

22 Arthur Circle, Forrest,  
A.C.T. 2603, Australia,  
9th January, 1976.

Dear P.D. Mac.,

Thank you for your letter giving me the dope on the closing proceedings re the Re-Planting Action. I found it good because I could understand your masterly condensation whereas the orations as transcribed seemed to waffle on. What it must be like in Court where one gets the full benefit of their legal prolixity and hair-splitting I shudder to think, and I am not surprised that Dick Turpin, after several months of such garbage, refused to return to London.

As you say, the only matter on which we could express our opinion is the tree coverage prior to phosphate extraction. And I should be chary even here since from Macdonald's remarks on 28 October it appears (as one already knew) that the B.P.C. made tree counts at the time: for compensation purposes.

What has not really been brought out, however, is that the coconut trees on the Karrenfeld (the elevated central area) grew here and there but did not bear nearly so well as those along the coastline.

On Vinelott's closing address I feel that he will surely lose out on the contention that the functions of the R.C. were not legally assumed by the Governor. But on the other hand he might have made more of his very true point about dolomietization had he quoted from that superb classic by Hutchinson on The Biogeochemistry of Vertebrate Excretion: it used to be my favourite bedside reading. Furthermore, he doesn't make it clear (possibly he was unaware of it) that while the Banabans, unlike most indigenous races, had a very clear system of customary ownership of under-surface rights (as regards their bangabanga) and that these under-surface assets were owned by communal groups and not individuals and had nothing to do with the individual tenure which governed the surface rights.

I suppose that Rotan and company were allowed to ramble on by the Judge because he was rightly anxious that they should say their say, whatever it might be, and not go away feeling that if they had only been allowed to speak the case would have gone very differently. As we know, this is the cardinal rule in hearing complaints from islanders. I rather feel, however, that Megarry has not altogether allowed himself to be fooled by all the emotionalism, public relations bull and the like, that has been so freely scattered around.

The Judge certainly does not seem to be of the opinion that the Banabans either intend, or should be encouraged, to waste any compensation on the utterly useless exercise of attempting the replanting of a small area of Ocean Island but that any sum should rather be earmarked for the development of their only viable asset: which is Rabi.

But enough of this case, which is presumably over bar the shouting. I have also got Mr Mowbray's opening speech (Day one, in two sections: pp.1-34 and 1-11) but no more so far. From this it is difficult to see where again we can be of help, although at B on p.34 Mowbray seems to hint that the purchase of Rabi in some way did the Banabans down. However, it should not be too difficult to show that he has got the whole transaction mixed up in his mind. I fancy that he knows all that there is to know about trusts, but very little about Banaban affairs.

Mr Vinelott has just sent word through Ing that 'the plaintiffs, in the royalty action, seem to be placing emphasis on the nature of ~~land~~ ownership (and even mineral ownership) and he envisages that your - i.e. our - evidence may very well have to be directed as much towards these technical matters (which would, I imagine, be congenial) as towards the events which you witnessed'.

For all this it is essential that I should have:-

- (1) My letter to Grimble enclosing the Banaban land customs as elicited as a result of the lands settlement of 1931-1932 (I would envisage that the letter should be dated about March 1932).
- (2) The schedule of lands customs enclosed with this letter.
- (3) The draft Ordinance which I drew up to legalize these customs.
- (4) Grimble's covering despatch sending everything to the H.C.

And anything else on the subject. I understand that the draft Ordinance was never enacted, but don't know why.

I have told Ing that we will bring all this and they will pay for the searching and photocopying. Actually Macdonald had it all photocopied for the Banaban side but the B.P.C. solicitors refused to accept it as evidence unless I appeared to be cross-examined on it; and I suppose that the Crown are now a bit diffident at asking them for their copies.

Now - as to our going (if, indeed, they still want us to go after receiving my letter on refunding expenses and defraying loss of income). Honor has rather unexpectedly decided to go too (I suppose she has a woman's prerogative to change her mind) and is now keener than I am. I did nothing to try and persuade her, but thank providence none the less, for she is now flat out on passports, inoculations, doctors, suitcases, clothes, and everything else that I am apt to leave till the last minute; and then forget.

I am now enclosing a copy of a letter I sent to Sands (who tells me that he has forwarded it to London) itemizing our conditions, based on your letter of the 18th. I hope that it is all right by you, but if not you can put in a supplementary log of claims direct. The only place where I had to deviate from your suggestions was on the very minor point of excess luggage, since Honor felt strongly that H.M.G. would demur at a carte blanche approval of unlimited weight without an explanation of why we might want a kilo or two more than allowance. The Nauruans, on being given approval for excess luggage to the S.P.C. Conference, took 15 suitcases each.

You will see that I have accepted your demur without question and called my 'living-away-from-home' allowance an allowance for loss of income while away. Alas, because the former is not taxable and subject only to a deduction at the rate of \$2 a week while the latter is taxable at the rate of (approximately) 50 cents in the \$, which cuts it in half. I should have thought that Fiji would have had much the same rule.

Your letter of the 7th January has just arrived as I write. As you say, we should not be long in England. We have suggested arriving 10 days before the billing of our performance to allow for acclimitization, briefing and say two sessions watching the lions in Court (I gather that we call the beak 'Your Lordship' and not 'old fruit').

We have been to British Airways and find out, needless to say, that you were right and I was wrong, i.e. Honolulu to Miami is too much and we had best stay in Los Angeles over night. Oscar and Browning Spate say on no account to go into the city because of the smog but to stay at one of the two \$ hotels at the airport.

Honor does not want to stop over at Nadi so we have worked out the following tentative itinerary:-

Sydney dep. 9 p.m.	Honolulu arr. 10.55 a.m.
Honolulu dep. 11.15 a.m.	Los Angeles arr. 8.20 p.m.
Los Angeles dep. 8.30 a.m.	Miami arr. 3.55 p.m.
Miami dep. 7.30 p.m.	London arr. 8.45 a.m.

That gives us 2 nights and, in effect,  $1\frac{1}{2}$  days in Honolulu (48 hours), 1 night (12 hours) in Los Angeles, and 2 nights and 2 days in Miami (51 hours); which leaves us 9 hours to spare out of the 120 stipulated. But Honor talks of perhaps taking an earlier plane from Honolulu so as to get to Los Angeles about 6 p.m., and maybe she would like a day in Los Angeles and take an all-night plane to Miami. Anyway this gives you a rough idea of her thinking and if it is more or less O.K. by you we'll book ourselves from Sydney and you from Nadi accordingly through Sands and the British Airways office here.

The last advice from our friend Ing was that there was a hint from the plaintiffs that their evidence might take most of February and would make our arrival in London rather later than hitherto thought. I sincerely hope so and have asked him to cable when he has a reasonably firm date and we'll book pronto and cable you flight numbers and times. Our number here to which you can telephone or telegraph if necessary is Canberra 731793.

Let me know if I have made any major errors. I feel far from competent about getting anything straight, not having left Canberra for about 14 years; not to speak about being preoccupied with other things bearing a date-line, and being in any case muddle-headed these days through old age. I fear that it looks like your having to join the plane at some horrible hour round midnight, so maybe you'd rather go to Honolulu ahead of us?

Yours ever,

*JRM*