

ROTAN TITO AND OTHERS v WADDELL AND OTHERS
ROTAN TITO AND ANOTHER v. HM ATTORNEY-GENERAL
[Mr. Winelatt's statement to the Vice Chancellor on costs
28 VII 77]

I am happy to be able to inform Your Lordship that the Crown will not be seeking any order for costs in either of these ^{two} actions.

As Your Lordship in Your Lordship's judgment in the royalty action drew the attention of H.M. Attorney General to certain matters of criticism concerning the discharge of governmental functions in relation to the Banabans, may I add a few words ^(a very few words) to explain recent developments to Your Lordship and also, to avoid misunderstanding, explain the reasons which have led the Crown to conclude that it should not ask for an order for costs.

The Crown has long been concerned about the future of the Banaban community when phosphate ^{royalties} ~~revenues~~ run out. There have been many discussions between the partner governments concerning this problem.

Following Your Lordship's judgment, the Crown appointed an experienced colonial civil servant - a Mr. Posnett a former Governor of Belize - to investigate and report on the present situation of the Banabans. That report was made available in the Vote Office of the House of Commons.

Following that Report and following further discussions the partner governments have proposed an arrangement under which a sum of \$10,000,000 ^(Australian) will be set aside as a fund to be preserved for the benefit of the Banaban community as a whole, the annual income to be paid to the Rabi Council of Leaders for development and community purposes. This money will come from reserves held by B.P.C. which derive almost wholly from activities unrelated to mining on Ocean Island. The reserves held by B.P.C. would in the ordinary course

have been distributed to the partner governments and the cost of establishing these arrangements will thus be borne by them.

As I have ^{told Your Lordship,} ~~said~~ this payment is proposed in order to help secure the future of the Banaban community and to assist them to establish themselves after the present ~~very~~ high level of royalty payments has ceased. ^{It} ~~The payment~~ is not directly related to any claim against the Crown in the royalty action.

It has not been calculated by reference to any claim made in that action but by reference to the need which the partner governments recognise for financial help if the economic development of Rabi is to be secured.

The proposals ^{which} I have ^{told Your Lordship about} ~~outlined~~ are indirectly related to the action in two ways.

First, as I have told Your Lordship, the Crown has decided (and in the light of current economic conditions only after consideration at the highest level) not to seek any order for costs ~~against the Banabans~~. It would be fruitless to establish a fund to help secure the future of the Banabans and at the same time seek to enforce against them a liability in costs. By forgoing costs the U.K. Government is, in effect, making an additional contribution to the funds which are being set aside for the Banabans. The decision not to seek any order for costs should not and, we hope, will not be seen as an admission that there was any legal merit in the actions brought against the Crown nor as an admission that the Crown had any alternative but to contest them. Your Lordship may ^{feel} ~~think~~ that the decision not to seek any order for costs in either action is a generous one,

Borne in mind
particularly when it is remembered if the Banabans
had agreed the course proposed by the Crown of trying
the issues of law on which the Crown succeeded as
preliminary issues the larger part of the costs
incurred in the royalty action would ^{never} have been ^{incurred} saved.
My second observation is that
Secondly the proposals cannot be finalised
unless and until the Crown ^{is} satisfied that Your
Lordship's judgment will be an end to all litigation
arising out of the mining of Ocean Island subject only
to any appeal that may be made in the replanting action.
~~while~~ We hope that the Banabans will accept Your
Lordship's decision in the replanting action. ^{At the same time,} the Crown
is not directly concerned in the replanting action and
we feel that it would be wrong to impose any condition
concerning ~~the future~~ ^{appeals in} of that litigation.

[Mr. Vinelott went on to refer
briefly to the costs of the "View"]