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12th January, 1976.

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Mr. Vinelott

With reference to paragraph 3 of my letter of the 7th January, on the subject of the current case regarding Ocean Island phosphates, I have now had a chance this past week-end of reading through the four "blocks" of the transcripts of the speeches on the 15th, 16th and 17th December. (I was wrong - there were five - two each for the 15th and 16th - morning and afternoon, and one for the morning of the 17th December).

2. I note that Ing has sent you the two "blocks" relating to the 15th December, and I comment on those below.

3. However, I might usefully comment first on the other three blocks and get them out of the way so to speak. The transcripts relate almost wholly to the pleadings, and the making of amendments thereto by Mowbray, the Counsel for the Banabans. But I do not think you need look at them; in any case if that had been necessary Ing would have sent them to you. Further, they are to a considerable extent unintelligible without the pleadings themselves, which make the amendments unintelligible.

4. But there are a couple of quite astonishing items appearing in the Court "discussions" on Tuesday the 16th December, and I quote them:-

"Mowbray - ...The first part of (Sources of Law) may not be so important in view of what my friend (presumably Vinelott) said yesterday about not claiming that the Crown owned the phosphates. I am not sure that I myself fully comprehended it, but if we can take it that the Crown is not claiming they ever owned the phosphates, then this becomes a much less important part of the argument.

Mr. Justice Megarry - Mr. Vinelott, certainly something was said that the Crown did own the phosphates, but at the moment you are not contending that the Crown does now own the phosphates?

Mr. Vinelott - No, my Lord.

Mr. Justice Megarry - And, as I understand it, you are not contending that the Crown contends that at some past time it did own the phosphates?

Mr. Vinelott - I think that has only been said on one occasion in the past and that was by Mr (sic) Murchison Fletcher and there have been internal memoranda where the point has been made, but we do not claim that the Crown now has, or ever has had, any title in its own right.

Mr. Justice Megarry - I will make a note that you accept that the Crown has not, and never has had, any title to minerals in Ocean Island. Is that right?

Mr. Vinelott - Yes, my Lord".

5. Wasn't it a poet who said "And things are not what they seem"? But it would be nice to know just what's behind it all. Of course, he is quite right that Mr. Fletcher was the only man who ever said the Crown owned the phosphates. The Secretary of State never did so.

6. Mowbray then goes on to state that Rotan owned the land and therefore owned the minerals - this is in the pleadings. And, finally, Megarry says:-

" You say the Banabans individually owned the minerals and the fact that the royalties are paid into a central fund for the benefit of all Banabans is produced simply by a surrender by agreement by the individual Banabans to give up their individual rights and surrender them to the central fund".

7. Enough of that - something for you to mull over!

8. But, to revert to paragraph 2 above, it would seem from Ing's letter that our evidence is going to be required to cover the period from the Banabans' banishment from Ocean Island by the Japanese to the conclusion of our meeting with the Banabans in 1947. Whether you will be asked questions about later history of the Banaban funds, during the period you were Resident Commissioner I do not know, but obviously the above period is what you will be questioned on when you (and I) take the stand. The questions are likely to be legion and we had better start considering what they might be so that we can answer with one voice; some of the questions are likely to be as follows, I suggest:-

- (a) the state of health of the Banabans when they were collected and taken to Tarawa;
- (b) their state of health on arrival at Rabi, and for some months afterwards;
- (c) their state of health when we went up in 1947;
- (d) their accommodation on Rabi;
- (e) the non-provision of advice to the Banabans by Government (or others) before Maynard tackled them in 1947;
- (f) the conditions put to the Banabans by Kennedy at, I think, Tarawa;
- (g) was Holland's appointment approved by the Banabans?
- (h) "the Kennedy mission" by both of us (I must search for our report on this, since I assure we made one);
- (i) our meeting with the Banabans in 1947 and everything to do with the "Statement of Intentions". Alas, there are no minutes of that meeting; I guess the pace was just too fast and furious to take notes!);
- (j) were the terms of the settlement with Maynard a short while earlier brought up for discussion at our visit; and so on.

8. I have no more time and must needs despatch this letter but I suggest it might be useful if we could both make a list of the points upon which we are likely to be asked to give evidence, so that we can en route to London discuss the answers.

