

ROTAN TITO AND OTHERS v. SIR ALEXANDER WADDELL AND OTHERS
(RE-PLANTING ACTION)

SUMMARY OF PROCEEDINGS, FRIDAY, 24 OCTOBER 1975.

1. The day was taken up with the remainder of Mr Browne-Wilkinson's (Counsel for the BPC) submissions concerning the measure of damages relating to the purple land, and to the plaintiffs claims concerning desecration of burial grounds, and removal of sand from the red land.
2. Mr Browne-Wilkinson argued that the level of any damages must be related to the value of the land to the owner had it not been removed. Since BPC had exclusive licence to mine phosphate on Ocean Island the only way the value of the phosphate in the purple land could be realized was for it to be mined by BPC. Any damages therefore, should be limited to a sum comprising surface rights and reasonable royalty, against which should be allowed royalties already paid to the Banabans and the cost of severing the phosphate. In so far as the phosphate was mined innocently the cost of "raising" the phosphate should also be allowed.
3. Mr Browne-Wilkinson then considered the plaintiffs claim concerning the desecration of a Banaban burial ground. Although there were no damages attached to this claim, it was one about which his clients felt very strongly. He cited evidence to show that BPC had at no time removed sand from the area of the burial ground and that any desecration which might have taken place had occurred during the war as a result of Japanese defensive works. Mr Browne-Wilkinson then turned to the unlawful removal of sand from the red land. He cited evidence to show that no sand had been removed from the land of the twelfth plaintiff, except perhaps, for a slight incursion near the sea, but if this area could properly be described as beach then it fell within the 1948 Agreement which permitted the BPC to remove sand from the "beach at Ocean Island". After some discussion about the exact meaning of the word "beach" Mr Browne-Wilkinson

/concluded

concluded his remarks with a few words about "limitations".
The case was adjourned until Monday, 27 October, when
Mr Macdonald (Counsel for the Banabans) will begin his final
address.

Pacific Dependent Territories Department
Foreign and Commonwealth Office