhaps laid a little stress on that and I wondered whether it would have been the same in Mr Grimble's day? A. That I cannot say. Mr Grimble did tell me that if they came to him he would seriously consider this matter, but he did not tell me whether he would or what he would have done about it. He really regarded me as A Cadet. He did not take me into his confidence on this particular question.
- D Q Did anyone approach you about getting a solicitor? A. Yes.
- E Q Will you tell us about that? A. That was Mr Rotan Tito. He approached me about the possibility of my getting a solicitor for the Banaban people. That would have been in Buakonikai. I was asked to attend a meeting at Buakonikai and to the best of my recollection Mr Rotan was sitting behind a table and he had a bag in his hand which he informed me contained Sovereigns, and he asked me to take this bag and, as I was going down on vacation in the not far future, would I take this bag with me down to - I forget, Australia or New Zealand- and send him up a solicitor. I think perhaps if you question him he will probably remember this question, I don't know.
- F Q Well, Mr Rotan could not remember it and that is why I am asking you. A. I do remember it quite well.
- G Q What happened next; did you take the money? A. I am not willing to swear that it was money, I never opened the bag I promise, it was sealed, but I took this rather heavy weight in a bag and I took it to my superior Officer, who was Mr Grimble, and I told him what had been requested of me, and Mr Grimble said to me "It is no function of yours as a Cadet in this Service to go taking bags of money about with you when you go on vacation. You are supposed to be recuperating, and if the Banaban people wish to obtain a solicitor they have only to come to me and the matter will be given every
- H

A consideration." I think I am repeating the words correctly, but, you know, it is half a century ago. But I think those were his words, and I took the bag of money back to Mr Rotan and I hope he will agree that I gave it back to him!

Q You said there was a psychological trauma -----

B THE VICE-CHANCELLOR: Just before that: when was this? A. This would have been just towards the end of my period as Lands Commissioner. That would have been 1932 about March, if I am correct in this; but it would be round about that date.

Q So this was after the resumption? A. Yes, my Lord.

C MR MOWBRAY: There is just one other thing I wanted to ask you, really, You started off your evidence with something about the relationship between the Banabans and the Gilbertese. Do you remember? A. In prehistoric times, yes.

D Q And a little later. Did you a few years ago prepare a paper about that? A. I think a good deal of it is contained in a paper on the Social Organisation of Banaba or Ocean Island, Central Pacific, which was published in the journal of the Polynesian Society in 1932. Is that the paper you had in mind?

E Q No, I was thinking of a paper - not a published paper, but one which you prepared, I think, probably to help the Banabans called the Relationship between the Banabans and Gilbertese. A. A, that was a paper I prepared, I think, both for the Chief Minister of the Gilbert and Ellice Islands Colony and for Mr Tabuke Rotan. I sent identical copies to them both.

Q Does it set out in greater detail your opinions and researches on that matter about the relationship between the Banabans and the Gilbertese? A. Yes, that was my intention.

Q Would you mind if we looked at that to expand your evidence about it? A. I have no copy.

F Q We will give you a copy. I had better check, before his Lordship looks at it, that this is the document you have in mind. Is this the one you were thinking of? (Document handed to the witness) A. Yes, except that it says I am a Lecturer in Pacific Studies?"

G Q Well, that is just Mr Macdonald's hand-writing. It is Pacific Studies.

THE VICE-CHANCELLOR: This is a copy of a document you prepared; is that right? A. Yes.

(Document put in and marked Exhibit P.7)

H MR MOWBRAY: I do not want to read the whole thing to you. Perhaps we could refer to it later as a fuller expression of your researches about this, but perhaps I could just read to you a couple of paragraphs starting at the beginning: "It is

PROF. HE MAUDE  
Cross-examined:

A understood that the relationship between the Banabans and Gilbertese was queried at the recent discussions in London" - which discussions would they have been, do you know? In 1968 would it be? A. I think so.

Q "... and that a single witness without professional qualifications, detailed knowledge of the two communities, or expert examination of the evidence, was called upon to testify on the matter. It is not surprising, therefore, that the answer allegedly provided was simplistic and inaccurate.

C "The view that the Banabans were Gilbertese was indeed uncritically accepted by myself during my early years of residence in the Gilbert and Ellice Islands Colony and it was only after detailed study that it became apparent that, like almost every community the world over, they in fact represented a racial mixture, in which the Gilbertese component was a relatively recent overlay on a basically non-Gilbertese stock; and that in any case the Banabans had never at any time formed a part of the Gilbert Islands, whether geographically, politically, or through social cohesion.

D "The question is, as indicated, a complicated one, necessitating the consideration of a number of historical, linguistic, anatomical, archaeological, cultural and political factors", and then you deal with those under various heads. A. Yes. When I said there it was a "relatively recent overlay" I did explain that by "recent" I meant 1650 AD.

Q Then you come to a conclusion on page 5. Do you see the first break on that page: "In this inter-locking world of the Gilberte Ocean Island and the Banabans, situated far to the west, had no part. Forgotten in Gilbertese tradition, unrecorded in the Gilbertese genealogies, it may be doubted if a single Gilbert Islander was aware of the existence of the Banabans at the time of their first contact with Europeans. Ocean Island was no more part of the Gilbert Islands than Greenland was part of Norway a century or two after the Scandinavian voyages had ceased. Like Nauru, it was a dead-end reached by occasional driftaways from the Gilbert Islands, but from which there was no return. It would seem honest to recognise that Ocean Island was, in fact, incorporated as part of the Gilbert Group solely by a unilateral decision on the part of the British Government in 1900, subsequent to and consequent on the discovery of lucrative deposits of phosphate on the island". You say you sent that to both sides? A. It seems to be much the same, but there was one document which I did in a hurry and I asked to have withdrawn, and a second document which I sent to Mr Tabuke last year, I think. Which of these two it is I cannot tell. Perhaps Mr Tabuke will be able to tell us which this is. It is just that some of the statements seem rather hyperbolic, as it were, and more categorical than I normally use as a historian in my qualifications of every statement that I make. But by and large what you have read I do not think I would have any quarrel with.

A THE VICE-CHANCELLOR: What was the approximate date on which you wrote this document ? A. That is what I was questioning, my Lord; whether it is the one that I sent last year or the one that I did in 1967 or 1968.

Q We know that it is after December, 1967, because you refer to articles published in December, 1967. A. Yes; therefore it would be 1968 possibly.

B Q Probably 1968 you think ? A. Or it may be the one last year, which is the one I asked to supercede this one, which certainly must be in your possession.

Q So it is either 1968 or 1975. A. Yes. Which of these it is I do not know. But if it is the 1968 one it has been superceded by further investigations and research by myself.

C MR MOWBRAY: It is the earlier one you have got in your hand. A. Could we not have the later one ?

Q Yes we can, but I do not think we have any copies. Let me put this to you and then it can be marked as an exhibit as containing your revised views, and then we can look at it later.

D A. You will regard that it was a draft which, after further investigations I wrote far more carefully. This is the draft which was produced for Professor Davidson at his request, and when I came to be asked to make a carefully formulated document I superceded this thing, and I would not like to take an oath to the accuracy of this. But if the second one is available ---

Q Let us hand you what I think is the second one to see if you think so too. (Document handed to the witness): A. Yes, I recognise the word autochthones.

E THE VICE-CHANCELLOR: It is also in the first one, the last paragraph on the first page. So that second document is your 1975 revised version, is it ? A. 1975 I think is the right day, my Lord.

Q And that superceded the first one ? A. This was only a draft for Professor Davidson.

F THE VICE-CHANCELLOR: Then the second one had better be marked P.7A. When it has been marked let it be delivered up to Mr Mowbray who can arrange for copies to be made. Is that the proper course, Mr Mowbray ?

G MR MOWBRAY: Let it be delivered up to my instructing solicitor, my Lord.

THE VICE-CHANCELLOR: It will be delivered up to you and you can see that whatever necessary is done.

H MR MOWBRAY: So be it, my Lord. Those are all the questions I want to ask, Professor Maude, thank you. A. You do not want to ask me about the truth of any of this ?

Q Well, you have said that is your revised opinion and we have got it and we will have copies and look at it later, if necessary.

A MR VINELOTT: I am afraid I have not got copies of either the first one or the second one and I shall want some time to consider them. I do not know that I will finish my re-examination before the adjournment, but if copies could be handed to me as soon as they are available -----

THE VICE- CHANCELLOR: If the document is handed down now there should be time to get copies made quite speedily; there is not an awful lot of it.

B MR VINELOTT: No, but it is quite a lot to digest.

Re-examined by MR VINELOTT:

C Q Professor Maude, you were asked some questions about a passage in Mr Rotan's evidence and you were asked whether you agreed with it, and you said, I recollect, you did not agree with everything in it. I am going to ask you to look at that passage again and say what you do not agree with. It is Day 7 page 7. A. Yes, starting at the bottom.

D Q You are quite right, starting at H: "Now I am going to ask you something different. When you came back from the Gilberts in 1926 Mr Grimble was the Resident Commissioner. How did you think of Mr Grimble then? (A) I think of him as I think of Mr Elliot, the Resident Commissioner who looked after Banabans, and also that he is the one to look after the interests of the Banabans. But something happened between us. This particular thing came about over the acquiring by force, in a forceful way, our 150 acres. From then on I looked upon him as one who had betrayed the Banabans". First of all, do you think that from then on, 1931, so long as Mr Grimble remained on Ocean Island, Mr Rotan looked upon him as the one who had betrayed the Banabans? A. Do I look upon him as one?

E Q Do you think that from 1931 on, while Mr Grimble remained on the island, Mr Rotan regarded him as one who had betrayed the Banabans? A. That is what he says here, and that is what would have been my opinion, yes.

F Q What about the other Banabans. Did they have the same opinion? A. The other Banabans! They were very upset about the resumption in 1931, yes. Whether they regarded him as a betrayer; it seems to me a very strong expression to use. They were disappointed.

Q What about the end of the 30's, do you think the attitude of Mr Rotan was the same then? A. This would be before the war.

G Q Just before the war. A. Towards Mr Grimble you mean?

Q Yes. A. I do not think he has ever, so far as I know, changed. Yes, it would have been exactly the same.

H Q What about the other Banabans? A. I think many of them have forgotten all about the thing by then. I do not think they kept up what I might call their animosity against Mr Grimble to the same extent that Mr Rotan did, because, if I could express the word, he appeared to have an idee fixe.



- A Q Do you think that idee fixe was an idee fixe in the mind of any other Banabans to the same extent? A. It could have been, but I do not know. Mr Rotan was usually the Banaban spokesman and it was very hard, but when I was on the Lands Commission I was really part of the Banaban community in a sense but at the later stage one felt less so. I was never in the same touch with them.
- B Q What about after the war in 1947? A. His attitude towards Mr Grimble in 1947, Mr Rotan's attitude?
- Q Yes. A. I do not remember him expressing any attitude towards him in 1947.
- C Q Let us go on to the next paragraph: "What do you say about your power to hold on to your land after that happened?" (A) I firmly believe that in Britain (literally he said 'in Britain') he would not do such a bad thing to the Banabans. It is because of this that I asked to come to see the High Commissioner in Fiji, and also even to come as far as here, because I felt that it could possibly be that it is only these people who come out to our place that do these unfavourable things to us, and our search and fight for the truth has brought us this far". A. That was a point which I felt was a bit unfair, one of these points, because here he is saying that he asked to come to see the High Commissioner, which is perfectly true, but it appears to be blaming Mr Grimble for that the fact that he was not able to see the High Commissioner, which is not in fact the case.
- D Q Why do you think it is unfair? A. Well, because it was Sir Murchison Fletcher who said he was not to come down and not Mr Grimble.
- E Q Let us come on to the next one: "When the land was taken in 1930 did that affect your feelings about your power to hold on to the land, or your authority to hold your land?" (A) I think I have made it clear what was in my heart about how we stood under the 1913 agreement. Under that 1913 agreement we had the freedom of choice whether to give our land or not to give our land. Each landowner had that right to decide. I think that is freedom, as we know it. And this was, of course, also in harmony with the one Britain sent over, Mr Elliot, who arranged for this". Is there anything in that passage you would like to comment on? A. He is expressing a common sort of view that I heard from other Banabans generally.
- F
- G 12.30  
Q Then he goes on: "At that time the BPC, the company, stood by itself, and the Government also stood by itself between the company and the people. In 1930 the company was not there - this is what Mr Rotan literally says; it has the sense of - the company was not acting in any way, but the Governor was acting for the company and he did not allow us the freedom on our own land. From then on the Government has killed our hearts, our freedom to decide over our land. This happened in 1930 and was repeated in 1947, and, alas, Ocean Island is totally gone". What about that last sentence, "This
- H

A happened in 1930 and was repeated in 1947..." Would you agree with that? A. No, because it was an agreement entered into between the Banaban people. If this was meant to be all a criticism of Mr Grimble, it is scarcely anything to do with him.

B Q I do not think it is intended to be a criticism of Mr Grimble, but what I want you to tell his Lordship is whether you agree with Mr Rotan that what happened in 1930 was repeated in 1947? A. Oh no, it was a very different affair. I think Mr Rotan has made a mistake there.

THE VICE-CHANCELLOR: I think you must read the next sentence aswell, where I think he explains.

C MR VINELOTT: I am going on to that, my Lord: "I knew from then that even if I refused to sign authority has been given in order that powers could be exercised to remove my land from me. Of course, even then I have not stopoed to complain". What do you say about that? A. I do not know what authority had been given that powers could be exercised to remove my land from me"

D THE VICE-CHANCELLOR: Professor Maude, what I understood by what Mr Rotan said then was this: that in 1930 the land was taken by compulsion. In 1947 the land was not taken by compulsion but hey knew that compulsory powers existed and even if they refused to sign the agreement it could be taken from them by compulsion. That is the sense which I think Mr Rotan was intending to convey. A. Yes, I think this was at the background there was always this threat.

E MR VINELOTT: Do you think that was in the minds of the Banabans in 1947, that they feared the exercise of compjlsory powers? A. They never expressed it to me. I only went there in 1946 for a time and I kept away from these discussions.

F Q But you know the Banabans - I was going to say as well as anybody, but you know them quite well. Can you express an opinion about it? A. They would have expressed their opinion to Major Holland undoubtedly if they felt this and would have asked if this was going to happen to them, and Major Holland would have reported it, in my opinion, or before Major Holland Major Kennedy, because that was the function of the Banaban elfare Officer, to hear their complaints and their fears and apprehensions, and where he could not deal with them himself, to refer them to the High Commissioner for help or reassurance from him. But in this case, so far as I am aware, neither Major Kennedy nor Major Holland ever got in touch with the High Commissioner and asked whether such an event could take plade.

G THE VICE-CHANCELLOR: The Welfare Officer, then, was to report to the High Commissioner, not to the Resident Commissioner? The Resident Commissioner was in Tarawa. A. Tarawa, in charge of the Gilbert and Ellice Island Colony.

H

QR VONELOTT: You saw them pretty shortly after Mr Maynard, about a month or so. A. Yes.

A

Q And you spent three days discussing the Ocean Island settlement question. A. Yes.

B

Q During the course of that period of discussion did you form any impression as to whether in their meetings with Maynard they had been acting otherwise than freely ? A. Oh perfectly freely with Mr Maynard, yes. They had the idea at that particular time of going back to the boundary business of Ocean Island and this is the matter which they seemed to be very interested in.

C

Q You were then asked by my learned friend some questions about Sir Murchison Fletcher and his view that the minerals belonged to the Crown and you said you doubted whether that was Mr Grimble's view. A. Yes, I doubt it, but he had never discussed it with me and I could not be sure on that point.

D

Q Then my friend went on to put a question I think in these terms: he (that is Mr Grimble) was put in a difficult position? and you answered "Yes". I just want you to try to explain to me what the difficult position was, or what the difficulty was. A. I felt that Mr Grimble's difficult position was that he had a great affection for the Banabans, he wanted to do his very best for the Banabans, and I felt that the High Commissioner was not altogether in sympathy with Mr Grimble's efforts towards the Banaban people. So there he was, getting blamed by the Banabans and blamed by the High Commissioner.

E

W You went on to tell my Lord that Mr Grimble thought that the 10½d royalty that was fixed in 1931 was fair. A. So I understood; he did indicate that to me, yes, that in his opinion it was a fair deal.

F

Q Was that an opinion which he formed on his understanding that the minerals belonged to the Banabans or on the alternative basis that the Banabans had no minerals ? A. I am sorry, on the alternative basis ?

G

Q Was that view of Mr Grimble's that the royalty of 10½d was fair a view which he formed on the basis that, as he thought, the minerals belonged to the Banabans, or was that wholly on the basis of Sir Murchison Fletcher's view. Do you follow me ? A. Oh, the first of those.

H

Q You were asked some questions about the normal channel of communication Resident Commissioner to Secretary of State and you said "The normal channel of communication, during my time, was Resident Commissioner to high Commissioner and High Commissioner to Secretary of State". Do you remember that ? A. Yes.

Q Can you just explain to me what you mean by "during my time". Are you talking of your time as Resident Commissioner or of your time with the Government ? A. I was at that time thinking of my time as Resident Commissioner and how struck I was by the courtesy of the Secretary of State in his commun-

- A  
ications with me. But I did not find it, really, any different when I was Secretary to Government and had to handle the correspondence between the High Commissioner that came through the Secretary of State to the Resident Commissioner.
- Q You did not find it any different? A. I did not find it any different to any great extent. Occasionally personalities differed in the way in which they phrased things, but, generally speaking, it struck me that the Secretary of State was advising rather than commanding, if I can express it in that way.
- B
- Q Was that true of the whole of your time in Government, or part only of that time? A. I think it got more and more so as time went on.
- C
- Q You told my Lord that the Banabans could have had a lawyer in 1947 and you told my Lord about an occasion in 1932 when the Banabans, or Rotan, came to see you with a request to instruct a lawyer. A. Yes.
- D
- Q Between 1932 and 1947 had the question of obtaining a lawyer, or seeing a lawyer, come up again? A. It came up again through Major Kennedy. He had a discussion with Rotan on this question of a lawyer and suggested that if they purchased the island of Wakawa they could move down to Fiji where they would be able to obtain a lawyer. That is the only occasion on which I recollect the lawyer business came up.
- E
- Q When you were telling my Lord about the incident in 1932 when Rotan came to see you, you told him that he gave you a bag of money, or a bag of something, and you went to see Mr Grimble and you said Mr Grimble said to you "If the Banabans want a solicitor they have only to come to me and it will be given every consideration" and then you said you gave the money back to Rotan. Can you tell my Lord, when you gave the money back to Rotan did you tell him what Mr Grimble had told you? A. Oh yes.
- F
- Q It was suggested by my learned friend that the Banabans in 1947 had little knowledge of world phosphate prices and I think you agreed. A. Yes.
- G
- Q Did they have any opinion as to whether it was valuable or not? A. Whether phosphate was valuable? Yes, they thought phosphate was very valuable.
- Q How valuable? A. In monetary terms? They never expressed it in monetary terms; they thought they were sitting on a gold mine, that is all I could say.
- H
- Q We know that in 1928-30 £5 a car was a figure which was being bandied around. A. Yes. This would be the people who had been down on ships to Australia. I had met several of them on these ships, and it is perfectly true that they were crews of the ships. One called Timothy travelled up with me in 1929 and he was taking a correspondence course in accountancy in Melbourne in his spare time. These are the sort of people who brought up these stories about how they saw bags of phosphate being sold for £5. Unfortunately they had not taken

into account the cost of production and the transportation and anything else.

A

Q Was that a figure mentioned in 1947 or 1946 ? A. No, I never heard that.

Q That was earlier ? A. It would be difficult for me to hear because I was only there such a short time and not dealing with that question. It would be brought up, I think, with the Banaban Welfare Officer if it had been brought up with anybody, not to me.

B

Q You were asked a question about the 1947 agreement, which is in the PD bundle page 103. You have seen this. A. Yes.

Q You see it is made between the Banaban landowners of Ocean Island on the one hand and the British Phosphate Commissioners on the other ? A. Yes.

C

Q And if you turn over, you will see it is signed by a number of people, including Rotan, for the Banaban landowners of Ocean Island of the other part. A. Yes.

Q Do you think that that list of persons represented all the landowners who owned land in the area that was being disposed of ? A. Do you mean were there any dissentients who did not sign ?

D

Q No. Look at that list. You see a list of 21 names. Do you think they were the only people who owned land in the area ? A. Oh no, I would not think so; they were signing on their behalf.

E

Q On whose behalf, do you think ? A. I should say on behalf of the landowners.

THE VICE-CHANCELLOR: You have not forgotten clause 3 ?

MR VINELOTT: I am much obliged, my Lord. (To the witness): Look at clause 3, Professor, still on page 103. A. Yes, that the phosphate land should be returned to the Banaban landowners as soon as this can take place without inconvenience or prejudice.

F

Q You have been asked quite a lot of questions about Banaban custom and one of the answers you gave to my learned friend yesterday was that when the Banabans talked of land being owned or phosphate being owned by the community, that meant the owners of the land on Ocean Island. A. The owners of the land on Ocean Island, yes, and that land should be returned to the owners.

G

Q When you talk of the community owning the land, do you mean the people who were there at the time, or people who are there plus the people who are going to own the land in the future ? A. It is a continuing thing with land. It never ends. It comes from the ancestors to the present occupants of the land, to their children and their children's children in perpetuity.

H

A THE VICE-CHANCELLOR: The difficulty about that, or a difficulty,  
is you can hardly regard the phosphate on Ocean Island as being  
owned partly by people who died centuries ago, partly by  
those who are now living and own land, partly by those who  
are living and do not own land at the moment but will in the  
future and partly by generations of unborn people in the  
future. I do not imagine "being owned by the Banaban community"  
means being owned by all those dead, all those living and all  
those yet to be born" ? Or do you mean that ? A. I understand  
it is going into a fund which is either going to be used for the  
purpose of future people as well as the present, or else, in  
the case of the Provident Funds, for instance, it will be used  
for the purchase of fixed assets for them, which will be even  
better for the future generations than the present generations.

B Q I follow that. That is what is being paid for the phosphate.  
C Before there is any question of payment there is a question of  
contracts being made for the sale of the phosphate and you  
are being asked the question: "Now who owns this phosphate?  
Who are the people with whom you have got to strike a bargain  
for selling it to the Phosphate Commissioners?" If you say  
"It is owned by the Banaban community", is that to say the  
Banaban community means, not only those now living who own  
land, but also those now living who in due course will own  
land, and also those who will be born in the future ? If that  
D is so, one then has great difficulty in deciding who is to  
strike the bargain about the sale of the phosphate if that  
is what is meant by "the Banaban community". A. Yes.

E Q Do you follow the question ? A. I think I do, yes: as to  
whether the entire population of Banaba should sign the document  
of this nature, or only the particular landowners in the  
part that is being sold.

F MR VINELOTT: My Lord is pointing out it is not just a question  
of the entire population because there would be the unborn  
as well. Perhaps we can get at it in this way; suppose that  
the existing landowners at a particular moment of time of a  
particular area of land are all adults. In your view, would  
it be consistent with custom that they should dispose of the  
right to mine phosphate and divide the money up amongst  
themselves without keeping any back for future generations ?  
Would that be consistent with Banaban custom in 1931?  
A. In 1931 ? That a few people could have alienated a  
portion of Banaba without the rest of the Banaban people ?

G Q Yes. A. Well, I realise the legal differences, but I do not  
think that the differences really exercised the Banabans at  
the time. They seemed to regard it that the people who were  
concerned in the new resumption of an area would be the  
people who normally would sign it. On the other hand, you  
can see people who have signed these documents who have no  
particular land in that area. I do not think this consideration  
seems to have come into the concept. I do not remember it  
ever being discussed. I hold no particular views on the subject  
myself as to whether Banaban phosphate cannot be disposed of  
H bit by bit, as it were, but must all be disposed of at the  
same time.

Q I am not sure I made my question clear. Let me start with

A an individual who owns a piece of land. Would it be consistent with Banaban custom in 1931 for that owner to dispose of the right to mine the entire phosphate on his land in exchange for a payment that went to him alone ? A. No, I would not think that would be consistent, no.

B Q Would that have been, from your Banaban experience again from discussions in 1931, consistent with Banaban custom at an earlier date, let us say in 1913 ? A. In 1913 I think it was done. Whether it was consistent with Banaban custom in 1913 I would have grave doubts, but I do recollect that on many occasions when we were settling disputes we used to go right to these phosphate dug out areas and we would certainly come across a piece of land which had not been disposed of and was standing up, as it were, in the middle of a pinnacled area and was practically useless to the landowner, but he did not want to dispose of that particular piece of land for some reason. But I do not think I learned of any custom to the effect.

C Q We seem to have reached this position, that in 1931, and possibly in 1913 also, an individual Banaban could not dispose of the phosphate on his land and take the proceeds and put them in his own pocket, because that would be inconsistent with Banaban custom. That is what I understand you to say.

D MR MOWBRAY: This is not really proper re-examination.

MR VINELOTT: I am merely summarising what he has said.

E THE VICE-CHANCELLOR: That is certainly how I understood it. So far in this particular question I thought Mr Vinelott was trying, in a single sentence, to say what he had got so far. There does not seem to be anything improper in the question so far, but all your rights will be reserved Mr Mowbray. You can put the question again at 2 o'clock, Mr Vinelott.

(Adjourned for a short time)

A2

EVIDENCE **25**  
(A.M.)

1971 R. No. 3670

IN THE HIGH COURT OF JUSTICE  
CHANCERY DIVISION  
GROUP B

Royal Courts of Justice,  
Thursday, 1st April, 1976

Before

THE VICE-CHANCELLOR

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ROTAN TITO

and

THE COUNCIL OF LEADERS

-v-

HER MAJESTY'S ATTORNEY GENERAL

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A IN THE HIGH COURT OF JUSTICE  
CHANCERY DIVISION  
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Thursday, 1st April, 1976

B

Before

THE VICE-CHANCELLOR

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ROTAN TITO

and

THE COUNCIL OF LEADERS

-v-

C

HER MAJESTY'S ATTORNEY GENERAL

-----

D

(Transcript of the Shorthand Notes of The Association of Official Shorthandwriters Limited, Room 392, Royal Courts of Justice, and 2, New Square, Lincoln's Inn, London, W.C.2.)

E

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MR. W.J. MOWBRAY, Q.C., MR. J.R. MACDONALD, MR. L.A. TUCKER and  
MR. C.L. PURLE (instructed by Messrs. Davies, Brown and Co.)  
appeared on behalf of the Plaintiffs.

F

MR. J.E. VINELOTT Q.C., MR. P.L. GIBSON and MR. D.C. UNWIN (instructed  
by the Treasury Solicitor) appeared on behalf of the Defendants.

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EVIDENCE

G

DAY TWENTY-FIVE

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H

A MR. MOWBRAY: My Lord, there are some corrections to corrections in evidence ay 24 (AM). On page 4 just above D in the middle line of the paragraph there it should be "Broken Hill South", not "Hills".

At page 5 just below B at the end of the paragraph it should read: "I think what I heard was 'which is out of kilter', not "out of tune".

THE VICE-CHANCELLOR: And I used that word at C.

MR. MOWBRAY: Yes.

B THE VICE-CHANCELLOR: It is actually the correction I made in Day 23.

MR. MOWBRAY: Then just below E there is a paragraph beginning: "Page 40 there is a slip". That should have been attributed to Mr. Vinelott, so one has to insert: "MR. VINELOTT" there.

C In fact just above that there is a paragraph beginning "I am told there is another" and that should also be attributed to Mr. Vinelott. The following remarks attributed to me further down the page should also be attributed to Mr. Vinelott.

THE VICE-CHANCELLOR: You were running on with all those, were you, Mr. Vinelott?

MR. VINELOTT: Yes.

D MR. MOWBRAY: On page 7 there is a spelling mistake just about C where there is reference to two islands. It should be "Kuria". It occurs again two lines later at the end of the line.

MR. VINELOTT: My first correction is on page 7 just below the second Kuria correction, in the third line on, which begins: "introduce this custom" and then it should be "te bowl." He had referred to that custom a bit earlier.

E In the question beginning at F the last word of the question should have been something like "land holding", not "retention". It must have been something of that nature.

THE VICE-CHANCELLOR: Let us make it "land holding".

F MR. VINELOTT: At page 9 in the last line of the answer at D delete the words "stock pile" and insert the word "babai". They are pits. Perhaps the witness can be asked about that in the examination.

MR. MOWBRAY: We will ask him in cross-examination.

MR. VINELOTT: At page 10 at G in the fourth line of the question delete "Mipanau" and insert "Nikanau".

G At page 11 in the second line of the question at B the reference is not to P.17 but to D.17.

At page 18 in the question just below D it should read: "...you went to Tarawa to the islet of Betio". Tarawa, as the witness has explained, is a sort of necklace of islets round a lagoon.

H My instructing solicitor has prepared a brief summary setting out simply the periods that Professor Maude spent on Ocean Island and on Rabi.

THE VICE-CHANCELLOR: That can be attached to D.17 and we will call it D.17A

(Table marked D.17A)

MR. VINELOTT: We will prepare a similar one for Mr. Macdonald which will in due course become D.17B.

A THE VICE-CHANCELLOR: Mr. Mowbray, I take it this is simply information compiled from D.17 and does not require formal proof.

MR. MOWBRAY: No. I think it is compiled from that and what the witness has said.

B PROFESSOR HENRY EDWARD MAUDE: recalled  
CROSS-EXAMINATION BY MR. MOWBRAY CONTINUED

C Q Will you look at the transcript of yesterday's evidence, day 24 AM. (Copy handed to the witness). Will you turn to page 9. This is something you probably heard us discussing. Do you see, just above letter D, the end of the answer reads: "I do not think there has ever been any question of that even to the digging of the pits for the sort of" - something - "that they build." What should that something really have been? - "Bob" something? A. Babai - that is the form of coarse taro which they have in the Gilbert Islands.

Q Coarse kind of ....? A. Coarse kind of taro - colocasia esculenta, I think it is, but I cannot remember for sure.

Q It is a kind plant, is it? A. Yes, it is a plant.

D THE VICE-CHANCELLOR: You said in the answer "the digging of the pits for the sort of babai that they build" - if it is a plant, you do not build it.  
A. If I said "build" I made a mistake.

Q No, what should it have been? A. They dig pits for growing the taro in in the Gilbert Islands, not on Banaba.

E Q So it should be "digging of the pits for the sort of babai that they grow".  
A. Yes.

Q "Grow" instead of "build" - would that make sense? A. Yes, because the babai will only grow on a water basis, so it will not grow on the surface so that the pits are dug down to water level.

THE VICE-CHANCELLOR: I think "grow" instead of "build", Mr. Mowbray.

F MR. MOWBRAY: Yes, my Lord.

G Q Thank you, that has cleared up that little mystery. Now, you remember we were going to look at a couple of photographs yesterday. I think we have got them out now. Will you take this bundle and look at the photographs numbered 3, 4 and 5. (Bundle of photographs handed to the witness). Would you tell us what is on the back of those photographs? A. "1901, early workings"; "1901, three early workings"; "1907, early workings."

Q They show a considerable depth of workings, do they not? A. Yes, they do - at least 1907, certainly.

H Q And they would be before the P & T deeds started to be granted. A. I would say yes, because they would be the actual purchased land by Sir Albert Ellis, some of which he purchased, I understand, before the Colony was declared - if I am right.

Q You are using "purchased" with inverted commas, I can tell from the way you say it. A. Well, because later on it was denied, was it not, whether it was purchased or not purchased. Sir Albert Ellis maintained he had purchased the freehold of the land and I think it was held in question.

THE VICE-CHANCELLOR: 1901 would be before the P & T deeds, but 1907 ..?

A

A. No, that was after.

Q That was after the P & T deeds? A. Yes.

MR. MOWBRAY: I beg your pardon.

THE VICE-CHANCELLOR: The P & T deeds started in 1903, I think.

B

MR. VINELOTT: I think what my friend said - it was merely a slip - was that he referred to 1902 and that may be what the witness had in mind.

MR. MOWBRAY: Yes.

THE WITNESS: It is in my memorandum, I think.

C

MR. MOWBRAY: Yes. I was taking a false point there.

THE VICE-CHANCELLOR: Photograph No.5 is 1910, is it not?

MR. MOWBRAY: Yes.

THE VICE-CHANCELLOR: What was on the back of photographs 4, 5 and 6?

A. Shall I read them again?

D

MR. MOWBRAY: Yes. A. Photograph 4 says: "1907, early workings." Photograph 5 - did you say photographs 4, 5 and 6?

Q I said 3, 4 and 5, I think. A. No. 3 says "1901 - three early workings".

Q Now will you take bundle 4 and turn to the last page. This is a P & T deed. It is page 191 of the bundle. A. With the letter 'B' at the top?

E

Q Yes. That says: "This deed is to record that in consideration of payment by the Pacific Phosphate Company, Ltd. of London and Melbourne, to the undersigned Nei Ema, a native of Ocean Island, the sum of £5 sterling, payment of which is hereby acknowledged, the said native does hereby sell to the said company all the coconut trees, pandanus and all other trees now growing, or that shall be grown, and all the rock and alluvial phosphate that may be found (with the right to remove and ship the same within the next ten years on that piece of land situated at Buakomikai, Ocean Island, the dimensions being as described in plan on back of this deed." Then it gives the area. There is no limit on the depth that the BPC could dig, is there? A. No, I think not.

F

Q A lot of those deeds were granted and they did not seem to think there was anything wrong with the landowner granting that kind of right to the BPC. A. Who is "they", may I ask?

G

Q The landowners who granted those deeds. A. The landowners who granted them?

Q Yes. A. They certainly granted them, but not, if you will follow my remark, I merely said that in 1931 they expressed the opinion that it would be appropriate if the phosphate was considered to be at that time held in common by the island. But I never denied I was fully aware of the fact that they had granted many lands previous to that and they had dug down, particularly when they got the machinery to do so, well below.

H

Q I think you said that the very people to whom you were talking probably had granted some P & T deeds. A. I would say that was quite possible, yes.

- A Q Is this what they were saying to you in 1930 or 1931 or 1932, that it would be a good idea if the community as a whole got the benefit from the phosphate?  
A. My conception was that the idea had come about after 1913 rather than before 1913.
- B Q But have I got the conception right: was it more a question of "It would be a good idea if this were done with the royalties in future" rather than a question of "The landholding custom is such and such"? A. It surely had already, to a certain extent, been done in the 1913 Agreements. Could I again look at my memorandum, perhaps?
- C Q Please do, yes. The 1913 Agreement is in paragraph 8. Is that a help?  
A. Yes, at (c) I think there was a royalty of 6d. a ton on phosphate shipped which was to be divided up to form a Banaban fund and this to be used for the benefit of the existing Banaban community in any way which might be recommended by them.
- Q That was during 1913 and during 1914? A. Yes, and after that it was to be distributed among all Banabans who leased land to the Company in the proportions recommended by themselves. This really I am referring to as in 1931 they considered - well, appropriate - they had no objection to that then.
- D Q Then in the second (b) in paragraph 8 of your memorandum, that was being divided among the landowners, was it not - the Banabans who leased land to the Company? A. Yes.
- Q In the proportions agreed by themselves? A. Yes.
- Q And you say that was an appropriate method? A. Because in 1931 it was again changed and it was divided out among the whole people.
- E Q Under the lease it was and under the Ordinance it was not, you remember? A. It was not. When I spoke to the people it was subsequent to that time, it was fresh in their minds. I did not mean, if I ever had expressed the opinion that in 1905 and 1910 that they had not leased land on an individual basis or sold land on an individual basis. I did express the opinion, I remember, that if they had actually sold land completely this would be absolutely contrary to native custom, but to lease land would have been a different matter. I merely said that they did mention to me that they considered that if they had leased land in the early days they had no idea how deep the phosphate was going to go at that time.
- F Q That would have been the very earliest days, would it not? A. In the earliest days, yes. Later on, presumably, I do not know to what extent they were leasing land, but they certainly leased land which went down further than that. I think if they were offered inducements sufficient they would, as I would consider, break their own customs to do so, but I did not suggest that this was an immemorial Banaban custom at all, but merely was an expression of an opinion that what had been done by, shall we say, the Government was not inappropriate under the circumstances.
- G

11 am

H

- A Q I follow, thank you. That is what I was trying to get at really. Just to finish this part about the customs and the title, have you got there the P.D. bundle? Would you look at page 103. This is the 1947 Agreement.  
A. That is the final one of the lot.
- B Q There was another one in 1973 which dealt with some operating land, some land that had got missed out. You did not know about that one. Anyway, this was the one in 1947 that you thought was going to cover the whole island.  
A. Yes. It was my recommendation which should finalise everything.
- Q Do you see that it says it is made between the Banaban landowners of Ocean Island and the British Phosphate Commissioners? A. I see that.
- Q And at the end on the next page it is signed by Mr. Maynard for the British Phosphate Commissioners and then by a dozen or more Banabans for the Banaban landowners of Ocean Island. A. Yes.
- C Q So it looks as though it was the landowners who were granting the phosphate rights in 1947? A. The landowners? What do you mean?  
Q Yes. A. The Landowners to this particular land, I suppose.  
Q Yes. A. Yes, well ....
- D Q You see the thought that is in my mind, that if the community owned the phosphate ...? A. But this concerns two things too, does it not? It concerns the surface rights as well as the phosphate. You mean that there should have been two agreements, one for surface rights and one for phosphate rights.  
Q If the community owned the phosphate you would think there would be a grant by the community of the phosphate rights.. A. Perhaps legally. I do not think it ever occurred to the Banaban people.
- E Q No, well ---? A. But it is a legal point which I agree with, but I do not think that they had ever thought it out like that. But in any case by 1947 their conceptions may have been very different to their conceptions in 1931.  
Q Yes. I was going to ask you about that. You said that in 1931 the land was used for subsistence. A. Hardly by then I think, it was beginning to change then. I forget the exact date on which copra ceased to be exported for instance from Ocean Island, which might be the date at which we could take subsistence as having ceased, but I think it was about 1913, was it not?
- F Q We do not know, but at any rate when the Banabans went to Rabi they still had a great sentimental interest in their land but their business interest was really a money interest, was it not? A. They had changed from a predominantly, shall we say, or partially subsistence economy to a mainly monetary economy by that time.
- G Q Do you think that by 1947 the landowner might have been by Banaban custom considered the owner of the phosphate under his land? A. This is a point which I thought I brought out in the examination in chief, that I felt that it was a matter for ascertainment at this time, and I have strongly supported at all times that as the society changes customs should change too, and it may very well be that by now the Banabans regard the phosphate as individually owned or owned by some other method than it was in 1931, because custom is continually changing, and I would hope that it was not going to stay still because if it was it was going to be an incubus on the development of the community.
- H

- A Q When you say "by now" do you mean by 1976 or by 1947? A. It seems to me that they really became more developed onto a monetary basis when they went to Rabi Island.
- Q So what you are saying would date back to 1947? A. Yes.
- B Q Or a little earlier, when they arrived. A. When they arrived. I would say it is continually changing all the time. If one could predict for another ten years I would say it would be wholly on a monetary basis except for the land on Rabi, which may again produce money. It would not be so much for food as for the sale of copra on the market, although a certain amount is used for gardening of course, as with us.
- C Q There is one thing I really should ask you about and perhaps it confirms what you have been saying this morning. Would you again look at bundle 39 and at your despatch which starts on page 89. Do you remember this is the despatch in which you forwarded to the Acting High Commissioner the copy of the final statement of intentions of the Government. We looked at a bit of it before. Look at paragraph 9 on page 90. That says: "Regarding royalties (whether new or already invested in the Royalty Trust) the Banaban argues, as he has always done, that all under surface rights belong absolutely to the owners of the surface rights and that the Government has no right to withhold his royalty payments, which should be paid to each individual landowner and not diverted to communal use." Is that what the Banabans were saying in 1947? D A. I would not say all of them, but a large number of them, and a greater number of them than were saying it in 1931. My only anxiety is to stress that custom changes all the time and should be allowed to change all the time and I am only pleading that we should recognise the right of the people to choose their own customs. But when I said - and I have been very conscious of this here, if I may say so - that it was always done, this was done in a casual moment and I should have put a qualifying adjective here. It was not done in 1900, you will appreciate that.
- E Q Obviously not, no. A. No.
- Q You remember you said that in 1946, and I think wrote in 1946, that the royalty ought to be increased to take account of inflation? A. Yes, this has been my opinion.
- F Q And I think you told us yesterday that you thought it ought to take account of the inflation since 1930 and ought to correspond in value to the 10<sup>1</sup>/<sub>2</sub>d that was fixed then. A. Only in the event of the unfortunate circumstances that negotiations between Mr. Maynard, or rather the BPC, and the Banabans broke down I thought we should then go back to 1931 and up-date it in accordance with the fall in the value of money. If we could turn to that paragraph perhaps, I think it is quite clear.
- G Q It is in your memorandum, is it not? A. It is in my memorandum here.
- Q Let us look at that. It is in paragraph 73. Perhaps we had better look at paragraph 19 first just for the sake of completeness. That says: "In March, 1946, however, the representative of the British Phosphate Commission again approached the Banabans regarding the acquisition of the new area but was informed that owing to the change in monetary value since 1940 the Banabans now required a payment of £225 per acre for surface rights and 1s.6d. per ton royalty, the proportion to be credited to the Royalty Trust and Provident Funds being unspecified. It is understood that the British Phosphate Commissioners are unlikely to accept these revised terms but no request has so far been received to have to land compulsorily taken over from the owners and leased to them."
- H

A Then in paragraph 73 you say what should happen if that did come about:  
"It has been stated in paragraph 19 that the Banabans and the Commission are at present unable to agree to the terms on which any further lands should be acquired and it is possible that the Government will be compelled to resume land again under the Mining Ordinance of 1928 and 1937. I recommend that in this event the Government should (a) urge that the resumption should be a final one, including all lands required by the Commission (see paragraphs 70 and 71) and (b) require that the terms offered for the acquisition should be at least as favourable as those offered in the case of the 1931 areas, due account being made for the fall in the value of money." A. That is so.

B Q You would have been the man to fix the royalty, would you not, as the Resident Commissioner? A. I would not have thought that I was necessarily the man to fix the royalty, but .....

Q The 1928 Ordinance says that the royalty shall be what the Resident Commissioner determines. A. I am sorry. Have I said that in my memorandum?

C Q I do not think so. A. Because I was not aware of the fact, I am afraid. I should have been. I imagine that in the case of the 1931 resumption that an independent man had been brought up from Tonga, in this case, I think a Mr. Neill, and he had fixed this matter.

Q He fixed the surface payment. A. The surface payment, yes.

D Q But Mr. Grimble fixed the royalty. A. I do not think I stated that in my memorandum.

Q No, but that is what happened all right. A. Yes, I will take your word for it that that is so.

E Q Thank you. We can take it, at any rate, that if it had fallen to you to fix a royalty in 1947 you would have fixed something which was equal in purchasing power to the 10½d. as it was in 1931. A. So in other words I was recommending the Secretary of State what he should tell me to do.

Q Yes, that is it. A. Yes.

F Q You agree with what I asked you? You agree with that question I asked? A. If I am the person that had to do it and I have certainly recommended that this was my viewpoint, I would have, of course, had to reconsider the matter, but it would have been consonant with my thought at the time I wrote that.

G Q I do not know whether you were in court when Mr. Silcock gave us some figures about the value of the 1921 10½d. Perhaps you would take a copy of D.16. (Copy handed to the witness). These are some figures got out by Mr. Silcock and in the top left-hand corner you will see reference to 1928 and then following that there is 1930/31 and he has got the royalty level as 10½d. Then in the right-hand column opposite that he has 5.8. At the top of that column with the 5.8 in it he is saying, "That is the royalty level in 1914 pence," so he has reduced everything to a common value, the value of a penny in 1914, and he is saying that the 10½d in 1930/31 was worth the same as 5.8d in 1914 pence - the value that the penny had in 1914. Are you with me so far? A. Yes, I think I am. Really I am not too hot on figures, but I think I am with you.

H Q Just a couple more now. In the bottom line there you have got 1946/47 with 1s.3d. on the left. Do you see that? A. Yes.

Q In the right-hand column he has got 4.6 in 1914 pence, so Mr. Silcock is saying



A that the 1s.3d. royalty that was agreed in 1947 was worth 4.6 and the 10 $\frac{1}{2}$ d royalty that was fixed in 1931 was worth 5.8d.

MR. VINELOTT: All this, of course, is expressed in terms of sterling and the difficulty is we just do not know what the price in Australian money in the Pacific was except by reference to figures, which I think appear in correspondence, obtained by Mr. Vaskess.

B MR. MOWBRAY: We will come to that, or my friend can put it in re-examination.

MR. VINELOTT: I do not think it right that the witness should be asked questions about the depreciation of an Australian royalty by reference to internal sterling prices.

C THE VICE-CHANCELLOR: Mr. Vinelott, I have on several occasions, I think, when reference has been made in this case to the value of money, insisted that this was the internal purchasing power of sterling. In fact I inserted the word "internal" just immediately after the asterisk on this page, so I have that point very much in mind.

MR. VINELOTT: I am sure your Lordship has, and I remember your Lordship drawing attention to it, but I was not so sure that the witness quite understood the basis on which the question was being put.

D MR. MOWBRAY: Mr. Silcock did this, as one would expect, in quite an intelligent way, because he took the level and converted it first in the fourth column to sterling, so he has taken account of the difference in rate of exchange between Australian and UK money from time to time.

E THE VICE-CHANCELLOR: Yes, but the point is not what Mr. Silcock did but how far this witness has followed what Mr. Silcock did, because he has expressed some diffidence in dealing with matters of figures and equivalents of money. That is the point.

THE WITNESS: Thank you, my Lord. I am a bit at sea.

F THE VICE-CHANCELLOR: I do not know if this will help you at all. You see a column headed "Royalty level"? The date is the first column and then the second column is "Royalty level" and that is the royalty expressed in Australian currency. You follow that there was in 1928 a royalty of 10 $\frac{1}{2}$ d. and in 1930/31 it was 10 $\frac{1}{2}$ d. and in 1940 there was the 1s. offer and in 1946/47 there was the 1s.3d. settlement, all in Australian currency. You follow that?  
A. Yes, I do.

G Q What this table is trying to do is to give some account of, first, the change in value of Australian money in relation to the pound sterling, because there was an Australian devaluation as against sterling - do you follow that?  
A. Yes.

Q And secondly to try and get some sort of comparison between the different sums of money when converted into sterling. If you look at the column headed "Royalty level" in sterling that is simply turning Australian money into English money as it were. You see the column headed "Royalty level in sterling"  
A. Yes.

H Q That is saying, for example, that in 1928 the 10 $\frac{1}{2}$ d. royalty in Australian money was the same as 10 $\frac{1}{2}$ d. royalty in English money. A. Yes.

Q By the time you get to 1930/31 the Australian 10 $\frac{1}{2}$ d has become 9.1d in English money. That is the middle column. A. I see, 9.1d.

A Q And when you get down to 1946/47 the 1s.3d. Australian has become 12d. in English money. Do you follow that part of it? A. I follow this part.

B Q And then the last column is turning everything into terms of 1914 English money so that like can be compared with like. That is probably the part that you do not follow - is that it? A. My Lord, with all deference, the part which I do not quite follow is that it seems to be a suppositious thing - I was making a preliminary recommendation to the Secretary of State on a thing which he might or might not have brought before me. If he had I would have presumably then had to make an adjudication taking all sorts of factors into account, and I do not know what those factors are at the moment. I am being asked at the moment to be a judge now of what I would have done in suppositious circumstances.

C  
(Continued on next page)

Q You are being asked about one of those factors, namely, the change in the value of money. A. Yes.

A

Q Because your recommendation was that effect should be given to the fall in the value of money and that that ought to be reflected in any royalty payments. Is that right? A. What I am asked to state is that if my recommendations were accepted and all other circumstances were equal this would have been the difference in the value of money that would have been taken into account.

B

MR MOWBRAY: No, Professor Maude, I was not going to ask you that exactly. I was going to ask you to agree with Mr Silcock that what was agreed in 1946 or 1947 was worth less than the 10<sup>1</sup>/<sub>2</sub>d. which had been fixed in 1930/31, on his figures.

C

MR VINELOTT: That raises exactly the same problem. Worth less in terms of what? Converted into sterling and then converted for the internal purchasing power, yes, but it is a very different thing, or may be a different thing if you go elsewhere, and the question simply is not precise enough.

MR MOWBRAY: In terms of 1914 sterling pence it was less, was it not?  
A. The value of money had fallen.

D

Q Yes. A. I would have thought the value of money certainly had fallen, but I have absolutely no idea as to how much it had fallen or of Mr Silcock's competence to decide how much it had fallen by. Nor have I any idea whether my recommendation in paragraph 73 would have been accepted and, if it had been accepted, what directions I would have received or anything on this matter.

E

Q You would have expected to receive some directions about the royalty to fix, would you? A. No, not that, but I would have expected to obtain advice as to how the matter should be brought about, because it would surely depend on factors like the market price of phosphate at any particular time, for instance, the expectations of profit of the Commission and various foactors which had still got to be brought into mind. I mentioned one point there because it had occurred to me as a fair thing, but I have not brought a judicial mind to adjudicate in advance as to what my final decision would have been. It might not have been, as you are suggesting, that it would have been 12d. or whatever it would have been.

F

11.30

THE VICE-CHANCELLOR: Let me see if I follow this. This may help. You recognise that between 1930/31 and 1946/47 there had been a fall in the value of money? A. Very definitely.

Q You are not at all sure how much that fall was? A. No.

G

Q And anyway, the fall in the value of money would only have been one of the factors. A. One factor.

Q One of the factors that you would have to take into account in fixing the royalty. Other factors would be matters such as the price of phosphate, and so on. A. Yes.

H

Q Is that a fair summary of your view? A. That is a very fair summary, my Lord.

MR. MOWBRAY: The price of phosphate and the profits that could be made by the Commission. A. Well, really I have not gone into all the questions. You are asking me to give a judicial decision off the cuff, if I may use a colloquial expression.

A Q We will not ask you any more about that. You said that one reason why you thought the Government ought to stay out of the negotiations - the reason the Government ought to stay out of the negotiations in 1947 - was that you did not want anything to happen like what happened in 1930 and thereabouts. We know Mr. Grimble ended up in a very difficult and embarrassing position in those earlier days. A. Yes.

B Q Could you tell us what particular factors you had in mind about 1931 time when you thought it was undesirable that that should happen again? A. I was doing the Lands Commission just about that time or just after it and just speaking around with the people I saw that they had, shall I say, a traumatic shock that the adjudication had been done, as it were, over their heads. They had always in the past imagined that free agreements between the Phosphate Commission and the Banaban community would take place and this is their land, and that they were free to get rid of their surface rights as they thought fit. But here a superior power had taken over and they were psychologically unhappy about it.

C Q I wonder if I could show you something that Mr. Rotan said and see if you think he is saying the same as you are saying now. It is in Day 7 and I want to start at the bottom of page 7. I was asking Mr. Rotan a question at the bottom of the page where it says: "(Q) Now I am going to ask you something different. When you came back from the Gilberts in 1926 Mr. Grimble was the Resident Commissioner. How did you think of Mr. Grimble then? (A) I think of him as I think of Mr. Elliot, the Resident Commissioner who looked after Banabans, and also that he is the one to look after the interests of the Banabans. But something happened between us. This particular thing came about over the acquiring by force, in a forceful way, our 150 acres. From then on I looked upon him as one who had betrayed the Banabans. (Q) What do you say about your power to hold on to your land after that happened? (A) I firmly believe that in Britain (literally he said 'in Britain') he would not do such a bad thing to the Banabans. It is because of this that I asked to come to see the High Commissioner in Fiji, and also even to come as far as here, because I felt that it could possibly be that it is only these people who come out to our place that do these unfavourable things to us, and our search and fight for the truth has brought us this far. (Q) When the land was taken in 1930, did that affect your feelings about your power to hold on to the land, or your authority to hold your land? (A) I think I have made it clear what was in my heart about how we stood under the 1913 agreement. Under that 1913 agreement we had the freedom of choice whether to give our land or not to give our land. Each landowner had that right to decide. I think that is freedom, as we know it. And this was, of course, also in harmony with the one Britain sent over, Mr. Elliot, who arranged for this.

G "At that time the BPC, the company, stood by itself, and the Government also stood by itself between the company and the people. In 1930 the company was not there - this is what Mr. Rotan literally says; it has the sense of - the company was not acting in any way, but the Governor was acting for the company and he did not allow us the freedom on our own land. From then on the Government has killed our hearts, our freedom to decide over our land. This happened in 1930 and was repeated in 1947, and, alas, Ocean Island is totally gone."

H Now, is that really the same ideas that you were expressing? A. In broad outline, yes. There are certain parts I do not quite understand here, but it certainly expresses the sense of shock that was felt by the people at the time, that the 1913 agreement had always been, to my recollection of how they used to express it, considered quite a fair one, but that they had not the same feeling about it. They had come to an agreement with the

A Company and they had a great deal to say as to how their money was to be spent afterwards, but in the 1931 agreement they felt that there had been a resumption - it is a different thing to a free agreement and I do not think that they had really believed that this was going to come about. When it did come about it was traumatic, I cannot express it differently.

B Q Now I am going to ask you about something quite different, that is, about Sir Murchison Fletcher's policy about the ownership of the phosphate. Was it your understanding that it was Sir Murchison Fletcher's firm policy to assert a Crown ownership of the phosphate? A. I have read that he did express his view that the Crown owned the phosphate. I have never discussed the matter with him, naturally - he would not have regarded me as anything more than quite insignificant.

C Q I see, so it<sup>is</sup> only what you have read about it really. A. It is only what I have read on the matter. I was a junior officer and he was the High Commissioner for the Western Pacific and also we were many miles apart from each other. I have read that he expressed the viewpoint and I have not only read it, but I heard it from Mr. Grimble too, that this was the view of Sir Murchison Fletcher. I doubt if it was Mr. Grimble's view.

D Q But he felt he had to abide by Sir Murchison's view? A. There was not much option, was there? I think he expressed his views as far as he could and he had done as far as he could to help the Banabans. I always found him personally very sympathetic towards the Banabans and I lived with him for a year in his house.

Q He was put in a very difficult position, was he not? A. Yes. He did what he could. He was a sick man at the time and he had amoebic dysentery and he fought for the Banabans, in my opinion.

E Q He did try quite hard to get them to agree to the 10 $\frac{1}{2}$ d. royalty, did he not? A. He did so, but I do not think he thought it was unfair at the time. What I am saying is in part of this Mr. Rotan appears to be rather hard on Mr. Grimble.

Q You do not agree with that part about Mr. Grimble? A. Not entirely, no.

Q The 10 $\frac{1}{2}$ d. had been discussed in London, had it not? A. I do not know these things.

F Q You remember when you spoke of the idea that the Crown owned the phosphate you told us that you had persuaded successive Resident Commissioners that the Crown did not own the phosphate. A. I said that we used to have talks about the subject and I expressed my view and they may have already held that particular view - I am not saying that my poor efforts had any effect on them, but I certainly have always expressed that view, not only on that, but on what, except for the Banabans, was a more important question, the question of the reef rights.

G Q You said when you were telling us about those conversations that the Resident Commissioners were not quite sure what the Secretary of State would say. A. Did I?

Q Yes. I suppose if he took a particular view about it that would conclude the matter. Is that right? A. If the Secretary of State did?

H Q Yes. A. The Secretary of State would no doubt have listened to the Resident Commissioner and the Resident Commissioner would deal through the High Commissioner with the Secretary of State. The relations between them

A I do not know, but all I can say is when I became Resident Commissioner my relations with the Secretary of State passed through the High Commissioner, but I cannot recollect an occasion on which the Secretary of State did not accept my viewpoint.

Q We have seen one or two examples in the documents where the Secretary of State did not agree. A. In the earlier days?

Q In the earlier days. A. Yes, maybe.

B Q Not in your time! A. The Secretary of State in my opinion, in my experience did not give orders. He made suggestions, shall we say?

Q As a matter of fact, he had asked to be informed about the royalty negotiations in 1947, had he not? Do you remember that? A. I think I have seen something in the bundles about that.

C (Continued on next page)

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A Q And then by an over-sight that was not done. A. No, I do not remember that part of it. If it is in the bundle then I would have seen it. You say he was not informed by an over-sight ?

Q Yes. A. Could be.

B Q If the Secretary of State asks to be informed about something before a final decision is made, or a final agreement is reached, I suppose he is reserving the right to make some suggestions or give some orders after he has seen what has been provisionally agreed ? A. In my time he would certainly make suggestions. I can only think of the question as to liquor, as to whether they would allow alcoholic consumption in the Gilbert Islands, and this matter went from me to the Secretary of State and he came back and said I might consider experience on Tanganyika and certain experience in West Africa and things, and he sent me correspondence on that so that I would be able to take all these factors into account. What I am trying to say is he did not say "No, you cannot do that" or "Yes, you do that", he said "I think perhaps it might be convenient if you took these factors into consideration".

C Q And did that tell you what you were thinking of doing ? A. It helped me a great deal as to what I was thinking of doing, because I saw what they had done in these other territories; in other words, they had legitimised or legalised the local tippie, as you might say, but not imported spirits, which I had not realised before.

D THE VICE-CHANCELLOR: Will you help me on one thing which has come up on a number of occasions earlier. In some cases the Resident Commissioner seems to have referred something to the High Commissioner and then the High Commissioner sometimes referred it to the Secretary of State ? A. That is so.

E Q On other occasions the Resident Commissioner has communicated direct with the Secretary of State sending a copy to the High Commissioner. A. I never occurred in my time, my Lord, not that I can recollect at any time. All the communication was from the Resident to the High Commissioner and from the High Commissioner to the Secretary of State. I should have thought the High Commissioner would have taken exception had a communication gone straight over his head to the Secretary of State.

F MR MOWBRAY: I think some of the communications my Lord is referring to were at a fairly early stage when communications were difficult ? A. Oh, that is very possible, yes.

G THE VICE-CHANCELLOR: The normal channel of communication, in your time at all events, was through the High Commission ? A. That is so, my Lord.

H Q From you to the High Commissioner and the High Commissioner, if necessary, to the Secretary of State ? A. Yes, my Lord. When Sir Alexander Grantham appointed me as High Commissioner he told me "Your's is a semi-autonomous command".

A Q When Sir Alexander appointed you as what ? A. I informed me that the Secretary of State had appointed me as Resident Commissioner.

Q When he appointed you to be what ? A. Resident Commissioner for the Gilbert Colony, he said "Your's is a semi-autonomous command" and I think that expressed it.

B MR MOWBRAY: Do you have Bundle 39 there, and would you go to page 111. You see the telegram from the Secretary of State to the High Commissioner of the Western Pacific, and he sets out the terms of the 1947 agreement and then at 5, at the bottom of the page: "In view of paragraph 4 of my telegram No.2 which asked that I should be consulted before any final settlement is reached, I should be glad to know the present position and, if settlement has in fact been reached on the above basis, whether you have consider its terms are satisfactory".  
C A. I am sorry, page 111 you say ?

Q I am afraid there are various page numbers at the bottom because it has been re-numbered at different times, and I see some of yours are falling out. A. 111 is a draft code telegram.

Q That is the one.

D THE VICE-CHANCELLOR: If you look at the bottom of that, the last four lines. A. Yes, my Lord.

E MR MOWBRAY: "In view of paragraph 4 of my telegram No 2 which asked that I should be consulted before any final settlement is reached, I should be glad to know the present position and, if settlement has in fact been reached on the above basis, whether you consider its terms are satisfactory." A. Yes.

F Q Then would you go to page 115, which is the reply: "I confirm that agreement has been reach between BPC and Banaban land-owners for transfer to former of 291 acres on Ocean Island at £200 Australian per acre and 380 acres at £65 per acre. Arrangements as paragraphs 2, 3 and 4 of your telegram also agreed. The matter was discussed between Grantham and Gaze in February when proposed terms regarded reasonable. Necessity for consulting you before final settlement was overlooked. Agreement was reached on 10th April and I regard terms as very satisfactory for Banabans", and then something else which I need not read. It looks there, does it not, as though that first telegram from the Secretary of State was a bit of a rap over the knuckles for not consulting him in the way he had asked ? That was page 111. A. Yes, I am just reading it again, if I may. It looks as if that is saying "Why on earth did you not do this thing". That seems the English of it.  
G

H THE VICE-CHANCELLOR: If it was a rap over the knuckles one would expect at the least the reply to include some expression of regret that it had been over-looked but it is just a flat statement that it was over-looked. A. Is there nothing here to say "I regret" ?

THE VICE-CHANCELLOR: I do not think so.



PROF. H.E MAUDE  
Cross-examined:

- A MR MOWBRAY: No, there is not. A. It is very difficulty with the Secretary of State to know when he is rapping one over the knuckles or when he is not, because he is invariably polite.
- THE VICE-CHANCELLOR: It would not have been very polite on the High Commissioner's part.
- B MR MOWBRAY: I suppose Sir Alexander Grantham had been away from his headquarters, had he not, and I suppose that was a kind of explanation. A. If he had been away from his headquarters it would very possibly have been sent by somebody else.
- C Q When the Secretary of States says "I want to be consulted before something is finally agreed" and then he is consulted and he says "That seems all right to me", or something like that, he is taking the responsibility, is he not? A. Yes, in a sense he is taking the responsibility. I do not know whether he would consider that he is taking the responsibility or whether he has advised and you have taken the responsibility. He certainly wants to be advised. Frequently I felt that he wanted to be advised of a certain position in order that he should be able to put to you all the factors in the case, but the ultimate responsibility very often lay on the man on the spot because he knew the local conditions not the Secretary of State. But there were occasions, admittedly, when the Secretary of State felt he had particular knowledge which the local person did not possess, and then he would -- he would never say "Do this", he would give a strong recommendation and one used to read between the lines.
- D
- E Q If you had asked him what to do, then you would really be throwing the responsibility on him? A. If you asked him what to do? It could be that you were going to take his advice, but there have been occasions when you felt very strongly but on those occasions I feel one would normally go back to him with a further statement as to why you considered that it would be better, under the circumstances, not to do this. It is always a difficult position with the Secretary of State and the High Commissioner, and also High Commissioner and Resident Commissioner, because of the distances between the two. If they could meet together and settle it over a table it is always so much easier.
- F
- G Q The negotiations the Banabans undertook in 1947 were very important negotiations from their point of view, were they not? A. Yes.
- Q The whole island was going to be covered, was going to be dealt with? A. I think so. That was my recommendation.
- Q That was your recommendation; in fact it was, as far as they knew, the whole island? A. Yes. You did mention there was some part, a minor part.
- H Q Yes. Would you look at page 27 of yesterday's transcript, Day 24. Mr Vinelott asked you something about possible

- A  
G he asked you: "What about 1947? Do you think you would have been better able to explain it to them then? (A) I think in 1947 they would have been able to understand that money did not buy as much as it did in 1940 or 1930, but I do not think they would have understood how market prices were fixed for phosphate". A. This is the first time that I had ever heard about this going up and down and I was rather at a loss to know what it all meant.
- B
- Q I was really thinking about the Banabans' knowledge of market prices of phosphate. They had no knowledge about that, had they? A. Very little I think, very little about the world phosphate prices, no.
- C
- Q You said that if you had been put in that judicial position in 1947 you thought one of the things you would have had in mind would be the prices of phosphate? A. I would have had very little knowledge; I would have obtained expert advice on that subject.
- D
- Q Do you not think the Banabans should have had expert advice on that subject? A. Well, if it had been an ~~ad~~ initio thing I would have given this matter some considerable thought, but they had made an agreement in 1940 and it seemed to be a question of the difference in the value of money between 1940 and 1947. This is what I had got fixed in my mind and I brought before Sir Albert Ellis. I felt that the Banabans, in their negotiations which were about to take place with the Phosphate Commission, should certainly take into account changes in the value of money.
- E
- Q The Banabans had not had any advice in 1940 either, had they? A. No, but they were the ones that made a willing agreement between the two. They could have asked for advice but they did this between them and, so far as I knew, it was a fair free seller free buyer bargain between them. I had no reason to suppose that in the 1940 negotiations they were suffering from any particular disability, as it were. They had had other negotiations with the Phosphate Commissionrrs and they seemed to be quite successful.
- F
- Q I am not asking these questions in criticism of you, Professor Maude, because it was not your job, was it? A. It was not my job, no.
- G
- Q You came to talk to them about the political settlement. A. Entirely, yes. In fact, I was told to keep right out of the phosphate negotiations, that they were no concern of mine in 1947 when I went there to do the statement of intentions.
- H
- Q You were told that, were you? A. I was told that if the matter was brought up, it was not my function to deal with that, nor was it within my competence, to be perfectly truthful to you. I knew very little about the phosphate negotiations. I was up at Tarawa Island, I flew down from Tarawa Island and all I knew about it was this question of Rabi and Ocean Island, which occupied all my thoughts.

12.00

- A Q Well, if you had been going to advise the Banabans about the other negotiations with the BPC, you would have wanted to know about phosphate prices and all kinds of things you did not know about; is that right? A. This is supposition, really. I have never been asked to interfere in any of these sort of negotiations. I was the Lands Commissioner and I dealt with native customs, on which I feel rather sure of myself; but on the questions which you are mentioning I am not sure of myself. It is rather out of my competence.
- B Q We will leave that. You said the Banabans could have had a lawyer in 1947. A. Oh yes, I am quite sure of that.
- C Q And I noticed you stressed once or twice, when you were saying that - and I think it was about 2.15 or so yesterday, my Lord. No, Professor, it is not in the transcript because we have not got the afternoon's transcript yet, we have only got the morning. My learned Junior's note suggests that when you said they could have asked for a solicitor in 1947, you said that at a later stage they did ask for a solicitor and then you said "There would have been no objection to their having had a solicitor or advise at that stage of 1947". A. Yes.
- D Q I thought you perhaps laid a little stress on that and I wondered whether it would have been the same in Mr Grimble's day? A. That I cannot say. Mr Grimble did tell me that if they came to him he would seriously consider this matter, but he did not tell me whether he would or what he would have done about it. He really regarded me as A Cadet. He did not take me into his confidence on this particular question.
- E Q Did anyone approach you about getting a solicitor? A. Yes.
- F Q Will you tell us about that? A. That was Mr Rotan Tito. He approached me about the possibility of my getting a solicitor for the Banaban people. That would have been in Buakonikai. I was asked to attend a meeting at Buakonikai and to the best of my recollection Mr Rotan was sitting behind a table and he had a bag in his hand which he informed me contained Sovereigns, and he asked me to take this bag and, as I was going down on vacation in the not far future, would I take this bag with me down to - I forget, Australia or New Zealand - and send him up a solicitor. I think perhaps if you question him he will probably remember this question, I don't know.
- G Q Well, Mr Rotan could not remember it and that is why I am asking you. A. I do remember it quite well.
- H Q What happened next; did you take the money? A. I am not willing to swear that it was money, I never opened the bag I promise, it was sealed, but I took this rather heavy weight in a bag and I took it to my superior Officer, who was Mr Grimble, and I told him what had been requested of me, and Mr Grimble said to me "It is no function of yours as a Cadet in this Service to go taking bags of money about with you when you go on vacation. You are supposed to be recuperating, and if the Banaban people wish to obtain a solicitor they have only to come to me and the matter will be given every

A consideration." I think I am repeating the words correctly, but, you know, it is half a century ago. But I think those were his words, and I took the bag of money back to Mr Rotan and I hope he will agree that I gave it back to him!

Q You said there was a psychological trauma -----

B THE VICE-CHANCELLOR: Just before that: when was this? A. This would have been just towards the end of my period as Lands Commissioner. That would have been 1932 about March, if I am correct in this; but it would be round about that date.

Q So this was after the resumption? A. Yes, my Lord.

C MR MOWBRAY: There is just one other thing I wanted to ask you, really, You started off your evidence with something about the relationship between the Banabans and the Gilbertese. Do you remember? A. In prehistoric times, yes.

D Q And a little later. Did you a few years ago prepare a paper about that? A. I think a good deal of it is contained in a paper on the Social Organisation of Banaba or Ocean Island, Central Pacific, which was published in the journal of the Polynesian Society in 1932. Is that the paper you had in mind?

E Q No, I was thinking of a paper - not a published paper, but one which you prepared, I think, probably to help the Banabans called the Relationship between the Banabans and Gilbertese. A. Ah, that was a paper I prepared, I think, both for the Chief Minister of the Gilbert and Ellice Islands Colony and for Mr Tabuke Rotan. I sent identical copies to them both.

Q Does it set out in greater detail your opinions and researches on that matter about the relationship between the Banabans and the Gilbertese? A. Yes, that was my intention.

F Q Would you mind if we looked at that to expand your evidence about it? A. I have no copy.

Q We will give you a copy. I had better check, before his Lordship looks at it, that this is the document you have in mind. Is this the one you were thinking of? (Document handed to the witness) A. Yes, except that it says I am a Lecturer in Pacific Studies?"

G Q Well, that is just Mr Macdonald's hand-writing. It is Pacific Studies.

THE VICE-CHANCELLOR: This is a copy of a document you prepared; is that right? A. Yes.

(Document put in and marked Exhibit P.7)

H MR MOWBRAY: I do not want to read the whole thing to you. Perhaps we could refer to it later as a fuller expression of your researches about this, but perhaps I could just read to you a couple of paragraphs starting at the beginning: "It is

PROF. HE MAUDE  
Cross-examined:

A understood that the relationship between the Banabans and Gilbertese was queried at the recent discussions in London" - which discussions would they have been, do you know? In 1968 would it be? A. I think so.

Q "... and that a single witness without professional qualifications, detailed knowledge of the two communities, or expert examination of the evidence, was called upon to testify on the matter. It is not surprising, therefore, that the answer allegedly provided was simplistic and inaccurate.

C "The view that the Banabans were Gilbertese was indeed uncritically accepted by myself during my early years of residence in the Gilbert and Ellice Islands Colony and it was only after detailed study that it became apparent that, like almost every community the world over, they in fact represented a racial mixture, in which the Gilbertese component was a relatively recent overlay on a basically non-Gilbertese stock; and that in any case the Banabans had never at any time formed a part of the Gilbert Islands, whether geographically, politically, or through social cohesion.

D "The question is, as indicated, a complicated one, necessitating the consideration of a number of historical, linguistic, anatomical, archaeological, cultural and political factors", and then you deal with those under various heads. A. Yes. When I said there it was a "relatively recent overlay" I did explain that by "recent" I meant 1650 AD.

E Q Then you come to a conclusion on page 5. Do you see the first break on that page: "In this inter-locking world of the Gilbert Ocean Island and the Banabans, situated far to the west, had no part. Forgotten in Gilbertese tradition, unrecorded in the Gilbertese genealogies, it may be doubted if a single Gilbert Islander was aware of the existence of the Banabans at the time of their first contact with Europeans. Ocean Island was no more part of the Gilbert Islands than Greenland was part of Norway a century or two after the Scandinavian voyages had ceased. Like Nauru, it was a dead-end reached by occasional driftaways from the Gilbert Islands, but from which there was no return. It would seem honest to recognise that Ocean Island was, in fact, incorporated as part of the Gilbert Group solely by a unilateral decision on the part of the British Government in 1900, subsequent to and consequent on the discovery of lucrative deposits of phosphate on the island". You say you sent that to both sides? A. It seems to be much the same, but there was one document which I did in a hurry and I asked to have withdrawn, and a second document which I sent to Mr Tabuke last year, I think. Which of these two it is I cannot tell. Perhaps Mr Tabuke will be able to tell us which this is. It is just that some of the statements seem rather hyperbolic, as it were, and more categorical than I normally use as a historian in my qualifications of every statement that I make. But by and large what you have read I do not think I would have any quarrel with.

A THE VICE-CHANCELLOR: What was the approximate date on which you wrote this document? A. That is what I was questioning, my Lord; whether it is the one that I sent last year or the one that I did in 1967 or 1968.

Q We know that it is after December, 1967, because you refer to articles published in December, 1967. A. Yes; therefore it would be 1968 possibly.

B Q Probably 1968 you think? A. Or it may be the one last year, which is the one I asked to supercede this one, which certainly must be in your possession.

Q So it is either 1968 or 1975. A. Yes. Which of these it is I do not know. But if it is the 1968 one it has been superceded by further investigations and research by myself.

C MR MOWBRAY: It is the earlier one you have got in your hand. A. Could we not have the later one?

Q Yes we can, but I do not think we have any copies. Let me put this to you and then it can be marked as an exhibit as containing your revised views, and then we can look at it later.

D A. You will regard that it was a draft which, after further investigations I wrote far more carefully. This is the draft which was produced for Professor Davidson at his request, and when I came to be asked to make a carefully formulated document I superceded this thing, and I would not like to take an oath to the accuracy of this. But if the second one is available ---

Q Let us hand you what I think is the second one to see if you think so too. (Document handed to the witness). A. Yes, I recognise the word autochthones.

E THE VICE-CHANCELLOR: It is also in the first one, the last paragraph on the first page. So that second document is your 1975 revised version, is it? A. 1975 I think is the right day, my Lord.

F Q And that superceded the first one? A. This was only a draft for Professor Davidson.

THE VICE-CHANCELLOR: Then the second one had better be marked P.7A. When it has been marked let it be delivered up to Mr Mowbray who can arrange for copies to be made. Is that the proper course, Mr Mowbray?

G MR MOWBRAY: Let it be delivered up to my instructing solicitor, my Lord.

THE VICE-CHANCELLOR: It will be delivered up to you and you can see that whatever necessary is done.

H MR MOWBRAY: So be it, my Lord. Those are all the questions I want to ask, Professor Maude, thank you. A. You do not want to ask me about the truth of any of this?

Q Well, you have said that is your revised opinion and we have got it and we will have copies and look at it later, if necessary.

A MR VINELOTT: I am afraid I have not got copies of either the first one or the second one and I shall want some time to consider them. I do not know that I will finish my re-examination before the adjournment, but if copies could be handed to me as soon as they are available -----

THE VICE- CHANCELLOR: If the document is handed down now there should be time to get copies made quite speedily; there is not an awful lot of it.

B MR VINELOTT: No, but it is quite a lot to digest.

Re-examined by MR VINELOTT:

C Q Professor Maude, you were asked some questions about a passage in Mr Rotan's evidence and you were asked whether you agreed with it, and you said, I recollect, you did not agree with everything in it. I am going to ask you to look at that passage again and say what you do not agree with. It is Day 7 page 7. A. Yes, starting at the bottom.

D Q You are quite right, starting at H: "Now I am going to ask you something different. When you came back from the Gilberts in 1926 Mr Grimble was the Resident Commissioner. How did you think of Mr Grimble then? (A) I think of him as I think of Mr Elliot, the Resident Commissioner who looked after Banabans, and also that he is the one to look after the interests of the Banabans. But something happened between us. This particular thing came about over the acquiring by force, in a forceful way, our 150 acres. From then on I looked upon him as one who had betrayed the Banabans". First of all, do you think that from then on, 1931, so long as Mr Grimble remained on Ocean Island, Mr Rotan looked upon him as the one who had betrayed the Banabans? A. Do I look upon him as one?

E Q Do you think that from 1931 on, while Mr Grimble remained on the island, Mr Rotan regarded him as one who had betrayed the Banabans? A. That is what he says here, and that is what would have been my opinion, yes.

F Q What about the other Banabans. Did they have the same opinion? A. The other Banabans! They were very upset about the resumption in 1931, yes. Whether they regarded him as a betrayer; it seems to me a very strong expression to use. They were disappointed.

G Q What about the end of the 30's, do you think the attitude of Mr Rotan was the same then? A. This would be before the war.

Q Just before the war. A. Towards Mr Grimble you mean?

Q Yes. A. I do not think he has ever, so far as I know, changed. Yes, it would have been exactly the same.

H Q What about the other Banabans? A. I think many of them have forgotten all about the thing by then. I do not think they kept up what I might call their animosity against Mr Grimble to the same extent that Mr Rotan did, because, if I could express the word, he appeared to have an idee fixe.

- A Q Do you think that idee fixe was an idee fixe in the mind of any other Banabans to the same extent? A. It could have been, but I do not know. Mr Rotan was usually the Banaban spokesman and it was very hard, but when I was on the Lands Commission I was really part of the Banaban community in a sense but at the later stage one felt less so. I was never in the same touch with them.
- B Q What about after the war in 1947? A. His attitude towards Mr Grimble in 1947, Mr Rotan's attitude?
- Q Yes. A. I do not remember him expressing any attitude towards him in 1947.
- C Q Let us go on to the next paragraph: "What do you say about your power to hold on to your land after that happened?" (A) I firmly believe that in Britain (literally he said 'in Britain') he would not do such a bad thing to the Banabans. It is because of this that I asked to come to see the High Commissioner in Fiji, and also even to come as far as here, because I felt that it could possibly be that it is only these people who come out to our place that do these unfavourable things to us, and our search and fight for the truth has brought us this far". A. That was a point which I felt was a bit unfair, one of these points, because here he is saying that he asked to come to see the High Commissioner, which is perfectly true, but it appears to be blaming Mr Grimble for that the fact that he was not able to see the High Commissioner, which is not in fact the case.
- D
- E Q Why do you think it is unfair? A. Well, because it was Sir Murchison Fletcher who said he was not to come down and not Mr Grimble.
- F Q Let us come on to the next one: "When the land was taken in 1930 did that affect your feelings about your power to hold on to the land, or your authority to hold your land?" (A) I think I have made it clear what was in my heart about how we stood under the 1913 agreement. Under that 1913 agreement we had the freedom of choice whether to give our land or not to give our land. Each landowner had that right to decide. I think that is freedom, as we know it. And this was, of course, also in harmony with the one Britain sent over, Mr Elliot, who arranged for this". Is there anything in that passage you would like to comment on? A. He is expressing a common sort of view that I heard from other Banabans generally.
- G 12.30
- H Q Then he goes on: "At that time the BPC, the company, stood by itself, and the Government also stood by itself between the company and the people. In 1930 the company was not there - this is what Mr Rotan literally says; it has the sense of - the company was not acting in any way, but the Governor was acting for the company and he did not allow us the freedom on our own land. From then on the Government has killed our hearts, our freedom to decide over our land. This happened in 1930 and was repeated in 1947, and, alas, Ocean Island is totally gone". What about that last sentence, "This



A happened in 1930 and was repeated in 1947..." Would you agree with that? A. No, because it was an agreement entered into between the Banaban people. If this was meant to be all a criticism of Mr Grimble, it is scarcely anything to do with him.

B Q I do not think it is intended to be a criticism of Mr Grimble, but what I want you to tell his Lordship is whether you agree with Mr Rotan that what happened in 1930 was repeated in 1947? A. Oh no, it was a very different affair. I think Mr Rotan has made a mistake there.

THE VICE-CHANCELLOR: I think you must read the next sentence aswell, where I think he explains.

C MR VINELOTT: I am going on to that, my Lord: "I knew from then that even if I refused to sign authority has been given in order that powers could be exercised to remove my land from me. Of course, even then I have not stopoed to complain". What do you say about that? A. I do not know what authority had been given that powers could be exercised to remove my land from me"

D THE VICE-CHANCELLOR: Professor Maude, what I understood by what Mr Rotan said then was this: that in 1930 the land was taken by compulsion. In 1947 the land was not taken by compulsion but they knew that compulsory powers existed and even if they refused to sign the agreement it could be taken from them by compulsion. That is the sense which I think Mr Rotan was intending to convey. A. Yes, I think this was at the background there was always this threat.

E MR VINELOTT: Do you think that was in the minds of the Banabans in 1947, that they feared the exercise of compulsory powers? A. They never expressed it to me. I only went there in 1946 for a time and I kept away from these discussions.

F Q But you know the Banabans - I was going to say as well as anybody, but you know them quite well. Can you express an opinion about it? A. They would have expressed their opinion to Major Holland undoubtedly if they felt this and would have asked if this was going to happen to them, and Major Holland would have reported it, in my opinion, or before Major Holland Major Kennedy, because that was the function of the Banaban Welfare Officer, to hear their complaints and their fears and apprehensions, and where he could not deal with them himself, to refer them to the High Commissioner for help or reassurance from him. But in this case, so far as I am aware, neither Major Kennedy nor Major Holland ever got in touch with the High Commissioner and asked whether such an event could take plade.

G THE VICE-CHANCELLOR: The Welfare Officer, then, was to report to the High Commissioner, not to the Resident Commissioner? The Resident Commissioner was in Tarawa. A. Tarawa, in charge of the Gilbert and Ellice Island Colony.

H

QR VONELOTT: You saw them pretty shortly after Mr Maynard, about a month or so. A. Yes.

A Q And you spent three days discussing the Ocean Island settlement question. A. Yes.

B Q During the course of that period of discussion did you form any impression as to whether in their meetings with Maynard they had been acting otherwise than freely ? A. Oh perfectly freely with Mr Maynard, yes. They had the idea at that particular time of going back to the boundary business of Ocean Island and this is the matter which they seemed to be very interested in.

C Q You were then asked by my learned friend some questions about Sir Murchison Fletcher and his view that the minerals belonged to the Crown and you said you doubted whether that was Mr Grimble's view. A. Yes, I doubt it, but he had never discussed it with me and I could not be sure on that point.

D Q Then my friend went on to put a question I think in these terms: he (that is Mr Grimble) was put in a difficult position? and you answered "Yes". I just want you to try to explain to me what the difficult position was, or what the difficulty was. A. I felt that Mr Grimble's difficult position was that he had a great affection for the Banabans, he wanted to do his very best for the Banabans, and I felt that the High Commissioner was not altogether in sympathy with Mr Grimble's efforts towards the Banaban people. So there he was, getting blamed by the Banabans and blamed by the High Commissioner.

E W You went on to tell my Lord that Mr Grimble thought that the 10½d royalty that was fixed in 1931 was fair. A. So I understood; he did indicate that to me, yes, that in his opinion it was a fair deal.

F Q Was that an opinion which he formed on his understanding that the minerals belonged to the Banabans or on the alternative basis that the Banabans had no minerals ? A. I am sorry, on the alternative basis ?

F Q Was that view of Mr Grimble's that the royalty of 10½d was fair a view which he formed on the basis that, as he thought, the minerals belonged to the Banabans, or was that wholly on the basis of Sir Murchison Fletcher's view. Do you follow me ? A. Oh, the first of those.

G Q You were asked some questions about the normal channel of communication Resident Commissioner to Secretary of State and you said "The normal channel of communication, during my time, was Resident Commissioner to High Commissioner and High Commissioner to Secretary of State". Do you remember that ? A. Yes.

H Q Can you just explain to me what you mean by "during my time". Are you talking of your time as Resident Commissioner or of your time with the Government ? A. I was at that time thinking of my time as Resident Commissioner and how struck I was by the courtesy of the Secretary of State in his commun-

A ications with me. But I did not find it, really, any different when I was Secretary to Government and had to handle the correspondence between the High Commissioner that came through the Secretary of State to the Resident Commissioner.

B Q You did not find it any different ? A. I did not find it any different to any great extent. Occasionally personalities differed in the way in which they phrased things, but, generally speaking, it struck me that the Secretary of State was advising rather than commanding, if I can express it in that way.

Q Was that true of the whole of your time in Government, or part only of that time ? A. I think it got more and more so as time went on.

C Q You told my Lord that the Banabans could have had a lawyer in 1947 and you told my Lord about an occasion in 1932 when the Banabans, or Rotan, came to see you with a request to instruct a lawyer. A. Yes.

D Q Between 1932 and 1947 had the question of obtaining a lawyer, or seeing a lawyer, come up again ? A. It came up again through Major Kennedy. He had a discussion with Rotan on this question of a lawyer and suggested that if they purchased the island of Wakawa they could move down to Fiji where they would be able to obtain a lawyer. That is the only occasion on which I recollect the lawyer business came up.

E Q When you were telling my Lord about the incident in 1932 when Rotan came to see you, you told him that he gave you a bag of money, or a bag of something, and you went to see Mr Grimble and you said Mr Grimble said to you "If the Banabans want a solicitor they have only to come to me and it will be given every consideration" and then you said you gave the money back to Rotan. Can you tell my Lord, when you gave the money back to Rotan did you tell him what Mr Grimble had told you ? A. Oh yes.

F Q It was suggested by my learned friend that the Banabans in 1947 had little knowledge of world phosphate prices and I think you agreed. A. Yes.

Q Did they have any opinion as to whether it was valuable or not ? A. Whether phosphate was valuable ? Yes, they thought phosphate was very valuable.

G Q How valuable ? A. In monetary terms ? They never expressed it in monetary terms; they thought they were sitting on a gold mine, that is all I could say.

H Q We know that in 1928-30 £5 a car was a figure which was being bandied around. A. Yes. This would be the people who had been down on ships to Australia. I had met several of them on these ships, and it is perfectly true that they were crews of the ships. One called Timothy travelled up with me in 1929 and he was taking a correspondence course in accountancy in Melbourne in his spare time. These are the sort of people who brought up these stories about how they saw bags of phosphate being sold for £5. Unfortunately they had not taken

into account the cost of production and the transportation and anything else.

A

Q Was that a figure mentioned in 1947 or 1946 ? A. No, I never heard that.

Q That was earlier ? A. It would be difficult for me to hear because I was only there such a short time and not dealing with that question. It would be brought up, I think, with the Banaban Welfare Officer if it had been brought up with anybody, not to me.

B

Q You were asked a question about the 1947 agreement, which is in the PD bundle page 103. You have seen this. A. Yes.

Q You see it is made between the Banaban landowners of Ocean Island on the one hand and the British Phosphate Commissioners on the other ? A. Yes.

C

Q And if you turn over, you will see it is signed by a number of people, including Rotan, for the Banaban landowners of Ocean Island of the other part. A. Yes.

Q Do you think that that list of persons represented all the landowners who owned land in the area that was being disposed of ? A. Do you mean were there any dissentients who did not sign ?

D

Q No. Look at that list. You see a list of 21 names. Do you think they were the only people who owned land in the area ? A. Oh no, I would not think so; they were signing on their behalf.

E

Q On whose behalf, do you think ? A. I should say on behalf of the landowners.

THE VICE-CHANCELLOR: You have not forgotten clause 3 ?

MR VINELOTT: I am much obliged, my Lord. (To the witness): Look at clause 3, Professor, still on page 103. A. Yes, that the phosphate land should be returned to the Banaban landowners as soon as this can take place without inconvenience or prejudice.

F

Q You have been asked quite a lot of questions about Banaban custom and one of the answers you gave to my learned friend yesterday was that when the Banabans talked of land being owned or phosphate being owned by the community, that meant the owners of the land on Ocean Island. A. The owners of the land on Ocean Island, yes, and that land should be returned to the owners.

G

Q When you talk of the community owning the land, do you mean the people who were there at the time, or people who are there plus the people who are going to own the land in the future ? A. It is a continuing thing with land. It never ends. It comes from the ancestors to the present occupants of the land, to their children and their children's children in perpetuity.

H

A THE VICE-CHANCELLOR: The difficulty about that, or a difficulty, is you can hardly regard the phosphate on Ocean Island as being owned partly by people who died centuries ago, partly by those who are now living and own land, partly by those who are living and do not own land at the moment but will in the future and partly by generations of unborn people in the future. I do not imagine "being owned by the Banaban community" means being owned by all those dead, all those living and all those yet to be born" ? Or do you mean that ? A. I understand it is going into a fund which is either going to be used for the purpose of future people as well as the present, or else, in the case of the Provident Funds, for instance, it will be used for the purchase of fixed assets for them, which will be even better for the future generations than the present generations.

B  
C Q I follow that. That is what is being paid for the phosphate. Before there is any question of payment there is a question of contracts being made for the sale of the phosphate and you are being asked the question: "Now who owns this phosphate? Who are the people with whom you have got to strike a bargain for selling it to the Phosphate Commissioners?" If you say "It is owned by the Banaban community", is that to say the Banaban community means, not only those now living who own land, but also those now living who in due course will own land, and also those who will be born in the future ? If that is so, one then has great difficulty in deciding who is to strike the bargain about the sale of the phosphate if that is what is meant by "the Banaban community". A. Yes.

D  
E Q Do you follow the question ? A. I think I do, yes: as to whether the entire population of Banaba should sign the document of this nature, or only the particular landowners in the part that is being sold.

F MR VINELOTT: My Lord is pointing out it is not just a question of the entire population because there would be the unborn as well. Perhaps we can get at it in this way; suppose that the existing landowners at a particular moment of time of a particular area of land are all adults. In your view, would it be consistent with custom that they should dispose of the right to mine phosphate and divide the money up amongst themselves without keeping any back for future generations ? Would that be consistent with Banaban custom in 1931? A. In 1931 ? That a few people could have alienated a portion of Banaba without the rest of the Banaban people ?

G  
H Q Yes. A. Well, I realise the legal differences, but I do not think that the differences really exercised the Banabans at the time. They seemed to regard it that the people who were concerned in the new resumption of an area would be the people who normally would sign it. On the other hand, you can see people who have signed these documents who have no particular land in that area. I do not think this consideration seems to have come into the concept. I do not remember it ever being discussed. I hold no particular views on the subject myself as to whether Banaban phosphate cannot be disposed of bit by bit, as it were, but must all be disposed of at the same time.

Q I am not sure I made my question clear. Let me start with

A an individual who owns a piece of land. Would it be consistent with Banaban custom in 1931 for that owner to dispose of the right to mine the entire phosphate on his land in exchange for a payment that went to him alone ? A. No, I would not think that would be consistent, no.

B Q Would that have been, from your Banaban experience again from discussions in 1931, consistent with Banaban custom at an earlier date, let us say in 1913 ? A. In 1913 I think it was done. Whether it was consistent with Banaban custom in 1913 I would have grave doubts, but I do recollect that on many occasions when we were settling disputes we used to go right to these phosphate dug out areas and we would certainly come across a piece of land which had not been disposed of and was standing up, as it were, in the middle of a pinnacled area and was practically useless to the landowner, but he did not want to dispose of that particular piece of land for some reason. But I do not think I learned of any custom to that effect.

C Q We seem to have reached this position, that in 1931, and possibly in 1913 also, an individual Banaban could not dispose of the phosphate on his land and take the proceeds and put them in his own pocket, because that would be inconsistent with Banaban custom. That is what I understand you to say.

D MR MOWBRAY: This is not really proper re-examination.

MR VINELOTT: I am merely summarising what he has said.

E THE VICE-CHANCELLOR: That is certainly how I understood it. So far in this particular question I thought Mr Vinelott was trying, in a single sentence, to say what he had got so far. There does not seem to be anything improper in the question so far, but all your rights will be reserved Mr Mowbray. You can put the question again at 2 o'clock, Mr Vinelott.

F (Adjourned for a short time)

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EVIDENCE **25**  
(P.M.)

1971 R. No. 3670

IN THE HIGH COURT OF JUSTICE  
CHANCERY DIVISION  
GROUP B

Royal Courts of Justice,  
Thursday, 1st April, 1976

Before

THE VICE-CHANCELLOR

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ROTAN TITO

and

THE COUNCIL OF LEADERS

-v-

HER MAJESTY'S ATTORNEY GENERAL

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A

IN THE HIGH COURT OF JUSTICE  
CHANCERY DIVISION  
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Thursday, 1st April, 1976

B

Before

THE VICE-CHANCELLOR

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ROTAN TITO

C

and

THE COUNCIL OF LEADERS

-v-

D

HER MAJESTY'S ATTORNEY GENERAL

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(Transcript of the Shorthand Notes of The Association of Official Shorthandwriters Limited, Room 392, Royal Courts of Justice, and 2, New Square, Lincoln's Inn, London, W.C.2.)

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MR. W.J. MOWBRAY, Q.C., MR. J.R. MACDONALD, MR. L.A. TUCKER and  
MR. C.L. PURLE (instructed by Messrs. Davies, Brown and Co.)  
appeared on behalf of the Plaintiffs.

F

MR. J.E. VINELOTT Q.C., MR. P.L. GIBSON and MR. D.C. UNWIN (instructed  
by the Treasury Solicitor) appeared on behalf of the Defendants.

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EVIDENCE

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DAY TWENTY-FIVE

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A MR. VINELOTT: Professor Maude, you told my Lord this morning that in your opinion it was inconsistent with native custom in 1931, and probably also in 1913, that a man should dispose of all the phosphate on his land and pocket the proceeds himself. A. Yes, I said that. I wonder if it is out of order if I say that all through the lunch hour I have been trying to consider what I have been asked, because I have been rather muddled by this question, due to my own obtuseness, I may add. I felt that it is all part of a statement which I made about the Banabans having expressed that they did not consider after the 1931 resumption that the ownership of the phosphate as a bulk was inconsistent with this Banaban custom. But beyond that I never went into what I call subtleties and theoretical points with them and B I find it rather difficult to try and inject into the mouths of the Banabans what they thought on these sort of details, because I doubt if they have those sort of analytical powers to be able to state these very important legal questions like this. They certainly never discussed them with me in any way. I wondered if it was right for me to give just the opinion of an ordinary citizen on this subject.

C Q We do not think of you as an ordinary citizen, if I may say so, but as a Pacific historian and anthropologist with a great deal of experience in this field. A. I do understand - but as there was no specific Banaban custom in 1900 which we registered on this subject, or a Banaban custom which had fallen into desuetude, which came under the second appendix, it is just an expression of Banaban opinion, unofficial and not entirely unanimous, and if you were to ask me a point on any Banaban custom which is laid down in the draft Ordinance I should be very glad to give an opinion on it. I did feel D a bit incompetent lest I just give a sort of thing which I have never thought out as to whether unborn children come into the picture and to what extent. Certainly there is the general principle, which I stand by entirely, that a person should not get rid of his land to the detriment of future generations except in accordance with the customs laid down and approved by the lands settlement.

E Q If under Banaban law a man cannot give away his land except in accordance with Banaban custom, could he dispose of the entire phosphate above the coral rock to the detriment of successors? A. I would not say that - he could do so if it is going to go into a fund which is going to provide for his people, but if it is going for instance to purchase land which future generations will inherit that will be very much in accordance with equity as the Banabans would see it.

F THE VICE-CHANCELLOR: I do not know if it would help, Professor Maude, or make things worse if I separate two quite different things - very much connected but quite different. The first is, who has the power to dispose of the property? If you have a plot of one acre of land owned by A, a Banaban, G the first question is, who has power to make any disposition of the property? Has A the power to do that or does the phosphate belong to the whole body of the Banabans so that only the whole body of Banabans (whatever that means) can dispose of it? The second question is, supposing A has the power to dispose of it, what happens to the proceeds? Can he dispose of it and put the whole of the proceeds in his pocket or can he dispose of it only if he puts the proceeds safely somewhere so that those who come after him will get the benefit of it as well? So there are two separate points: who can make the disposition, who can strike the bargain? - that is the first point - and secondly, what happens to the proceeds? Does it help if you separate those two things? A. It does help, my Lord. I think the second one seems to me H to be rather easier to answer.

A Q You have more or less answered the second one by saying, "Yes, if there is a sum set aside for those who come after and the proceeds go to the funds, that is all right," you said. A. It seems to me in entire accord with both Gilbertese and Banaban custom generally.

Q But then the first question, who can make the disposition?, you are rather suggesting I think by the answer to your second question that probably the landowner has the power. A. Yes, but I am very doubtful on this score. I have never discussed this with the Banabans in those terms.

B Q So there is just a gap, as it were, a complete absence of discussion? A. Yes. I do appreciate this very much and yet if I were to say (a) or if I were to say (b) it would only be an expression of personal opinion because it is hardly a fixed native custom from time immemorial, is it, my Lord?

THE VICE-CHANCELLOR: It does not sound like it!

C MR. VINELOTT: Perhaps we can approach the first question in a slightly different way. I wonder if this would help. We know that in 1913 individual landowners signed what are called A and C and you know what they are. A. A and C deeds.

Q And we know that the royalty was to be paid to the Resident Commissioner and applied for the benefit of the Banabans. When you were talking to the Banabans in 1931 ---

D MR. MOWBRAY: We do not quite say that. It was to be applied primarily for the Banaban landowners.

E MR. VINELOTT: Applied for the benefit of Banabans or Banaban landowners - let us leave that open. When you were talking to the Banabans in 1931 did they regard that arrangement as being something within the powers of landowners to concur in? Had there been any doubt about the effects of this arrangement? A. Going back half a century, all I remember is that they just generally said that the phosphate belonged to the people of Banaba, and I mentioned the question of the resumption by which it seems to be held and those with whom I discussed it said that this seems to be perfectly in order as far as they were concerned, this was not an issue which they were fighting at the time. But the intricacies . . . I can very distinctly remember the question coming up as to whether people who did not at that time (and there were very few) own phosphate within any phosphate area but owned land on the periphery, say below the 170 contour - whether they should be consulted on such matters, and the answer to that, as I understood it, from those people that I spoke to, was, "Yes, we are all Banabans." But we did not go into this legal business at all. I would not have been competent really to go into legal points, although I fully understand in a court of law like this how unfortunate it is.

F G Q I do not think I can pursue this beyond asking you one more question. Did anyone at that time to your knowledge cast any doubt upon the validity or effectiveness of the 1913 agreement - I mean any Banaban? A. They seemed to be quite happy with the 1913. They felt over the 1931 that they were not getting the same say in the disposition of the royalties which they were getting from the phosphate; rightly or wrongly they felt this rather strongly. But in the 1913 one they felt that they really did have a say in how this was going to be spent.

H MR. VINELOTT: I am very happy if your Lordship would like to ask further questions, but I do not think I can pursue it.

A THE VICE-CHANCELLOR: No. Professor Maude, I quite understand your difficulties, and of course you have been asked a very great many questions about matters which at the time you obviously did not pursue with the Banabans - you did <sup>not</sup> ask them all the questions that you have been asked in this court. A. No.

Q And so if you did <sup>not</sup> get those questions answered by the Banabans it is quite right that you should not express views on things where you have no information. I entirely understand your position. A. Thank you very much, my Lord.

B MR. VINELOTT: I have very few more questions. Could you look at Bundle 39, page 89. It is a bundle you have seen already. On page 90 at paragraph 9 at the bottom it says: "Regarding royalties (whether new or already invested in the royalty trust) the Banaban argues, as he has always done, that all under surface rights belong absolutely to the owners of the surface rights and that the Government has no right to withhold his royalty payments, which should be paid to each individual landowner and not diverted to communal use." You told my friend this morning when he read that passage to you that you thought it needed some qualification. C A. I felt I was being too categorical there. I should have put in not "as he has always done". I did explain that this memorandum was written in a period of three days and I am only relieved that there are not more mistakes of wording in it.

D THE VICE-CHANCELLOR: If one substituted "often" for "always" would that convey the sense? A. Yes.

Q "The Banaban argues as he has often done that all the under surface rights" - is that the sense of it? A. Or "as he has increasingly done".

MR. VINELOTT: How many Banabans in 1947 put forward that argument? A. In 1947 when we were dealing with the matter?

E Q Yes. A. Could I turn to my dispatch on the subject?

Q This is the dispatch on page 89 written on board the "Sydney Star". A. Yes.

MR. MOWBRAY: Is it not at the bottom of that page?

F MR. VINELOTT: Perhaps you would look at the bottom of page 90 where you say: "A majority of the Banabans would accept a payment of 2d. per ton made to the Provident Fund for the purchase and development of Rabi as their community home, since this was originally agreed to by the people, but an increasing minority of the younger men would have this sum also divided up and all development and other community expenses met from taxation." A. That is what I was thinking of, actually, that it was the younger people, and elsewhere I think I have said that they had agreed that it might not be in the benefit of future generations.

G Q Look at paragraph 7. Have you looked at that? A. Yes, that is the one I was thinking of.

H Q "These demands were admitted by the Banabans themselves to be based on self interest and framed regardless of the welfare of succeeding generations. The proposal as to the division of the capital in the landowners' fund is, furthermore, contrary to Banaban customary law while those relating to the royalty trusts and provident funds are in opposition to the policy hitherto adopted by the Government of regarding royalties from under surface rights as being the property of the community as a whole rather than the individual owners of surface rights". A. Yes.

Q Is it right that what you are recording here has changed since 1931?  
A. Yes, that people were becoming more money conscious, and perhaps if I said avaricious it would be too strong a word, but they were becoming more conscious of the value of money.

Q When would you date that change? After the war or before the war, so far as you can say now? A. My view is that it occurred when they came down to Rabi Island and entered a much more individualistic, competitive, monetary system which exists in Fiji, but barely existed in the Gilberts, but did to a certain extent on Ocean Island. But I think it is becoming increasingly evident on Rabi Island today.

Q How widespread was this individualistic feeling in Rabi Island in 1947? Was it the view universally held or by a minority or what? A. I was only there for three days.

Q Of course. If you cannot answer the question .....? A. I cannot answer it statistically - not statistically in three days.

Q Without giving a percentage or number, would you like to express it in any other way? A. I think I have said that my opinion is that the Banabans are increasingly becoming an individualistic people based on a monetary economy and that they were more so in 1947 than when they arrived in 1945 and I would surmise from things that they are more so today than they were in 1947. I think this is inevitable. I am not meaning to be derogatory to them. It is the fact of life through living in a community which is so big.

THE VICE-CHANCELLOR: From this despatch and what you have said about it I get this impression, and I want you to tell me whether it is right: first of all, that the Banabans were divided in their views. A. Yes.

Q Second, that their views were more an expression of what they thought ought to be done than an expression of what the binding Banaban customary law was. Is that right? A. Yes. I do not think that the younger people thought much about customary law at all.

Q And they were expressing a view as to what they thought ought to be done? A. Ought to be done in the future. They felt, for instance, on the question of the land holders fund that the money should be divided now because they had new land on Ocean Island which could be left to their children and why therefore should this sum of money - this was their general view, it was becoming more towards the personal rather than towards the whole family grouping and ancestors and the rest of it.

MR. VINELOTT: My Lord, I have no further questions except on one matter. This morning I was given a copy of a document that I would like to study a little further before asking further questions in re-examination and if my friend would agree to that being deferred until tomorrow morning I should be obliged.

MR. NOWBRAY: Yes.

THE VICE-CHANCELLOR: Have copies been made of what I think has been marked D.7?

MR. NOWBRAY: Yes, I think your Lordship has one.

THE VICE-CHANCELLOR: D.7 was the original one and D.7A was the new one.

MR. VINELOTT: Yes.

THE VICE-CHANCELLOR: Professor Maude, will it be convenient for you to come back

PROF. H.E. MAUDE:  
Re-examined.

A tomorrow morning at 10.30 to deal with any questions on these two memoranda on the relationship between the Banabans and the Gilbertese? Would you be able to come back tomorrow morning? A. Yes, certainly my Lord.

THE VICE-CHANCELLOR: Very well, then, subject to that, thank you for coming to give your evidence. You are now released subject to coming back tomorrow morning.

B (The witness withdrew.)

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MR VINELOTT: My Lord, my next witness will be Mr Macdonald.

MR MOWBRAY: Subject to your Lordship's approval, the other Mr Macdonald will cross-examine this witness.

THE VICE-CHANCELLOR: Very well.

MR PATRICK DONALD MACDONALD: Sworn.

Examined by MR VINELOTT:

Q Mr Macdonald, you live in Fiji, I understand. A. Yes.

Q What is your address? A. I live on the outskirts of Suva, so you would really have to give a box office number, GPO Box 1404, Suva.

Q You are a CMG and CVO, is that right? A. Yes.

Q And you took a degree at Cambridge? A. Yes.

Q In 1930/31? A. No, 1928/32.

THE VICE-CHANCELLOR: You went up in 1928 and took your degree in 1932? That is correct.

MR VINELOTT: Your subjects, I believe, were history and anthropology, is that right? A. History, geography and anthropology, Part I of each.

Q In 1932 you were appointed a cadet officer in the Gilbert and Ellice Islands Colony? A. That is correct.

Q Have you made out a list of your appointments in Ocean Island? A. I gave a list to the Treasury Solicitor this morning.

Q Is this it? (Document handed to the witness). A. Yes.

(List of witness's appointments marked D.17B).

Q Let us look at this. I see that you went to the Colony on 18th November, 1932. A. No, I was appointed then and I assumed duty in the Colony on 15th January, 1933.

Q It took you a couple of months to get there? A. Yes, in those days.

Q For six months you were attached to the Resident Commissioner's department? A. Correct.

Q As a cadet, I imagine. A. Yes, that is correct.

Q Then from February to March, 1933 and 15th June, 1933 you were Acting Secretary to the Governor? A. That is correct.

Q Between March, 1933 and 15th June, 1933 were you elsewhere in the colony? A. No, I was still in the Resident Commissioner's office in Ocean Island.

Q As a cadet? A. Yes.

Q So that is continuous service 15th January to -- what? A. To 15th August.

Q Then you interpose a date. On 26th July you passed as a cadet - you passed your cadet examination? A. Yes.

A Q On 16th August you became attached to the Department of District Administration. That is on Ocean Island? A. Well, it could be, if you were administrative officer, Ocean Island, but in fact the bulk of the district administrations was in the Gilbert and Ellice and Line Islands.

Q From 31st August to 24th April, 1934, I see you go away from Ocean Island and become Acting Administrative Officer, Northern Gilbert Islands District? A. That is correct.

THE VICE-CHANCELLOR: You assumed duty on Ocean Island on 15th January, 1933. A. Correct.

B Q And you stayed on Ocean Island in these different capacities, was that it? A. Yes.

Q Still on Ocean Island until you became Acting Administrative Officer for Northern? A. Yes.

C Q So until 31st August, 1933, you were still on Ocean Island? A. The 15th, because I left on the 16th to go to the Gilbert Islands and the period between the 16th and the 31st August I was travelling.

Q So it was Ocean Island from January to August, 1933? A. That is correct.

MR WHELOTT: Until April, 1934, you were Acting Administrative Officer, Northern Gilberts, and during that time, 26th January, 1934, you were Deputy Commissioner for the Western Pacific? A. That is correct.

D Q From 29th April to 4th October, 1934, you are back on Ocean Island as an Acting Administrative Officer, and then from October to April, 1935, Acting Administrative Officer, Ellice Island District, and May, 1935 to April, 1936 back on Ocean Island as Acting Secretary to the Governor and Acting Administrative Officer, Ocean Island? A. That is correct.

2.30.

E Q During that period you passed your higher standard examination in Gilbertese. A. That is correct.

Q In January, 1936, again during the same period, you were appointed Administrative Officer? A. Yes.

F Q Then in April, 1936 until May, 1937 you come back to the United Kingdom. From May, 1937 to June, 1937 you are at Suva in the High Commission office. A. That is correct.

Q You remained at Tarawa from June, 1937 until September, 1937 and in September, 1937 you come back as Administrative Officer, Ocean Island? A. That is correct.

G Q You stay there until May, 1938, and in part of that time, January, 1938 to January, 1939 you were Acting Secretary to the Governor. A. That is correct.

Q It overlaps? A. Yes.

Q That is still on Ocean Island? A. Yes.

H Q In July, 1938, you are appointed a Member of the Board of Examiners in Gilbertese. In February there is a change. You move from Ocean Island and stay there till September, 1939, and then you move from there in October, 1939, to the High Commission in Suva. In August, 1940 you are at the High Commission as Assistant Secretary. In 1942 you go to Trinidad and Tobago and stay there until May, 1945. From February, 1946 you are Assistant Colonial Secretary, Fiji. In 1949 you have a stretch of leave

in the United Kingdom and then from 1949 to 1957 you become Colonial Secretary of the Leeward Islands and from 1957 to 1966 you are Colonial Secretary of Fiji? A. That is correct.

A

Q It seems that before the war, from 1933 until 1940, you spent the bulk of your time on Ocean Island? A. Yes, more time than I spent in the districts. I have not added it up, but there were just two periods in the Northern Gilberts and the Ellice Islands and a short period in Fanning Island.

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Q I have not added it up either, but it seems to me, running through this, that the bulk of your time, more than half, was spent on Ocean Island. A. Yes.

THE VICE-CHANCELLOR: Can I see if I have it right. It looks to me as if you had four periods on Ocean Island. The first was January to July, 1933. Is that right? A. January to 15th August.

C

Q Then secondly, April to October, 1934? A. That is correct.

Q Thirdly, May, 1935 to April, 1936? A. That is correct.

Q And lastly, September, 1937 to January, 1939? A. That is correct.

MR VINELOTT: During the war you were at Trinidad and Tobago, but after the war you spent the bulk of your time in Fiji, except for a period 1949 to 1957 in the Leeward Islands. A. Yes.

D

Q Going back to your pre-war experiences, did you on Ocean Island have any close contact with the Banabans? A. More so when I was Acting Administrative Officer than when I was Secretary to the Governor, although during the periods when I was Secretary to the Governor I also had some contact with them, but for two of the periods of course I was doing the two jobs conjointly, so I had quite a lot of contact.

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Q What sort of job did you have to do as between the Banabans and yourself? A. On Ocean Island, as on all the islands in the colony, there is a native government which administered the code of native laws, and one had to sit with that court very often - for example, to hear appeals against sentences, to hear divorce cases and other matters of a judicial nature that came up before the native government. That was one aspect of the matter. The other aspect of one's work primarily was that one attended meetings which were asked for by the Banaban community to discuss matters with which they were concerned - their funds, education, drought relief, hospital facilities - an almost endless variety of subjects which might be brought up. These were purely informal meetings, usually held in the maneaba or meeting houses, particularly in Tabiang village, which was close to the Government station, and they might last several hours. They were not at any fixed dates, they were just held when it was felt there were some subjects which could usefully be discussed.

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Q Did you discuss money matters with them? A. Yes.

Q What sort of matters came up? A. Again, with the native scribe, who was responsible for payments to government funds as far as the native government was concerned, but naturally at the other meetings with the Banaban community the question of Banaban funds would almost invariably come up in some form or another.

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Q What sort of points came up for discussion? A. In connection with Banaban funds?



Q Yes. A. Oh, almost everything - how their funds were invested, how much they had got in the bank, the division of the funds, the amounts of moneys in the different funds - almost any subject.

A Q Can you remember any particular occasion in the 1930's when you had a more detailed discussion than usual? A. There was one occasion I remember in 1935 when - I am not a teacher, but - I borrowed a blackboard and easel from the Banaban school and we had a long discussion about Banaban funds and I demonstrated on the blackboard the various funds and how much money there was in each and what was happening to them and how they were growing, and so on.

B Q In these discussions did the history of negotiations for phosphate and the resumption in 1931 come up? A. The history of negotiations almost invariably came up, yes, in one form or another. I think in any meeting with Banabans one usually gets back to Banaban funds before one has finished.

C Q What about the resumption? Did that come up - what had been called the resumption? A. I could not say off-hand precisely what points came up at any particular time, but it was more reminiscing than anything else, but what they were primarily worried about I think at that time was there had of course been the world depression in 1929/31, and I think they were worried as to the safety of their funds and what was happening to them - whether they were increasing as they should and that sort of thing - they were more worried about the future than the past.

D Q Was there any bitterness about the resumption? Was there any ill-feeling at that time? A. No, I cannot say that I recall any. I was always treated with the greatest courtesy by the Banabans at these meetings. They were tough bargainers and tough spokesmen, but no, I cannot recall any bitterness. Plenty of argumentation and debate, but that was all.

E Q Did you know Mr Rotan Tito at that time? A. Yes. He was not a member of the native government there. I cannot recall my actual first meeting with him, but it would certainly be in 1933, because he captained the Banaban cricket side and I captained the Government one.

Q Did you have anything to do with the negotiations in 1940 about the acquisition of other lands? A. No, in 1940 I was serving in the Western Pacific High Commission.

F Q Land matters, questions of title and ownership and customary rights: have you any experience or knowledge about that? A. No. I might have done, but when I went to Ocean Island the Lands Commission under Professor Maude had been concluded only about a year previously, the registration of lands and the demarcation of boundaries and all that, and so I had nothing to do with it then.

G Q You have told my Lord that after the war you came back from Trinidad and Tobago. A. 1946, February.

Q And you did not go back to Ocean Island or the Gilberts, you went to Suva. A. Yes, I became an officer of the Fiji Government then, which was quite distinct of course from the Western Pacific High Commission.

H Q Do you remember or do you know anything about the acquisition of Rabi before the war? A. No. I have seen the correspondence on it.

Q But no personal knowledge. A. No.

Q In the post-war period did you visit Rabi at all? A. Yes, indeed, I visited Rabi from the 26th to the 29th June, 1946 and the 7th to 13th May, 1947 in company with Professor Maude.

Q The second occasion, we know, Professor Maude has told us, was to do with the statement of intentions of the Government with regard to the Banabans.  
A. That is correct.

A Q When you saw the Banabans in 1947 what was their physical state, the state of their physical and mental health? A. I would have said they were physically and psychologically very fit.

B Q What about 1946, your first visit? What was the situation then?  
A. No, they certainly were not - I would not describe them as that in June, 1946. They were, I would say, a rather dispirited community that had lost its way and did not know where it was going, particularly the older people; I think less so with the young people, but with the older people I think there was a good deal of homesickness about it - homesickness for Ocean Island.

Q In 1946? A. Yes, homesickness for Ocean Island amongst the older people.

C Q What about 1947? A. No, the atmosphere was entirely different.

Q Did you receive any reports in your official capacity about the state of the Banabans between your two visits? A. Yes. There was a handing-over report from Mr Kennedy in August, 1946. There was a report by the Divisional Commissioner, Northern Division, in December, 1946. He had also made one in December, 1945 too, the Divisional Commissioner.

D Q Is this the 1946 report? (Document handed to the witness).  
My Lord, these documents have been disclosed. There are copies available.

MR MACDONALD: Perhaps my friend would indicate whether that is one of the documents in Bundle 55. All the subsequent documents which relate either to this witness or to Mr Maude we understood had been included in Bundle 55.

E MR VINELOTT: I am instructed that two documents which this witness brought with him from the Fiji archives were handed over, or copies were handed over, on his arrival in this country two weeks ago.

MR MACDONALD: If my friend would show me the document I can tell him whether we have seen it.

MR VINELOTT: Yes. There is, I think, nothing controversial about it.

F MR MACDONALD: I think this one is indeed in Bundle 55.

THE VICE-CHANCELLOR: What is the date of it?

MR VINELOTT: December, 1946.

MR MACDONALD: We have certainly seen this one.

G THE VICE-CHANCELLOR: According to the table of contents there does not seem to be anything of that date in Bundle 55.

(Extract from Monthly Letter, December 1946 marked Exhibit D.18).

H MR VINELOTT: Does it start off with paragraph 37 - being an extract from the Monthly Letter from the District Commissioner, Northern, for December, 1946 - was that Mr Windrum? A. Yes.

Q In paragraph 38 there are some detailed comments and in the middle of the page there is a passage saying: "Laws and local regulations for the Banaban People. Our discussions touched on how far Fijian (Native) regulations

could be followed and incorporated, or made to fit in with existing and proposed Banaban laws and regulations. Questions involving the efficient and successful settlement of the Banabans were also considered."

A In paragraph 40 it says: "I am pleased to record that practically the whole of the refugee camp of army tents has disappeared. Some of these tents have been taken away and erected temporarily in the new settlements, but in most instances houses of native construction and design have been built, including such community places as churches and council houses. (41) The type and construction of the Banaban houses is much neater than those of the Fijians, and are adequate for normal weather conditions. They appear, however, to be too flimsy for winds of gale and hurricane force and I should think they would not be dry during the periods when rains driven by heavy winds are experienced. (42) Sanitation had improved throughout the settlement. (43) Paths and small footbridges had been constructed between settlements making communication between them pleasant, convenient and quick. (44) Everywhere I visited there were signs of something being done, although the lack of building materials, as experienced in other parts of the colony, is causing delays in development work. (45) I did not sense, at any time during my visit, the tenseness and sullenness that I had experienced on previous visits, but rather an atmosphere of contentment and purpose."

Then in paragraph 46 there is a commendation of Major Holland. . . , how far does that report accord with your experience on your two visits? A. This was precisely midway between our two visits, June, 1946 and May, 1947.

D Q How does it accord with what you found when you got there in 1947?  
A. How does it accord? - From the visit in 1947 I would have expected this sort of thing to be happening in December, 1946.

Q Thank you.

E THE VICE-CHANCELLOR: I do not quite know what paragraph 46 means. It is capable of being read as a criticism of Major Holland.  
A. I think I can explain that. When Mr Windrum visited Rabi before, particularly during his visit in June, which was just before Professor Maude and I visited Rabi, he found things in a very difficult state - he had had reports from the police that there was trouble on Rabi and one thing and another, and it was not long before, only a fortnight or so before, we had to get rid of Major Kennedy from the Island, and I think they just did not get on together; I think there was a personality clash.

F Q There was not a change in the behaviour of Major Holland? A. No, what he means is it was a relief to meet Major Holland in contrast to Mr Kennedy, though it may not be very clearly put.

MR VINELOTT: There had been a change of Banaban adviser? A. Yes.

G Q Your next visit was in May, 1947, to discuss the statement of intentions?  
A. That is correct.

Q Did you take the document with you or was it drafted there?  
A. No, we took the statement of intentions with us.

Q How were those proceedings opened? A. The meeting at which the statement of intentions was discussed?

H Q Yes. A. A few copies of the statement which had been prepared were laid on the table and then I think Professor Maude made a speech saying how glad we were to visit them and that we were glad to see them fitter, healthier, more enjoying life on Rabi. Then I think - I am sure - there was a speech in reply, probably given by Rotan, but I cannot be absolutely

positive on that point, and then we started the negotiations.

A Q What was the course of those negotiations, how were they --- ?  
A. How were they conducted?

B Q Yes. A. Well, we took each clause of the statement one by one  
and discussed it at tremendous length. All the discussions took three  
whole days, with only very brief breaks for meals. They were all  
conducted in the vernacular, Gilbertese, although there was an interpreter  
there present - the Government interpreter. I can remember certain  
aspects of the discussions, but not every detail naturally, because they  
went on for so long and were in a foreign language. But they went on for  
C three days and they were rather exhausting.

Q We know that they ended up with a secret ballot. A. That is right, yes.

Q T the course of those discussions, was anything said about Rabi being  
sold? A. Yes.

D Q Can you remember what that was? A. Mr Maude made a statement - I  
cannot remember exactly what he said now, but it was to the effect that -  
of course, the ballot was to decide whether the Banabans wished to make  
E Rabi their homeland or not, and the statement which Mr Maude made was to  
the effect that they had now seen Rabi, they had lived there for a while  
and if they did not like it there would be no difficulty in selling it  
again, but in two sections of the statement of intention and repeatedly  
F throughout the meeting Professor Maude made it absolutely crystal clear  
that there was no question whatever of the Banabans losing Rabi if they  
went to Ocean Island, either temporarily or permanently, and vice versa,  
G that there was no question of them losing Ocean Island if they decided  
to stay on Rabi.

H

A 3.00

Q I wonder if you would just repeat that. You said there would be no question of losing Ocean Island if they decided to stay on Rabi ? A. Yes - not being able to go to Ocean Island, I should have said.

B

Q Was anything said about their losing Rabi if they went to Ocean Island ? A. Yes, that was the tenor of Mr Maude's statement that they would not lose Rabi if they went to Ocean either temporarily or permanently, and that was in accordance with our instructions, which had the approval of the Secretary of State, I may say.

C

Q From your experience of the Banabans and your experience in Colonial Service would you tell my Lord whether your impression at that time was that the Banabans were capable of entering into this sort of discussion and understanding what the issues were and coming to a decision ? A. Oh, I think so, because in the discussions - and your Lordship has seen the documents, I imagine - as I say, the discussions lasted three whole days and Mr Maude made it clear in his printed report of the 2nd September, 1946 that each item was argued over endlessly and repetitively until I think everybody was exhausted and quite glad to resort to the secret ballot.

D

Q My friend reminds me that you referred to the report just a moment ago of Mr Maude. Did you mean the despatch ? A. No, I meant Mr Maude's printed report of the 2nd September, 1946, which is in one of the bundles.

E

Q That was before the meeting. A. The report on Banaban Funds and their future, yes, because that dealt with the future of Rabi and there was a recommendation in it saying that if the Banabans did go back to Ocean Island Rabi was not to be sold but it was to be operated by the High Commissioner until such time as the phosphate deposits were exhausted or until the Banabans should decide to return to Rabi, and that was approved by the Secretary of State.

F

Q At this time were the Banabans, in your view, intellectually capable of understanding what was being discussed and forming a judgment ? A. Oh yes; that I have no doubt about that whatever.

G

Q Were they capable people, the Banabans ? A. Oh yes, and very tough bargainers too.

Q During the series of meetings was anything said about the earlier visit of Mr Maynard ? Was anything said about the BPC ? A. Which do you call the earlier visit, the one in 1946 ?

H

Q The one which had taken place just before ? A. It is very difficult to say with three days of discussion in the vernacular. My recollection is that it was not raised, but our instructions were that if it had been we were to stick to our brief, which was simply to discuss with the Banabans the question of their future and if it had been raised we

should have had to have replied to them along those lines.

A

MR MACDONALD: I am sorry to interrupt, the witness has referred to approval by the Secretary of State and, of course, the written instructions which he received. I wonder whether they could be produced, because they are not in the bundles.

B

MR VINELOTT: Have you got those ? A. No. When I said approval by the Secretary of State, the Secretary of State had approved that the negotiations with the Banabans should take the form of negotiations in the recommendations in Mr Maude's memorandum. There is a telegram from the Secretary of State giving the go-ahead for that.

C

Q You have seen some of the very large number of bundles we have. Is that in any of the bundles ? A. I could not say. I am speaking from memory. I remember seeing the telegram.

Q We will see if we can find it in the bundles. You were in court when Professor Maude gave evidence ? A. Yes.

Q And you have read the transcripts of Mr Rotan's evidence, have you ? A. I am sorry!

D

Q Have you read the transcripts of Mr Rotan's evidence ? A. Evidence-in-chief, yes, I have seen it.

Q And cross-examination ? A. Yes.

E

Q May the witness have Day 8, and would you look at page 3. Mr Rotan is being examined by Mr Mowbray about a report of a meeting when the Chief Secretary went to Rabi. Can you remember that, I think in 1949 ? A. Yes, January, 1949.

F

Q At the top of page 3 a passage is read to Mr Rotan: "I want to ask you first about paragraph 4. Your Lordship has not seen this, so perhaps I could read it to your Lordship: 'First unpleasant incident. High Commissioner most displeased and disturbed. Matter must be put right. A few weeks ago at Island Council Rotan accused Maude, Macdonald and Holland of carrying through Statement of Intentions as trap to bind necks of Banabans. Bad words for anybody to use of officers who have done so much for Banabans; much worse for man in position of Rotan. Rotan has apologised to Holland but offending words were uttered in Council and apology and withdrawal must now be made. Chairman cannot say one thing in one place and another in another place. His Excellency expects this. After some attempt at equivocation, Rotan withdraws and apologises. He expresses a wish also, if ever this is possible, to say he is sorry in person to the High Commissioner, Mr Maude and Mr Macdonald". First of all, was there anything in the statement of intentions or the discussions you had which you would describe as binding the necks of the Banabans ?

G

A. No, I do not honestly think so. In Mr Maude's despatch to the High Commissioner forwarding the statement of intentions he says - and I agree with him - that the Banabans were surprised at the liberality of the proposals put to them, and I would share that view. I think that the proposals that were put to them were the most favourable that could have been put to them at that stage in time.

H

A Q Looking back, do you think any Banaban was under the impression that he was being forced and coerced in any way? A. I find it very difficult to believe that.

Q Now will you turn to page 5: "(Q) Was that paper the statement of intentions? (A) That is what I remember of it, yes.

(Q) What did you say when Major Holland said that the statement of intentions prevented you from raising these points?

B (A) I was angry when Major Holland told me this and I replied 'Is that the paper by which the neck of the Banabans would be tied; is that the paper that would prevent the Banabans raising any matters at all?' Then Major Holland said 'Don't you know that those are the words of Mr Maude and Mr Macdonald in that paper?', and he was angry and he said he would write to Fiji to the High Commissioner and also to Mr Maude in London.

C (Q) What did you say to that? (A) When I saw him in great anger I apologised to him and told him that I did not intend it to make him angry, but that I would come to Fiji and tell Mr Macdonald about this and would also apologise to him.

D (Q) Did you think that Mr Maude or Mr Macdonald had tried to deceive the Banabans? (A) I did not know of their having deceived the Banabans. I believed them in all our discussions in connection with the interests of the Banabans. (Q) Just to make that answer clear: are you saying you do not consider that Mr Maude and Mr Macdonald deceived you? (A) No, I do not say that. (Q) Did you see Mr Macdonald later on in Suva? (A) Yes. After that I went to Suva and I went to see him in his house and apologised to him about the words I had raised in my discussion with Major Holland. Mr Macdonald told me 'I have read about it. Forget about it; if I was really hurt I would have raised this matter with you'.

E MR MACDONALD: The cross-examination about this is on Day 11.

MR VINELOTT: Thank you very much. Would you look at Day 11, page 8. I read this passage again to Mr Rotan and just above G I say: (Q) And you were asked whether afterwards you saw Mr Macdonald in Suva. (A) Yes, that is true. (Q) I am going to ask Mr Tofinga to translate to you a question that was asked and your answer to it", and then I read the passage which I have just read to you, and then I say: "Mr Macdonald is in London. He has read this question and answer in the transcript and he says that you did not come and apologise and that this conversation never took place. (A) I am sorry, I have told the truth. I have sworn on the bible. I have gone to Suva and I saw Mr Macdonald. I have seen him, he and I met. If Mr Macdonald says that I did not go to see him, then maybe he has forgotten but I actually have gone to see him. It is a long time ago, probably 1950, 1960, 1970 and I think he has forgotten". A. What are the last few words of that?

Q I think we altered them.

H THE VICE-CHANCELLOR: The version I have got is "He had got a lot of work and it is a long time ago, and I think he has forgotten". In place of the words "he is probably 50, 60, 70" I have written "it is a long time ago".

- A MR VINELOTT: Do you see that ? A. Yes, I understand it now, I did not understand it before. I thought he was thinking about my age.
- Q Can you tell myLord, did Mr Rotan come and see you and make an apology ? A. I have met Rotan a number of times over the years and he has been, to the best of my recollection, twice to my house during those years, but I regret to have to say that he has never apologised to me and never withdrawn those allegations.
- B Q Where were you in 1950 ? A. In 1950 I was in the West Indies. I left Fiji for the West Indies in July, 1949.
- Q And you were there how long ? A. Eight years; I got back to Fiji on the 27th September, 1957
- C Q When did you first learn that this allegation had been made by Rotan ? A. When did I first hear of it ? I first became aware of them in mid-September, to the best of my recollection, last year.
- Q How did that come about ? A. I received a letter from Professor Maude telling me of them, and he had become aware of them because he had come across a telegram on the subject in Capt. Holland's papers which Capt. Holland had bequeathed to him, as he mentioned yesterday.
- D Q Did you find this telegram in the BPC archives ? A. Yes.
- Q Did you bring a copy with you ? A. Yes.
- E MR VINELOTT: My Lord, this is another document which is not in the bundle.  
(Telegram put in and marked Exhibit D.18A)
- Q This is a telegram to the Chief Secretary, Western Pacific High Commission, from Major Holland, on the 20th October, 1948. "On 4th October during meeting of Island Council, and in my presence, Rotan, the Chairman, stated that Maude and Macdonald had carried through the statement of intentions hastily as a trap to bind the necks of the Banabans. As there was no context, meaning was beyond doubt and words were repeated a few minutes later. I was included in the accusation. Rotan has since denied using the phrase 'as a trap' but acknowledges the remainder.
- F "I informed the Council and Rotan at the time that his statement must be withdrawn and apologised for by him in writing. Two days later Rotan expressed regret to me for the words used and promised to follow this with the written apology desired. He then accepted my offer to draft the letter, with the phrase quoted above excluded. Draft translated and handed to him but request made by him for time. We have met several times since, but on each occasion Rotan has testified his inability to make written acknowledgement on grounds of conscience. I feel unjustified in waiting longer, without submission of matter to you". Do you regard that as a serious accusation ? A. Yes, I do.
- G H



- A Q If Mr Rotan came to you and told you that he apologised do you think you would remember? A. Yes, indeed I should have remembered, because if he had come I should have said "Well, this is the first I have heard of it. What on earth is all this about, you will have to explain it to me".
- Q Do you think --- A. Excuse me, that is if he had come before mid-November when I returned to Fiji last year.
- B Q Do you think if he had come and made an apology you would have accepted it without a written apology? A. No, I should not. The first thing I should have done would be to ask him to commit it to writing, because that telegram D.18A was on the files in the High Commission's office and it is dated 1948 and under the rules of archives this is going to be open to searchers from 1978, and this slur on the reputation of Professor Maude and myself will be there in the files.
- C Unfortunately there is a certain type of researcher which enjoys finding these sort of criticisms and writing them up. So I would asked certainly for a statement in writing and then handed it to the archivist so that he could put it in the file. I am very proud of my 39 years' service in the Colonial Service and, as far as I know, this is the only sort of accusation that has ever been made against me by native people.
- D Q I want to come back to 1947. We have seen in the bundles and heard in Professor Maude's evidence of the instruction that Major Holland and Professor Maude later should keep out of the negotiations with BPC. A. Yes.
- E MR MACDONALD: My friend says it appears from the bundles of documents that this witness, Professor Maude and Major Holland were told to keep out of the discussions. I readily recollect the evidence about Major Holland, but unless my friend calls my attention to it, I do not recollect any references to Professor Maude and this witness.
- F THE VICE-CHANCELLOR: Mr Macdonald, if you are suggesting that Mr Vinelott was asking a misleading question, then of course you would be right to intervene at that stage, but if you are not suggesting that but you would like to have this information later on, then I think he should be entitled to ask his question.
- G MR MACDONALD: I think I was objecting to the way my friend phrased the question and I thought he might wish to have an opportunity of reconsidering it.
- THE VICE-CHANCELLOR: Now, Mr <sup>V</sup>inelott, Major Holland is admitted, the other two are questioned.
- H MR VINELOTT: You have seen references in the bundle of documents to Major Holland not being allowed to take part in the discussion? A. Not what?
- Q Not taking part in the discussions. A. Yes, I have.
- H Q Professor Maude has told my Lord, and I think you told my Lord, that you understood when you went to Rabi in May, 1947, that you were not to get involved in discussions about it. Is that correct? A. The discussions including the land

discussions, yes.

- A Q Do you think, with your experience, that that was a sensible course for the Government to take? A. It is very difficult to say what one would have done if one had been in the position of the writer, but I think "yes", it was a sensible course. After what one might call the Grimble debacle in 1930-31 and the fact that negotiations had been amicably concluded in 1940, and the fact that the Banabans were eager when Mr Maynard visited Rabi in March, 1946, to conclude the negotiations about lands, and obviously as quickly as possible, I think it was probably the right decision, because the writer obviously feared that if the presence of another Government Officer was introduced into the negotiations you might conceivably have a repetition of 1930-31.

- B
- C There was also a further point, I think, and that was that Holland, I think it is fair to say, was liked and trusted by the Banaban community. He had certainly made a great success of the settlement after taking over from Major Kennedy, and I think the writer probably felt that Holland was probably <sup>good</sup> a Banaban Adviser as they were likely to get and that he probably had advised them in fact. Major Holland had said in a telegram dated the 4th February, I think, that the Banabans agreed, and in his opinion most reasonably, that they should conduct the negotiations for an independent settlement on their own; and to have sent that telegram I assume he must have had some discussions with the Banabans. The letter forbidding him to participate in the discussions is dated, I think, the 25th March, which he would not have got until the end of March, so there was that period between the 4th February and the end of March when he could also have discussed matters with the Banabans. Whether he did so I have no means of knowing, of course.

- D
- E
- THE VICE-CHANCELLOR: You used an expression at the beginning of that answer, "After the Grimble debacle in 1930-31". What were you referring to there? A. Well, I was not in the Gilbert and Ellice Islands in those years, my Lord, but I have always understood from discussions with Professor Maude and others that Mr Grimble allowed himself to get very deeply emotionally involved as a result of the negotiations that transpired at that time. Others might not have become so emotionally involved, but, of course, that was due to his friendship for the Banabans over 12 years and, I suppose, partly because they were enclined to accept his advice.

- F
- G Q What was the debacle? A. Well, the fact that, as Professor Maude was telling your Lordship this morning, the Banabans were very disappointed and upset, I think were the words he used, and it was a traumatic experience for them.

- Q By the resumption. A. Yes, by everything Grimble did at that time.

- H Q Everything he did, and was the final blow the use of compulsion? A. I could not say, my Lord, I was not in the Colony then.

A Q I still do not know what you had in mind when you used the expression "Grimble debacle". A. I think there is also the point that what happened then possibly caused the mistrust of Government for a while amongst the Banabans. I say "Possibly" because I cannot speak of my own knowledge, but that was my impression from those I have talked to.

B MR VINELOTT: What do you mean exactly by the word "debacle", Mr Macdonald. Is it the subject of compulsory acquisition that you had in mind when you used that word, or the whole sequence of events which ended with that? A. Well, Mr Grimble got himself involved in these negotiations, really, in 1926 and they were not finalised until 1931. So it was a five year period. So when he was appointed Resident Commissioner on the 2<sup>nd</sup> January, 1926, there had already been a demand for additional land.

C Q At that time, if the Banabans had asked to see a lawyer would there have been any objection? A. No.

Q Why do you say that? A. I am sure there would not. I would not have done if I had been asked. But apart from that, when they did ask if they could have the services of a lawyer in January, 1949, the Chief Secretary said certainly.

D Q Had it been raised before, do you know? A. Oh yes, it was indeed. To the best of my knowledge, apart from what my colleague Professor Maude said in the witness box this morning about the incident in 1932, it was raised in 1940 when Major Kennedy was on Ocean Island and he said to the Banabans that if they wanted to get the services of a lawyer they should go to Fiji.

E THE VICE-CHANCELLOR: I am sorry to refer back to this, but I am still wondering whether "debacle" is really the word you want. A. I probably used the wrong words, my Lord.

F Q It appears to mean: "A breaking up of ice in a river; a sudden deluge or violent rush of water which carries before it blocks of stone; a confused route, a stampede; collapse, downfall, e.g. of Government". Was something like that the idea you wanted? A. No, my Lord, I am afraid not.

Q So "debacle" is not quite the right word. A. No, it is not the right word.

G MR VINELOTT: Can you think of a better one, Mr Macdonald? A. I would rather not at short notice.

Q You told my Lord that if the Banabans had asked to see a lawyer you do not think objection would have been made? A. No, I am sure it would not have been.

H Q Suppose that the Government - that is Major Holland or some other Officer of the Government - had suggested to the Banabans that they should go and see a lawyer. How do you think they would have reacted to that? A. How would they have reacted?

A Q Yes. A. It is very difficult to say. It is difficult to understand why, when Major Kennedy had given them this advice, they did not take advantage of it when they came to Fiji at that time. They did later.

Q What about Mr Rotan; what do you think his attitude at the time would have been? A. If Major Holland had suggested the services of a lawyer?

B Q Yes. A. I think he would have ruminated over it very long before coming to a conclusion, but what the conclusion he would have come to would have been I have no idea.

3.30

C Q Do you think that Mr Rotan had confidence in his ability to conduct negotiations? A. Oh yes, I think so. I think he had - I was going to say "sublime" self-confidence, but it was just a self-confidence about his ability to deal with these matters, because I recall him saying more than once that if only he could see the High Commissioner the problem of the Banaban royalties and things could very speedily be settled. I think one of his objects in coming down to Rabi, if I remember, he was asked whether he wanted to go to Ocean Island or to Rabi and he said he preferred to go to Ocean Island because it would give him a chance to see the High Commissioner.

D Q He would go to Ocean Island? A. I am sorry, to Rabi.

THE VICE-CHANCELLOR He would prefer to go to which island?  
A. Rabi.

E MR VINELOTT: In general do you think, for people like the Banabans, that it is better for them in terms of advancement that they should have experience acting for themselves, or not? A. Yes, I think so. After all, our whole training in Colonial administrative service was really geared to one aim, which was to participate and advance with all deliberate speed the movement of native peoples towards self-government and independence, and clearly if one was going to put that practice into force you want to see people stand on their own feet and do things for themselves.

F  
G THE VICE-CHANCELLOR: I wonder how far you take that. If one leaves the Pacific altogether and comes to this country there are many people who would be most ill-advised to enter into a commercial transaction without getting proper professional advise. Can you really say: well, in the Pacific, with a desire that people should advance towards self-government, they should enter into a commercial transaction without advice because it is good training? A. With respect, my Lord, I have not said that. I think, in reply to your Lordship's question, I would say that each case must be decided on its merits at each stage of time, and perhaps the man on the spot has to make a decision for himself as to what is wise.

H Q There were large sums of money involved in the phosphate transactions, were there not? A. Oh yes. I was not speaking in relation to the phosphate transactions when I made that remark, my Lord, it was a generality. I think the question

was phrased in quite general terms and I answered in general terms.

A

Q You were not thinking of the phosphate transactions then ?  
A. No; I had not been asked that question.

MR VINELOTT: I was not intending to direct the question to whether professional advice should be given but to the role which the Government should play. A. I am sorry ?

B

Q My question was not intended to be directed to the question of professional advice but to the role which Government should play. Do you in retrospect, in the light of what happened, think the Government should have taken any different role in 1947 ? A. Certainly not as suggesting a further Government Adviser. It comes back to my point about what happened in 1936-31.

C

THE VICE-CHANCELLOR: That is you agree the Government ought not to have taken any part in the 1947 negotiations ? A. Apart from such advice as the Banabans own Banaban Adviser could give them, yes.

D

Q Do you think the Government ought to have encouraged the Banabans to get some professional assistance in those negotiations ? A. They had already been advised to get a lawyer when they came to Fiji. It is difficult to understand why they did not do so.

MR VINELOTT: Did you yourself take any part in considering the proposals made by the BPC at that time, or was that outside your province ? A. I was an Officer of the Fiji Government at that time. No, I did not.

E

Q If you cannot help on this say so, but do you think legal advice would have been any great help to the Banabans at that time ? A. It might or it might not have done. All I can say is this, that later, to my knowledge, the Banabans employed no fewer than four lawyers and, to the best of my knowledge again, the employment of - and I hope you will forgive my saying this - none of those four lawyers advanced their ends at all. Two were mentioned in the transcript, Mr Munro and the Company William Scott represented by Mr Saunders, and the other two lawyers, who were Indians were the Leader of the Opposition in the Legislative Council and the other has just retired as Public Prosecutor.

F

THE VICE-CHANCELLOR: But, you see, I think you are being asked questions about the employment of lawyers for negotiating the 1947 agreement, and the fact that lawyers employed after that agreement had been made and signed did not do them much good does not really throw very much light on whether lawyers could have helped in the making of the 1947 agreement.  
A. I did preface my remarks by saying I did not know.

G

Q I follow that. A. I find it very difficult to say. I mean, some lawyers in Fiji are pretty good.

H

MR VINELOTT: It was not something which it was your duty to consider at the time. Is that right ? A. No, I was in the Fiji Government. I was not consulted.

MR VINELOTT: I have no further questions.

A

Cross-examined by MR MACDONALD:

Q Could the witness have Bundle 55. Mr Macdonald, I am right in thinking that in January, 1949, you were in Suva and you were Assistant Colonial Secretary? A. Yes.

B

Q Would you look at the first page of that bundle, at the very top.

THE VICE-CHANCELLOR: You will not see much if you look on that page. Look on page 4 and you will see a better copy.

MR MACDONALD: Do you see at the very top: "Copy sent to C.S, Fiji. 4.1.49"? A. Yes.

C

Q Do you recollect whether you saw that memorandum in the files at that time? A. No.

D

Q There is clearly a difference of recollection between you and Mr Rotan Tito as to whether or not he apologised to you and it is clearly a matter about which you feel strongly. I do not propose to ask you any questions about that because I am instructed by Mr Rotan - who is in court at the moment - if you have not had an apology before, to apologise to you now and to say that he has always regarded you as a friend of the Banabans who has the Banabans' best interests at heart. I hope that will find its way into the archives. A. Thank you very much.

E

Q I do not know, really, that there is very much between us. I am sure you will agree that in April, 1947, when Mr Maynard came to Rabi, he came to ask the Banabans for more land. You recollect that? A. I would not put it that way. When he came to Rabi in 1946 it was the Banabans who raised the question of their land. Certainly when Mr Maynard came in April 1947 he was certainly hoping to get more land for the British Phosphate Commissioners.

F

Q It was 380 acres and 291 acres. A. Yes, that is right.

Q That, I think, comes to 671 acres. Would you trust my calculation? A. I have not got it.

Q It is round about that. My Lord knows, and I am sure you will accept, that the total acreage of Ocean Island today is 1,500 acres. A. Yes.

G

Q So what the Banabans were considering was whether or not they should agree to well over one-third of Ocean Island being mined for phosphate; that is right, is it not? A. I have not added it up.

Q That was a decision of crucial importance, was it not?  
A. It was what?

H

Q That was a decision of crucial importance? A. For the Banabans, yes.

- A Q Not just for the Banabans alive in 1947, but for future generations of Banabans; that is right, is it not? A. Yes.
- A Q There are really two ways in which that was important. Let me suggest the first. If they agreed to those 671 acres being mined, it was going to make it very much more difficult for them ever to go back in the long term and live on Ocean Island? A. Unless Ocean Island was rehabilitated, yes.
- B Q Unless Ocean Island was rehabilitated. It was also important to them because this was their most important capital asset. A. Yes.
- Q And they needed money for developing Rabi? A. Yes.
- Q So they were faced with this very important decision some 14 months after they had landed on Rabi? They landed on the 15th December. A. 17 months; they landed in December 1945.
- C Q They landed on the 15th December and the agreement was signed on the 10th April. A. Yes.
- Q When they landed on the 15th December, 1945, they had endured the horrors of being in Japanese hands during the war. A. Yes.
- D Q They were scattered over the Gilbert Island, Nauru and Tarawa? A. Yes.
- Q The climate which they came to on Rabi was totally different? A. During the hurricane season, yes.
- Q Very much wetter. A. During the hurricane season.
- E Q How long is the hurricane season? A. Well, they landed there unfortunately right in the middle of it; it is October to March.
- Q It is half the year. A. Roughly; that is the official season.
- Q You get cyclones at unofficial times? A. Unfortunately, yes.
- F THE VICE-CHANCELLOR: You do not get hurricanes all the time during the season, do you? A. Some part of the Pacific always gets hit, my Lord, so it is just a toss up.
- Q But on Rabi do you enjoy six months of continuous hurricanes? A. Oh no, but it is apt to be heavy rain.
- G Q Heavy rain most of the time, or what? A. I could not say. That is the rainiest season of the year, that is all you can say.
- MR MACDONALD: It does rain for days on end at times, does it not? A. I would not put it quite as bad as that.
- H Q I am sure you would agree with what Professor Maude says in paragraph 34 of his memorandum, that when they landed they were in a very wretched and unstable state? A. Well, I was not there so I would not know. They had been in Japanese

A hands so they cannot have been in a very good state, and certainly when we saw them in June they were fairly dispirited and miserable.

Q No doubt what Professor Maude wrote in his report was a reflection of what he and you had seen on your June visit ?  
A. Yes, that is true. I think, though, he was thinking of their sight when they landed at Tarawa when he wrote that.

B THE VICE-CHANCELLOR: We do not know when he wrote it. It was published in September. A. It was published on the 2nd September, yes.

Q So he probably wrote it a bit earlier.

C MR MACDONALD: Yes, my Lord. Is this right: this crucial decision they were going to make about the future of their island they were going to make without having been back to Banaba to see it ? A. Yes.

Q None of them had been there since 1942. A. That is right. There was no housing and no supplies, or anything, for them there and that is why they could not go back.

D Q I do not want to go into reasons because I do not think it is relevant to the issues my Lord has to try. The fact was that none of the Banaban community had been to Ocean Island since they were taken off by the Japanese in 1940 ? A. Not as far as I know.

E Q I am choosing my words carefully: I think you would agree with me that when you described them as hard bargainers, they had no commercial knowledge or expertise ? A. Certainly no expertise, and I would say their commercial knowledge was very limited.

F Q Would it be right that you would have thought that they must have had misgivings about pitting their commercial and legal ignorance against the competence of a negotiator from an organisation like the BPC ? A. They do not seem to have had misgivings, that is the strange part, because they were the people who raised the question of finalising the sales of land on Rabi at the meeting with Mr Maynard in March, 1946 and later said that they wished to negotiate on their own. That was their own decision, they said it should be treated as an independent settlement.

G Q If you had been advising them you would have had certain misgivings about letting the Banabans pit their skill against the BPC, would you not ? A. This is in 1947 ?

Q Yes. A. Yes, I would have had misgivings. I would have had to have thought about it very carefully.

H Q Do you think Major Holland's Gilbertese was adequate ?  
A. He could - how can I put it - talk sort of bush Gilbertese and sort of knock along in it. It would not be grammatically correct probably, but he was not what you might call a Gilbertese speaker, no. He could probably follow the gist of a conversation, but he would not get all the facts I don't think.



A Q I entirely understand and accept what you say about the Government not wishing to get involved in the negotiations itself because of what had happened to the 1928 negotiations, but in that situation it must be right, must it not, that if it had been your responsibility you would have been keen to make sure that the Banabans had some independent advice?  
A. I think that is a hypothetical question.

B Q Yes, I have asked you to assume that you are the Banaban Adviser on Rabi in April, 1947. The Banabans are going to take this important decision which will affect their future. It is fourteen or sixteen months after the war. They have no commercial experience. You would have been concerned, as a responsible Colonial Officer, to see that they had good advice, would you not?  
C A. Yes, but the thing is that they had the advice of Holland, of course. I am not discussing his ability in Gilbertese now. Holland was an officer of very long experience. He had acted as Resident Commissioner on Ocean Island and other posts and they had his advice. That is one point I would have to take into account.

D The second point is a point that was raised by Professor Maude, which was that there had already been negotiations entered into in 1940 just between the Banabans and the British Phosphate Commissioners at which an amicable settlement had been reached. That is another point.

The third point I should have to take into account would be the fact that they had already been advised by Major Kennedy that when they got to Fiji they should obtain the services of a lawyer to advise them -----

E Q Just pause there on your third point. That was advice which Major Kennedy gave to them once in 1939; is that right?  
A. 1940 I think.

Q That was before the war? A. Yes.

F Q Before they had had the horrors of their war-time experience.  
A. Yes. But I do not think somebody like Rotan would forget that advice.

G Q You, as a responsible Colonial Servant, would have been keen, would you not, to have made sure that your charges were properly protected?  
A. Then the fourth point, if I may mention it, is the fact that it was the Banabans themselves who raised the issue of finalising the disposal of their lands in March 1946 with Mr Maynard.

Then the next point I would have had to consider is the fact that the Banabans had opted to conduct the negotiations themselves and allied to that the fact that Major Holland - who, as I say, was an officer of long experience - had agreed with them.

H It would have been a very difficult decision to take. I would certainly have hoped that justice and equity would have prevailed in the negotiations to the advantage of both parties.

- Q You have spent a lifetime in the Colonial Service; is that not right? A. Yes.
- A Q And during that lifetime it has been your concern to do the best you can for the people in your charge. A. Yes.
- Q That is right, is it not? A. Yes.
- Q Had you been on Rabi at the beginning of 1947, do you not think that you would have been concerned that the Banabans, with all their failings and all their virtues, should have had the best possible help before they came to this vital decision? A. Yes. You see, there are other considerations too you have to take into account. You spoke, I think, of pitting the ignorant and uncommercially minded Banabans against the representatives of a giant commercial machine, but I can assure you that the Banabans are real tough bargainers and they are well able to look after themselves in those circumstances.
- C Q But not in these circumstances? A. Well, I do not know. As I said earlier, Rotan is a man who is an able and tough negotiator and a man of supreme self-confidence, and he may have felt that he could do better for his people. I find it very difficult in a court to stand up and say what my decision on that would have been. It is one of those cases where I would have sat down and made a list of the factors and then tried to evaluate the whole thing.
- D Q You told my Lord the factors you would have put into the scale of not giving them advice. A. I am sorry, I did not hear that, you were facing the other way.
- E Q You have told my Lord of the factors you would have taken into account against obtaining independent advice. A. Some of them, yes.
- Q Are there any others? A. There may well be.
- Q Can you think of any? A. I cannot think of any at the moment.
- F Q Look at page 35 of Bundle 39 or page 102 in the PD Bundle. This is a letter from Mr Vaskiss to Major Holland: "With reference to my telegram" etc; (reading to the words): "that those negotiations are wholly between them and BPC". Mr Macdonald, do you not think that Mr Vaskiss made a serious error of judgment when he wrote that letter? A. In saying that Major Holland should not participate in the negotiations?
- G Q And in not suggesting that Major Holland should see that the Banabans had some proper independent advice. A. It is difficult to say. Mr Vaskiss was an officer of extremely long experience. He had joined the Western Pacific High Commission before the First World War and he had, therefore, something like 35 years' service. I would not have put it quite like this myself.
- H Q How would you have put it? A. I think I would have said something like this: While I note from your telegram that the Banabans have decided, most reasonably in your opinion,

MR P.D MACDONALD  
Cross-examined:

A that they should negotiate a separate settlement on land with  
Mr Maynard, nevertheless I think it would be wise to suggest to  
the Banaban Leader or Leaders that your advice and assistance  
would be available at all times, if required, during the  
course of the negotiations, and that it might be wise if you  
acted in, at least some times, a supervisory capacity during  
those negotiations. It is very difficult to try and draft a  
reply on your feet like this, but I think I would have said  
B something like that which I have tried to convey here.

Q You would have said that because you would have been concerned  
to make sure the Banabans were fairly treated and knew exactly  
what they were doing? A. I would like to have a finger in  
the pie, in the decision, yes, to make sure they did not  
do themselves down, shall I say.

C MR MACDONALD: I do not know whether that would be a convenient  
moment, my Lord.

(Adjourned until tomorrow morning at 10.30)

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