

Notes on requests to give evidence for the plaintiffs

- (1) At the request of Mr Tebuka Rotan I visited Sydney on the 30th and 31st December, 1971, for consultations with the counsel for the plaintiffs on various aspects of the Banaban claims.
- (2) At, or near, the conclusion of the discussions I was asked if I would give evidence in a Court of Law for the Banabans and against the Crown. I replied that I would not and, on being asked why, I said that for one thing I should in all probability be subject to a penalty for so doing (as an officer of the Crown myself).
- (3) On being asked how I could be penalized I replied that I had no idea but envisaged that I could well lose my pension (which I conceived as being of grace and not of right). Mr Macdonald mentioned to his senior colleague, in an aside, that he thought this unlikely but that I might be proceeded against under the Official Secrets Act.
- (4) I was then asked if I would find a competent Research Assistant to search the B.P.C. records in the Commonwealth Archives in Melbourne for documentation bearing on the case, and this I agreed to do since the archives were open to the public for research purposes.
- (5) Through the Executive Officer of the Pacific Manuscripts Bureau I obtained the services of Mrs Ilma O'Brien, a well qualified searcher, but before she could commence her work the B.P.C. records were closed to the public.
- (6) At a later date correspondence ensued between the plaintiffs' solicitor and myself with a view to persuading me to give evidence for the Banabans and in, I believe, August 1974 Mr Macdonald visited me again with a solicitor, bringing a letter from some functionary in the British Civil Service saying that if I gave evidence for the Banabans no action would be taken against me.
- (7) The letter was quite unacceptable to me as I was not prepared to give evidence for the plaintiffs unless directed by the Crown, whose servant I was and am.
- (8) Mr Macdonald also explained to me the nature of the questions which he proposed to ask me in Court. These appeared to me to be trivial and even irrelevant, having little to do with the action as I understood it. I formed, in fact, the distinct impression that the plaintiffs were most anxious that Mr P.D. Macdonald and I should be seen as appearing on their behalf not for any light which we could throw on the question at issue but to be able to point to the two most senior public servants alive today,

who had been associated with the Banabans, as having come forward voluntarily to give evidence against the Crown.

(9) After long and careful consideration of my position under a number of headings, coupled with consultation with my solicitors and friends, and prayer, I came to the conviction that my reluctance to give evidence had little to do with any question of penalties, which in any case others more competent to judge than myself considered unlikely in the extreme, but was in fact a simple question of ethics.

(10) I therefore wrote to the Solicitor for the plaintiffs as follows, by letter dated the 3rd February, 1975:-

'I have given the whole question of my possible attendance in London almost constant attention for several weeks now and have reached the conclusion that it is a moral or ethical, and not necessarily a legal, one.

There appear to be many facets to this ethical question and I have considered them under seven main categories, which I need not enlarge on. I have also discussed the issues with other, and wiser, heads.

In brief, the result of all this agonizing is that I am satisfied that, although now on pension, I am still a servant of Her Majesty's Government and am consequently not prepared to give evidence in a case in which that Government is involved except at its express request in writing, and that this applies to evidence in Court or by commission.

I am at all times ready to give my unofficial advice on documentation and such like matters whether to the Banabans, the British or Australian Governments or the British Phosphate Commissioners; and in fact have done so at one time or another to all of them. But this is very different to giving sworn evidence in a Court of Law on behalf of plaintiffs engaged in a law suit against the Crown, whose servant I am.

I consider that my Christian duty to my fellow men, as in the present instance represented by the Banabans, has been satisfied by the five months I spent in 1931 settling their land disputes; by my instigating and negotiating the purchase of Rambi Island for them; by my action in arranging for their transportation there after the war and the destruction of their villages on Ocean Island by the Japanese; by my negotiations with the Fiji Government for their settlement there; and by my discussions with them (followed by a secret ballot) to ensure that they remained on Rambi of their own free will and aware that they would be returned to Ocean Island free of charge should they so elect; as well as by my subsequent replies to any requests for information, in so far as it

lay within my power to do so. I am not aware that any other expatriate has done as much for them, or has a tithe of my knowledge and interest in their affairs and future.

My reply to your request, therefore, is not a categorical but a qualified negative, for if the British Government wish me to give evidence they will no doubt, if solicited, indicate as much by a simple request to me to that effect. If they do not so wish, then as a loyal servant of the Crown, it would be morally wrong (quite apart from being inexpedient) for me to do so.'

(11) I was then served with a subpoena by the plaintiffs, dated the 25th March, 1975, and on taking this to my solicitors they wrote the following reply:-

'We are instructed to advise you that Professor Maude will not make any response to the subpoena because we have advised him that he is not legally bound to do so.

Furthermore we are instructed to say clearly and unequivocally that there are no circumstances under which Professor Maude will go to London to give evidence on this matter. His medical condition is delicate and he is advised by his medical advisers that such a trip and such an experience would seriously endanger his health and life.

There is no question of our client altering his view and we are instructed that it is useless for there to be any further correspondence or communication on the question.'

The remarks anent my health related to the fact that at the time of visiting my solicitors, and indeed for some months before, my health had deteriorated under the strain of worry about my proper course of action.

(12) During June, 1975, I saw a transcript of some evidence adduced for the plaintiffs and was seriously concerned at what appeared to me to be certain no doubt inadvertant misapprehensions contained in it. I wrote to the Banaban solicitors to say that 'had I been called to appear for the Banabans I should have been an embarrassment to Mr Macdonald to the extent that he might well have been compelled to ask that I be declared a hostile witness'. I also wrote detailing my concern to the Crown solicitors and later, as in duty bound, I accepted an invitation from them to give evidence, pointing out, however, that such evidence would be of a factual nature and objective, and might conceivably at times favour the plaintiffs' case as much as, or more than, that

of the defendants. My object in coming would be to assist the Court in any way I could, but not to take sides in an action in which my evidence would necessarily be only a small contribution.

.....