

77 Arthur Circle,  
Forrest, A.C.T. 2603,  
14th February, 1975.

Messrs. Macphillamy Cummins & Gibson,  
P.O. Box 628, CANBERRA CITY,  
A. C. T. 2601.

Dear Sirs,

Banabans v British Phosphate Commissioners

Thank you for your letter J.52037 of the 4th February. I am glad that you are keeping my file open for the time being, since I have a feeling that we have by no means heard the end of this case. I shall let you know should any further developments occur.

In reply to the query in your para. 4 you will see from the correspondence in your possession that I approached you at the express request of Mr R.M.L. Brown, the solicitors for the Banabans, and on his written assurance that your costs would be defrayed by him.

There were two matters on which Mr Brown wished me to secure your advice and assistance: the preparation and engrossing of a vital affidavit required for the presentation of the Banaban case, and my protection against pecuniary loss should I give verbal evidence. The first matter has been duly completed, sworn to, witnessed, sealed and forwarded to Mr Brown.

As regards the second matter, from the very commencement of my involuntary involvement in this case I informed Sir Elwyn Jones, then acting for the Banabans, that I was not willing to give any evidence for the plaintiffs in view of the possibility of subsequent victimization by the defendants.

I have never deviated from this position though I consented to consider the possibility of giving evidence should you agree that my position was adequately protected against pecuniary loss through subsequent action instigated directly or indirectly by the British Government or the British Phosphate Commissioners. This, as you have informed me, proved in the event to be impossible.

Still wishing to be conciliatory, however, I framed the expression of my reluctance in such a way that Mr Brown is able to approach the solicitors for the defendants with a view to securing my presence as an expert witness which is all, as an officer of the Crown, that I could be.

As I am the only person still alive in a position to testify on matters which transpired on Ocean Island during the early 30s my absence might well prove a matter for comment by the Judge, whereupon the Barrister leading for the plaintiffs can explain why I am not there. In any event, as on former occasions, I presume that one of the main sources of factual

information will be my monograph on The Future of the Banaban Population of Ocean Island; with special relation to their lands and funds, prepared for, and published by, the British Government, and on the Banabans themselves, my paper on 'The Social Organization of Banaba, or Ocean Island,' published by the Polynesian Society in 1932.

Should Mr Brown, though I personally consider it to be unlikely in the extreme, now demur on his written undertaking to pay your costs, I imagine that one might have to approach the Bar Association of Great Britain, or to appeal to the Judge of the Supreme Court hearing the case; but you are in a better position than I am to consider the best action to be taken. Presumably he would be required to return the affidavit which, in such an event, would have been obtained under what might be regarded as false pretences.

Yours faithfully,



H.E. Maude.

MACPHILLAMY CUMMINS & GIBSON

SOLICITORS

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Your ref.:

Our ref.: J.52037

4th February, 1975

Professor H.E. Maude,  
77 Arthur Circle,  
FORREST. A.C.T. 2603

Dear Sir,

BANABAN LAND RIGHTS CASE RE: EVIDENCE ON COMMISSION

We thank you for your letter of 3rd February 1975 with the enclosed copy of your reply to Mr. Brown, Solicitor, of London, bearing the same date.

We note your decision in the matter and should be only too pleased to assist further, providing Mr. Brown with your formal letter if he so desires. Pending further correspondence from Mr. Brown we shall keep our file open for the time being.

We trust that you will contact us should any further aspects of this matter arise.

The only matter that remains for consideration is, whether you wish us to approach Mr. Brown to ascertain whether his clients are prepared to defray your legal costs incurred in seeking advice regarding the protection of your interests.

We await your further instructions.

Yours faithfully,  
MACPHILLAMY CUMMINS & GIBSON

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77 Arthur Circle,  
Forrest, A.C.T. 2603,  
3rd February, 1975.

Messrs. Macphillamy Cummins & Gibson,  
P.O. Box 628, CANBERRA CITY,  
A. C. T. 2601.

Dear Sirs,

Banabans v British Phosphate Commissioners

I have thought over my position in regard to the desire expressed by the solicitors acting for the Banabans that I should proceed to London to give evidence for them in this case and have come to the view that the considerations which should govern my decision on the matter are of an ethical rather than a legal nature.

This conclusion, which is necessarily one which had to be taken personally and independently by me, has resulted in my deciding that I am not prepared to give evidence in a case in which Her Majesty's Government is involved as a party except at its express request in writing, and that this applies to evidence in Court or by commission.

As time is now pressing I have written to Mr R.M.L. Brown, the solicitor for the plaintiffs, accordingly, and enclose a copy for your records.

You will note that I have offered to write a formal letter to the same effect, to be forwarded through you, should Mr Brown so desire; in which case perhaps you would be so kind as to send it through your office.

Failing this eventuality there would appear to be nothing further of a legal nature to be dealt with.

Thanking you for protecting my interests in this matter,

Yours faithfully,



H.E. Maude.

MACPHILLAMY CUMMINS & GIBSON

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Your ref.:

Our ref.: J.52037

18th. February 1975

Professor H. Maude  
77 Arthur Circle  
FORREST. A.C.T. 2603

Dear Professor Maude,

RE: BANABAN LAND RIGHTS CASE - EVIDENCE ON COMMISSION

Thank you for your letter of the 14th February 1975. We have not heard anything further from Mr. Brown but no doubt he is involved very much in the Court case which appears to have now commenced.

For your interest, I enclose a copy of a clipping from the Sydney Morning Herald of 15th February which you may not have seen. We shall be grateful if you could keep Mr. Hohnen informed of any further developments in case Mr. Brown or anyone else writes to you direct about the matter.

Yours faithfully,  
MACPHILLAMY CUMMINS & GIBSON



Encl.,

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