

ROTAN TITO AND OTHERS v. SIR ALEXANDER WADDELL AND OTHERS
(RE-PLANTING ACTION): SUMMARY OF PROCEEDINGS
WEDNESDAY, 29 OCTOBER 1975.

1. The entire day was again taken up with submissions by Mr Macdonald (Counsel for the Banabans) concerning the possibility of re-planting the mined out areas on Ocean Island. Mr Macdonald referred to the evidence of the various coconut experts whom the Court had already heard concerning the condition of those trees planted in 1940 which still survive. He also reminded Mr Justice Megarry that his Lordship had, himself, seen these trees on the view of Ocean Island. Here was proof, said Mr Macdonald, that trees have grown in the mined out areas and can bear fruit despite the small amount of phosphate in which they were set.

2. Mr Macdonald then referred to MacRoberts evidence about the 1954 re-planting, and the fact that many of the coconuts had been planted in no more than 12 to 18 inches of phosphate. Mr MacRoberts, said Mr Macdonald, could not have been more unlucky in the date at which he planted those coconuts, for it was followed by three years of drought during which no serious attempt was made to water them. The experts had agreed that the early years of a coconut palm life were the most difficult and Mr MacRoberts had estimated that about half the seedlings planted had been lost, though this was probably an under-estimate. Considering the facts that so many of these coconuts had been planted in a mere 12 to 18 inches of phosphate dirt and had immediately experienced a prolonged severe drought, that many of them had survived from the 1954 planting was adequate testimony to the adaptability of the coconut palm and its capacity to survive in the most adverse conditions. The plaintiffs did not seek to show that the trees had borne fruit for there was no evidence to that effect but merely to demonstrate their ability to survive in an extremely harsh environment.

3. Mr Macdonald turned to the reasons for the survival of these trees in the eastern mining area. He quoted evidence to show the relatively high number of trees which had survived and the fact that they were fairly widely spread throughout the area. He quoted the evidence of the various coconut experts and the different hypotheses put forward to explain the trees survival. Whatever the true reason, said Mr Macdonald, the distribution of the trees strongly suggests that they are able to obtain sufficient water despite having less soil than any of the experts had regarded as the minimum necessary.

4. Mr Macdonald reserved his final comments on the possibility of re-planting in the mined out lands until the Court resumes on Thursday morning.

Pacific Dependent Territories Department
Foreign and Commonwealth Office