

22 Arthur Circle, Forrest,  
A.C.T., 2603, Australia,  
6th January, 1976.

Mr N.D. Ing,  
The Treasury Solicitor,  
Matthew Parker Street,  
LONDON SW1H 9NN, England.

Dear Mr Ing,

Ocean Island Phosphates: Royalty Action

Thank you for your three letters, written on the 18th, 22nd and 30th December. The first arrived on the one and only delivery between Christmas and the New Year and the others yesterday. Our Christmas deliveries are a bit erratic in Australia as the Post office virtually closes between Christmas Eve and the 4th January.

It is indeed kind of you to keep us so fully informed of the probable timetable in the Royalty action. I agree that it is essential that we should arrive in London between a week and ten days before being required to face the Court: firstly to recover one's physical and mental balance after what is to us in old age a rather abrupt change of climate and environment; secondly to be briefed by Mr Vinelott and his henchmen; and thirdly to attend once (and if possible twice) in Court to get the hang of legal procedures and etiquette.

I gather from your last letter that we may be lucky and not required to perform our act until the end of February. When you do have a reasonably definite date I should be most grateful if you would make a tentative booking at the Society accordingly, for my wife and myself; and perhaps for Mr Macdonald too, if you find that he has not done so already.

As soon as I hear the date on which I shall probably be required to give evidence (possibly by telegram?) I shall arrange with Mr Sands for the booking of our passages and stop-over accommodation and ask him to cable you our date of arrival and flight number so that you can confirm our booking at the Commonwealth Society.

This is all on the assumption that the British Government feel that the cost involved in the whole exercise is worthwhile. I have given Sands an itemized list of what seems to me to be the minimum financial outlay necessary to enable us to undertake such a portentous journey in mid-winter with the least risk of getting ill and without incurring a financial loss (we do not seek any financial gain, but only to cover expenses and loss of income).

It all seems a horribly expensive operation, as from inclination, and to a certain degree of necessity, we live frugally at home and never go out. So if it is considered to be too great an outlay for any likely benefit to Government I shall quite understand; and indeed be relieved, as to be truthful I dread the whole business.

I have read through the transcripts of Mr Mobray's opening speech and found it to be almost exclusively concerned with Banaban royalties, trust funds and other financial matters on which I know absolutely nothing first-hand, since they never came on my plate at any period of my career (except when I borrowed the High Commission files to write that memorandum).

As Chief Lands Commissioner I was occupied with questions relating to customary tenure and boundary disputes and not with financial payments, and at no time was I engaged either directly or indirectly with the B.P.C. or the Banabans on funds, trusts or the negotiations about the acquisition of lands for mining purposes, nor did I draft any legislation on such matters. And when I was Resident Commissioner the Banabans were living on Rabi and matters concerning their funds were dealt with by the High Commissioner or the Chief Secretary to the High Commission in Suva; I have no recollection of any point ever being referred, or even notified, to me at Tarawa.

As to how, why and when Rabi Island was purchased I could perhaps help to clarify things (if it indeed has anything to do with the case, as the Judge seems to doubt) since Mr Mobray appears to be under some misapprehension on this point (see B on p.34 of his opening address). Also on Banaban custom relating to land ownership and sub-surface rights, which Mr Vinelott considers may come to the fore.

On this latter question you may recollect that, at the request of the Banaban solicitors, I had the draft Ordinance which I prepared in 1931 to codify Banaban customary tenure (as ascertained when I made the lands settlement of Ocean Island, which took nearly a year), together with a schedule detailing all Banaban customs relating to land, both existing and in desuetude, engrossed and sent to them as an Affidavit, but that both the Crown and B.P.C. solicitors refused to allow this document to be used unless I attended in person to give evidence on it.

Perhaps if I am now to attend the Crown solicitors may be willing to relent on this interdict; for it would certainly be difficult for me to answer questions on such an abstruse matter without recourse to the relevant documentation. And hard for the Judge to understand what I was talking about if I did so attempt. But in any case I shall try to bring a copy if I can obtain one.

While speaking of abstruse matters I am quite overawed at the thought of your having written a work on the law of Bona Vacantia.. Alas I can claim no legal expertise other than having qualified by examination in criminal law for appointment as a Deputy Commissioner for the Western Pacific under the Pacific Order in Council 1893. As a Lands Commissioner I was concerned with such questions as the proper payment for te nenebo (blood payment for murder): normally three lands (the kiena, or mat for the corpse to lie on; the rabunana, or shroud; and the baona, or coffin); the sufficiency of te aban rau (land in compensation for adultery); te abani kamaiu (land given in compensation for support during famine); te aban riring (land for bone-setting), and the like.

But as a result of spending several months on Pitcairn Island devising a constitution and code of laws for the islanders I wrote a legislative history showing how their laws can be directly traced from the first rules laid down by Fletcher Christian, John Young and John Adams. Sir Kenneth Roberts-Wray borrowed and quoted from it but I have never tried to get it published. More recently I did a rather similar paper on 'The Evolution of Island Government in the Gilbert and Ellice Groups'. The history of the development of customary law in response to extraneous, and mainly European, legal concepts is a fascinating one.

As regards the diary of Sir Albert Ellis please keep it for as long as you need it: I shall not be wanting it until the case is over and it is a good deal safer with you than with me, as I took an age to locate it. Incidentally, I am asking Mr Sands to post you a paper on 'The Banaban Problem', by Nancy Viviani. She wrote the book Nauru phosphate and political progress in 1970, to which I contributed a Foreword as it dealt indirectly with Ocean Island problems. Mr Vinelott may wish to see it, if only for its Table 2. I'll retrieve it when I see you.

You will have gathered from the above that my wife has decided that she must accompany me to London, firstly on account of my health (psychological, I fancy, rather than physical) and secondly because on one or two matters she appears to know more than I do. For example I was away for most of the time when the Banabans were staying on Tarawa waiting to go to ~~Rebilon~~ but she was there, talking to their womenfolk and caring for their children. Even if she is not called upon to give evidence she can refresh my memory, which is sublimely vague as to dates and times.

Again thanking you for keeping me au fait with developments on the Chancery front,

Yours sincerely,

*SLM*



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BY AIR MAIL

Professor H E Maude  
77 Arthur Circle  
Forrest, A.C.T.2603  
AUSTRALIA

Please quote  
T&M 71/948/NDI  
Your reference

Date  
30th December 1975

Dear Professor Maude

OCEAN ISLAND PHOSPHATES - ROYALTY ACTION

Being once again "in harness", I have received your (other) letter of 12th December, enclosing Sir Albert Ellis' Diary and the 3 voting cards.

I feel sure that these enclosures will be of considerable interest to Counsel.

I am arranging for the Diary to be copied. However, before, as requested, I return the original to you, may I make one point? It is, I suppose, not impossible that (subject no doubt to further consultation with yourself) Mr Vinelott (who is abroad at present) might advise that the whole or part of the Diary should be in evidence. If so, it would, as you will appreciate, be necessary for the original to be retained in this country until that had happened. It would, therefore, seem a pity for the original to be returned to you now, only (if Mr Vinelott should so advise) to have to be sent or brought back to this country a few weeks later. It is under lock and key in my office at present and, if you agree, I would like to retain it until Mr Vinelott has had an opportunity to consider the point. Nevertheless, if you would really prefer it to be returned without more ado, you have only to let me know and this will be done.

Thank you also for having sent me the completed application forms for membership of the Royal Commonwealth Society.

With best wishes to Mrs Maude and yourself for 1976 from Roy Price and myself.

Yours sincerely

N. D. Ing  
(N D ING)

PS Please  
forgive (As from) Treasury Solicitor's Department,  
manuscript - Matthew Parker Street, London SW1H 9NN  
I am away from  
the office this week. N.D.J. 22<sup>nd</sup> December, 1975

Dear Professor Maude,

Your letter of 12<sup>th</sup> December reached me the day after I sent you the letter of 18<sup>th</sup> and I was very pleased to read all that you had to tell me.

I shall of course be delighted to arrange the R.C.S. membership as soon as I receive the forms from Richard Sards. I feel sure you will find the library as congenial as ever; I imagine you are well acquainted with the librarian, Donald Simpson. His is no easy task, as he has to contend with budgetary difficulties as regards new purchases and acute problems of space even for his existing stock.

I was most interested by your comments on how you tackle your writing. My only substantial attempt in that direction is to have written a text book (for Butterworths<sup>1971</sup>) on the law of *Bona Vacantia* and this had to be done in spare time from my office work, taking a year in consequence. You must have had to consider allied problems <sup>to bona vacantia</sup> in your work on land customs and tenure and I should be most interested to hear your comments - it might help for my next edition (if any).

More pertinently, Mr. Dinevelt has mentioned that, while it is early

\*days'; the plaintiffs, in the royalty action, seem to be placing emphasis on the nature of land ownership (and even mineral ownership) and he envisages that your evidence may well have to be directed as much towards these technical matters (which would, I imagine, be congenial) as towards the events which you witnessed. Also, on the last day of term, there was a hint (no more) that their evidence may take most of February - which would make your arrival rather later than suggested in my letter of 18<sup>th</sup>; I will keep you informed of course.

All good wishes. Yours sincerely,  
Neil Joshi