

ROTAN TITO AND OTHERS v. SIR ALEXANDER WADDELL AND OTHERS
(RE-PLANTING ACTION), SUMMARY OF PROCEEDINGS, TUESDAY,
28 OCTOBER 1975.

1. Mr Macdonald (Counsel for the Banabans) continued his discussion about whether or not the re-planting of the mined out areas was possible by referring to the evidence of various coconut experts whom the Court had already heard. He drew attention in particular to the evidence of Senator Walker and Dr Robinson, both of whom had held that given certain conditions it would be quite possible to grow coconuts on Ocean Island. The most important condition was the provision of a sufficient planting medium which could be phosphate dirt or which could be soil. Mr Macdonald argued that the obligation to re-plant implied the provision of an adequate planting medium and that precisely what quantity of dirt or soil could be considered "adequate" was a matter for decision by the Judge. Mr MacDonald also referred to the evidence of Mr MacRoberts with regard to his 1964 re-planting. He argued that this tied in with the evidence of the experts, and showed that given sufficient care and attention quite striking results could be obtained with coconut cultivation on Ocean Island.

2. Mr Macdonald then turned to the general vegetation pattern of the island. He cited the evidence of early visitors to Ocean Island to demonstrate that despite the regular periods of drought there had once been abundant vegetation on the island and it had even been described as "well wooded". He argued that even land which had never been planted in the past was, with the exception of the pinnacle belt, capable of cultivation. Mining in the central part of the island in 1914 had involved the removal of trees at the rate of 60 per acre. Other tree counts at about the same time gave averages of 53 and 41 for coconuts, 66 and 51 for pandanus, and 41 for almonds. Banaban witnesses had testified to the fact that in living memory most plots on the island had contained at least some trees and Mr Macdonald referred the Judge to his view of Ocean Island and in particular to certain parts of the island which give the impression of what

Ocean was like in "earlier, and perhaps happier, days".

3. Mr Macdonald said that the trees continued to thrive on Ocean Island despite the harvesting of fronds for ceremonial purposes and the harvesting of nuts for drinking, both of which had an adverse effect on the development of the trees. He concluded that even today, there were more coconuts on Ocean Island than climatic factors would lead one to suppose.

4. Mr Macdonald then turned to the various re-planting experiments which had taken place on Ocean Island. The earlier re-planting in the days before 1913, he argued, had been undertaken to make a good impression on the Colony Government. The re-planting by the BPC between 1937 and 1939 had been undertaken at a time when BPC wanted to acquire further land for mining, and had indeed been followed by the 1940 Agreement. In the post-war period, although there had been several re-planting efforts, none of them were done in pursuance of the 1913 Agreement.

5. Mr Macdonald then considered those trees which had survived from the various re-planting schemes. He argued that these demonstrated that trees could take root and grow in the mined-out areas and even bear fruit, though at a later age than usual.

6. Mr Macdonald then turned to the 1940 re-planting about which the Court had heard a great deal of evidence. He drew attention to the extent of the re-planting operation, to the rate of survival from the 1940 re-planting, and the day ended with a consideration of the way in which the re-planting had been carried out.

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