



**THE TREASURY SOLICITOR**  
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BY AIR MAIL (BAG)

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Please quote

T&M 71/948/NDI/NJS

Your reference

Date

December 1976

I thought that I should write to you about the Ocean Island judgments which have now been delivered.

The Vice-Chancellor began to deliver judgment on Monday 29th November and finished on Friday 3rd December thus, as one had expected, breaking all legal records. The judgment itself was impressive and clearly, had been most carefully considered, but it contained little comfort for the Banabans. However, nor can the Crown feel completely satisfied.

The claims against the Crown in both actions were completely dismissed. However, the Vice-Chancellor did say in the royalty action, that the Banabans had genuine grievances, but he was powerless to redress them as the only obligation was a governmental one and not a legal or equitable one and so the courts were powerless to enforce it.

Although he went on to say that he hoped that the criticisms in his judgment would be communicated to the Attorney-General and although this has enabled the Banabans to claim that they have achieved some sort of moral victory, they too were not spared from criticism. He referred to the presentation of their genuine grievances being marred by significant omissions of what was true and intemperate assertions of what was false. He also said that one of their claims in the royalty action was totally misconceived and should never have been brought (the wholly legalistic one, unrelated to the 1931 and 1947 royalties, which alleged that certain taxation ordinances had the effect of conferring further royalties on the Banabans).

In the replanting action they lost their minor claims in respect of removal of sand and overmining but they were awarded damages for the failure to replant (although "specific performance" was refused). However, the Vice-Chancellor did not accept their definition of replant; he said it was a naked obligation to plant coconuts etc., not an obligation to level pinnacles, import soil or do any of the other engineering feats that the plaintiffs had suggested. He did not fix the amount of damages; it will be agreed or determined later, but in the light of the limited definition of "replant" he said whilst "minimal" sounded severe, the damages could not be large.

The transcripts are going to be very bulky (approximately the length of "David Copperfield") and expensive when they appear and we have been instructed to exercise strict economies here. We will be sending one in due course, when they are available, but we hoped that you and Harry might come to some mutual arrangement over studying the same transcript. I shall send it to Harry, via the High Commission in the first

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and you  
instance and then he can send it on to you, or he, may then retain it. Since I shall be sending you a copy quite soon, there is no point in quoting anything here but both you and Harry were commended by the Vice-Chancellor.

I trust that you are well and have not been black-legged by the Banabans. I shall be in touch again once I have the transcript; until then I send you, on behalf of us all here, best wishes for a Happy Christmas.

Noel Ing asked specially to be mentioned to you.

*Noel Seed.*

(N J SEED)



77 Arthur Circle, Forrest,  
A.C.T. 2603, Australia,  
23rd January, 1977.

Nigel Seed, Esq.,  
The Treasury Solicitor,  
Matthew Parker Street,  
LONDON, SW1H 9NN,  
England.

Dear Nigel,

Thanks for your two letters, and for your resume of the judgment contained in your first. It was good to get a balanced epitome after all the emotional nonsense in the newspapers. One thing seems clear to me: that the efficacy of the Banaban public relations firms far transcends that of the government; and much of it is taken by the journalists at its face value. The Times had the only reasonable summary that I've seen; the Express was yellow journalism at its worst (admittedly I've not been sent the Sun), the Economist was very disappointing and the Telegraph should be ashamed of itself.

Megarry's judgment was of course unexceptionable, as one would expect, so long as he kept to strictly judicial matters within the range of his high technical expertise. But when he wanders off into so-called 'moral' issues his views appear to be merely the expression of a personal opinion.

It seemed to me in London that Megarry, quite unlike Vinelott, had no historical sense whatever, and would cheerfully judge the actions done half a century ago by a man like say Grimble in the light of the very different ideas and ideals which we all hold today (and which Grimble would have held had he been alive today, for he was always a bit in advance of his times). In 1930 Megarry would have thought and done just as Grimble thought and did; or Paddy did, or I did, for that matter.

On the strict interpretation of the law it would appear that the Crown won out hands down. The personal expressions on morality seem to me essentially anachronistic: the sort of arguments that would ensure the failure of any historical thesis. I only hope that they will not lead to the Government handing over more money to the Banabans than they offered in the first place, for it is difficult to see how their rehabilitation as a community can proceed until they have got through - some would say 'drunk through' - any purely monetary grants.

Paddy is quite right, it would be better to send the judgment to him for I have now got half-way through my new book - on the activities of Peruvian slavers in Polynesia - and would find it difficult to break off. In any case I have a girl chasinnng and checking primary sources, another translating French items and another coming (I hope) to work on Spanish; and they have to be kept busy.

Paddy will send the transcripts on to me in due course, or else a precis written in his inimitable style. He reads everything sent to him and, what's more, understands what he is reading, whereas I merely skim through and understand little; especially as I am usually thinking of the next paragraph of immortal prose to go into my book. Hence I'm not allowed to drive a car until its finished.

With best wishes to Noel and yourself from us both,

Yours sincerely,



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

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Your reference

Date  
11th January 1977

*Dear Harry,*

OCEAN ISLAND PHOSPHATES

I would like to mention the transcripts of the judgment again.

Since my last letter to you I have heard from Paddy who has some time available and is anxious to start reading them as soon as possible, having read all the evidence and all seventy-nine volumes of the speeches. He suggested that you might have some academic commitments and might not be able to turn your attention to the judgment straight away.

I wondered therefore, under these circumstances, whether I should reverse the process and send them to Paddy first and he would then send them on to you. Would you please let me know whether this would be more convenient or whether you would like me to stick to my original idea of sending them to you first. I now have the transcripts but will not send them anywhere until I have heard from you.

Noel Ing and I both send our best wishes for a Happy New Year to you and Honor.

Yours sincerely

*Noel Seed*

(N J SEED)





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16<sup>th</sup> December 1976

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I trust that you and Honor are both well and that the Antipodean Summer is as good as the one we had in the Northern Hemisphere. I shall be in touch again once I have the transcript; until then I send you both, on behalf of us all here, best wishes for a Happy Christmas.

Noel Ing asked specially to be mentioned to you both.

*Nigel Seed.*

(N J SEED)