

FIJI TIMES, Tuesday, 10th January, 1978.

VOICE FOR BANABANS.

The Rabi Island Council will be able to appoint one special member to the new Gilbert Islands House of Assembly, according to a Gilbertese Government statement.

And, like all other islands in the Gilbert Group, Banaba will be a separate constituency electing its own Member of Parliament.

Constitutional changes have been made in preparation for a general election the Gilberts will hold on February 1.

The former House of Assembly was dissolved on December 21.

Every inhabited island will be a single constituency for the first time, the statement says.

The new Assembly will have 35 members elected by 23 constituencies.

Constitutional provision has been made for the appointment of a Rabi Council member.

After the election MPS will meet in Tarawa to decide whether a Chief Minister should be elected by themselves or by a national election.

A new government is expected to be in office by mid-March.

## New Banaban group 'a minority'

# BOSS REPLIES ON RABI HOLDINGS

The managing director of Rabi Holdings, Mr Tekoti Rotan, says the newly formed Banaban Community Association is "a small minority," motivated probably by political considerations.

"It is deplorable that this group should try to undermine Rabi Holdings at a time when it has major expansion plans under way to benefit the Banabans," Mr Rotan said.

Mr Rotan was replying to allegations by the association that the affairs of Rabi Holdings were not in order.

It was true that the 1975-76 accounts had been delayed, but he expected that they would be complete by next month, Mr Rotan said.

The company had strengthened its accounting division to help to avoid similar situations in the future.

He denied that annual reports had not been



distributed to shareholders.

It was the practice to meet soon after the end of each year regardless of whether the auditor's report was complete.

"I doubt whether the critics have attended any of these meetings, nor have they made any complaints to me personally," he said.

Lack of commercial knowledge and expertise had been one of Rabi Holdings' main problems, but many

Banabans had now acquired a degree of commercial know how.

Rabi Holdings intended to publish a bi-monthly newsletter to keep the Banabans better informed of the company's activities.

It was building a \$1 million commercial centre in Rabi Island and work was due to start soon on an airstrip.

The Banaban Community Association has retained a Suva lawyer, Mr Peter Knight, to look into Rabi Holdings' annual reports — which it says have not been distributed to shareholders — dating back to 1970, and into the company's accounts for the same period.

The Registrar of Companies is proceeding against Rabi Holdings for failing to produce its 1975-76 accounts in time.

The association has called also for a complete investigation of Rabi Island Council's affairs, dating back to 1946.

RABI COUNCIL & COMPANY QUERIED.

Community group wants probe of island affairs.

The newly formed Banaban Community Association has called for a complete investigation into the Rabi Island Council's affairs dating back to 1946.

And the Registrar of Companies is starting proceedings against Rabi Holdings for failing to produce its 1975-76 accounts in time.

The new Association says it wants a thorough look in particular into the Council's affairs during the years 1969 to 1973, when it says the accounts were not audited.

During a meeting with some of the Committee members of the Banaban Community Association, including their chairman, Mr. Henry Spring, a Fiji Times reporter, was told that not only had the Rabi Island Council's accounts not been audited during 1969 to 1973, but no records had been kept during this period and documents were missing.

Among the missing documents were 3 cheque books each containing 300 cheque leaves.

Further, the Association says that when Rabi Island Council was audited in 1974 by Suva Accountant, Mr. Girdhar Lal, he did not certify that everything was in proper order.

Mr. Lal yesterday refused to comment on this statement.

Rabi Island Council is composed of 8 Councillors who are elected by the Banaban people at 3-yearly intervals. The Chairman throughout the 1969-73 period was Mr. Titso Rotan.

The Council controls the Trust Fund which now totals approximately \$15 million. This is the revenue from the phosphate being mined on Ocean Island.

The administration and distribution of this is in the hands of the Rabi Island Council of Ministers, according to the Banaban Community Association, (and it) has never accounted to the people for what they do with the money.

They claim that the Banabans have been kept "ignorant" of the distribution of the phosphate revenue. The Banaban Community Association has retained Suva lawyer Mr. Peter Knight to look into Rabi Holdings on their behalf.

They have asked him to look into Rabi Holdings' annual reports which have not been distributed to shareholders dating back to 1970 & into the company's accounts over the same period.

The Association, which was formed in November last year, says its aims are to foster and promote the general welfare of its members & to safeguard & protect the members' interests.

The group is open to all Banabans and has about 200 members in Suva and Rabi.

# Rabi leaders also call for inquiry

Rabi Council of Leaders will ask the Government to appoint a commission of inquiry to study council affairs and administration of Rabi Island.

The council secretary, Mr Thomas Teai said that the council was aware of defects in its operations and in the way the island was administered.

Councillors had approved a resolution calling for a commission of inquiry and a formal request would be made to the Government for the appointment of a commissioner.

"We hope a commission will make recommendations on how things can be improved," Mr Teai said.

"Rabi Council has nothing to hide."

He was answering allegations by the Banaban Community Association about unaudited accounts, lack of

## 'Nothing to hide'

records and missing documents.

He said it was irresponsible of the community association to make sweeping public claims without first officially approaching the council.

Mr Teai said accounts had not been audited between 1969 and 1973, but this did not indicate any deliberate wrongdoing.

"It is actually a reflection of the administrative problems we have faced," he said.

The accounts position had been improved in recent years and he hoped it would be possible to publish proper ac-

counts this year.

He explained that some documents were probably misplaced when Rabi Holdings — the Banabans' commercial organisation — took over certain council functions in 1970.

The association claimed also that the Banabans were not told about the distribution of revenue from Ocean Island phosphates.

Mr Teai said there was no \$15 million trust fund. Phosphate revenue was expended as it was received and was allocated to development on Rabi, share capital in Rabi Holdings, housing assistance, political activities, and bonus and annuity payments to landowners.

"It is untrue to suggest that the people do not know how the money is spent. The distribution of our income is decided by the people every year at a special meeting," Mr Teai said.

*Fiji Times 4<sup>th</sup> December,*

# BANABANS HAPPY

## No complaint on judgment

The Rabi Council of Leaders said yesterday that every Banaban would find great satisfaction in the denunciation by a British judge of the way in which the British Government had failed in its obligations towards the Banabans.

The secretary to the council, Mr Thomas Teai, was commenting on a decision by British judge Sir Robert Megarry to dismiss a claim by the Banabans for the replanting of devastated mining areas of Ocean Island with coconut palms, pandanus and almond trees.

An AAP report from London said the judge said that replanting had become impossible and damages would be a proper recompense.

But he would not quantify the damages, saying they could not be nominal nor could they be large.

The judgment, the longest delivered in an English court, came at the end of a 221-day trial.

### SETBACK

Sir Robert said the British Phosphate Commissioners (Australia, New Zealand and Great Britain) who had been in charge of mining operations on the island for the last 56 years, could not take the benefit of the mining without taking on the burden of their obligations.

Those obligations included the replanting question and the issue not yet decided of mining

operations done outside the areas agreed.

The first setback the Banabans received was when the trial judge ruled against their 21 million sterling (about \$35 million) claim for extra mining royalties.

Mr Teai said in Suva that the Banaban people had found great satisfaction in the judge's denunciation of the British Government.

The Banabans had felt that way for a great many years since they became aware of the way things were manipulated to suit first the private exploiters of the phosphate deposits, then the administering power of the Gilbert and Ellice Islands Colony, and last but not least the BPC.

"The judge said that we did not have the protection we should have got," he said.

"But as he also said, his court was not a court of morals, and we lost our claim that legally the British Government had been our trustee and had let us down.

"We have absolutely no complaint to make about the judgment.

"The judge gave the finding he did simply because there was no law under which he could do otherwise."

He said the ordinary Banaban would find it hard to understand why when a wrong

was admitted, the law made no provision for it to be set right.

"But now that Mr Justice Megarry had spoken in the way he has, it will be easier for everyone who knows about Banabans to appreciate why they were forced into litigation and into seeking independence."

Mr Teai quoted from a verbatim report of Sir Robert's observations in which the judge said the Banabans had much to compare themselves with, always to their disadvantage.

Meanwhile, another AAP report from London said the Australian, New Zealand and Fiji Governments would be consulted before any settlement was reached on the future of Ocean Island.

### NO CONFERENCE

The report, quoting the British Foreign Minister, Mr Evan Luard, ruled out any round table conference to settle the island's future.

Legal opinion in London said yesterday that the British Government might well pay compensation to the Banabans even though the High Court ruling was that it had no financial obligation to do so.

The statement from the judge was most unusual but was one that the British Government would not be able to ignore, the opinion stated.

GOVERNMENT OF THE GILBERT ISLANDS.

MEMORANDUM.

From Chief Minister's Office, Bairiki.

To J. Willis Richards Esq., District Officer, Butaritari.

PF 2621.

11th February, 1977.

Dear Johnathan,

PERMISSION TO VISIT RUSSIA.

Thank you for your letter of 31st January, 1977. I must confess that I am a little surprised at the tone of your reply to my friendly reminder, however, I feel that I should correct certain misapprehensions that you appear to be labouring under.

Firstly, your memory regarding your contract is in error, it was not FCO but Crown Agents. On leave (see contract) the Secretary of State for Foreign and Commonwealth Affairs is entitled to exercise any of the conditions of the contract.

Secondly, you are part of the FCO set-up since this country is still a British dependency and Britain is responsible (through the Governor) for external policy and defence.

Thirdly, abnormal route is purely for passage costing, not for insurance. The permission to which I refer is merely to clear yourself with the UK Government. I must still advise that you do so as failure to do so may have future implications.

Your paragraph 2 puzzles me somewhat; I am still at a loss to understand what relevance your digression into the realms of political philosophy and the concept of the roots of Marxism vis a vis the Gilbert Islands and the USSR has to do with applying for permission to visit the latter nation.

I am afraid that you are clouding the issue with semantics.

Finally dont get up-tight, this is really only for your benefit.

Regards

Sean.

for Secretary to the Chief Minister.

London Times  
14/1/77  
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## A settlement for the Banabans

From Sir John Peel

Sir, In his article in your issue of January 10, Sir Bernard Braine, MP, called upon the Government to deal generously with the Banabans both financially and politically. I am sure that nobody would want to dispute this, but in righting any wrong which may have been done to the Banabans care must be taken not to do wrong to the Gilbert Islands.

Sir Bernard, like the recent and one-sided BBC television production *Go tell it to the Judge*, stated that the link between Ocean Island and the Gilbert Islands was forged by Britain purely for her own administrative and financial convenience. This does not stand up to the facts. The link is precolonial and the story is well known to every old man in the islands. The Banaban village names come from Beru and date from the time of an important chief marriage between the two islands. Inter-island marriage, always necessary for these small island populations, has been made easier by modern communications and in 1945, 152 of the 337 men who went to settle Rabi Island came from islands other than Ocean.

Even today, of the 2,000 living on Rabi, some 250 have both parents born in Gilbert Islands other than Ocean. Nearly everyone has relatives in the Gilbert Islands, some owning land there elsewhere than on Ocean Island, and, of course, the language spoken by the Banabans is the same Gilbertese spoken throughout the group.

The point must also be made that over the years the revenue received from phosphate by the Gilbert Islands Government has been in lieu of normal taxation. Seen in that context it is not the excessive sum implied in the BBC film.

The Gilbert Islands has a point of view and it must not be overlooked. Let there be a generous settlement for the Banabans, but let it also be honourable.

Yours faithfully,

JOHN PEEL,

Resident Commissioner, Gilbert and Ellice Islands Colony, 1949-51,  
51 Cambridge Street, SW1.  
January 11.

12/1/77

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## The Banabans and the Gilbertese

*From the General Secretary, Council for World Mission (Congregational and Reformed)*

Sir, We should all be grateful to Sir Bernard Braine for his article on Ocean Island (*The Times*, January 10) and to James Cameron for a television film on the same subject. It is not often that the small population of a distant speck on the map gain such a sympathetic hearing in Britain.

That there has been a case of exploitation under the British colonial system there can be no doubt. The benefit accruing to Britain was the cheap food we were able to import from Australia and New Zealand, subsidized by Ocean Island's cheap fertilizer. Britain must attempt to put things right.

Unfortunately the present publicity focuses solely on the Banabans and not on the Gilbert Islands as a whole. The Banabans and the Gilbertese were one people, one in language and tradition, one by intermarriage, so it was not just a commercial trick to include Ocean Island within the boundaries of the Gilbert Islands colony. The phosphate was regarded quite properly as a resource for all the Gilbertese with separate royalties going to those who directly owned the Ocean Island land itself.

To speak now of separation for Ocean Island is a blow to the Gilbertese. Britain cannot escape from her Pacific entanglements by taking a narrow view of her responsibilities.

It will be up to Pacific people themselves to find a reconciliation of interests, but perhaps Britain may allay fears by adopting a policy such as the following:

1. With the Governments of Australia and New Zealand, Britain should ensure that the British Phosphate Commissioners make generous provision in lieu of making good the surface soil of Ocean Island.

2. With this resource behind them the Banabans should be given freedom to resettle on Ocean Island if they wish to do so.

3. The Gilbert Islands Government should be informed that Britain does not recognize independence for Ocean Island at the present time.

4. Britain should expedite the independence of the Gilbert Islands, and seek an agreed timetable, perhaps two or three years after independence, for a referendum among Banabans who live on Rabi or Ocean Island on the question of independence for Ocean Island: the majority wish to be respected by all the Pacific peoples.

Putting right an historic wrong is always very difficult; we are liable to create new injustices. Therefore the British Parliament should not be hustled into adopting a short term and narrow view of our obligations.

Yours,  
BERNARD THOROGOOD,  
Livingstone House,  
11 Carteret Street, SW1.



Times

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Friday 14/1/77

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Yours faithfully,

JOHN PEEL,

Resident Commissioner, Gilbert and Ellice Islands Colony, 1949-51,  
51 Cambridge Street, SW1.

January 11.

## The Banabans

*From Mr Henry F. Naisali*

Sir, To us Pacific islanders, reading of the reactions of the British Parliament and press to the judgment given in the Banaban case, the ironies of the situation are almost more than we can bear.

The Banabans, by Pacific island standards, are a rich, well off people living in a fertile island conveniently placed near to metropolitan Suva, capital of Fiji. They have received many millions in phosphate dollars. To us they seem a very lucky people. And yet the British talk of giving them more money.

By comparison, my people in Tuvalu (formerly Ellice Islands),

four times as numerous, have nothing. We are tiny specks in the middle of the Pacific far from anywhere. After 70 years of colonial rule we still have no safe way of getting ashore through the reef passages to our islands, no air service, little employment and scant hopes of economic development. And yet the British Government has recently cut its aid allocation to us.

To those that have, more shall be given, and Britain does not want to know about those who really are in need!

Yours faithfully,  
H. F. NAISALI,  
Ministry of Finance,  
Funafuti,  
Tuvalu.  
January 26.

LONDON TIMES 18/1/77.  
**Plight of the Banabans**

From Mr Frank Hooley, MP for Sheffield, Heeley (Labour)

Sir, The plight of the Banabans first came to my attention nearly 10 years ago, when I was invited to look into their difficulties by my own church, the Methodists. I was considerably shocked by the information I managed to unearth by parliamentary question and discussions with Ministers, and not surprised to discover that this squalid story had provoked criticism in the Commons from Members on both sides of the House over a long period of years.

It must be almost unique in colonial history that a tiny community of about 2,000 souls should have the very land they lived on excavated from under their feet, for the profit and benefit of three of the richest countries in the world, Britain, Australia and New Zealand. The specious briefs supplied by FCO officials and their predecessors to a long line of Ministers cannot excuse the sordid exploitation of these people, now exposed to public gaze by the forthright terms of the Megarry judgment, and I concur with every word of the eloquent article by Sir Bernard Braine in yesterday's *Times* (January 10).

I hope, in fact, that the existence of pressure from both sides of the House of Commons (which is both sincere and determined) will cause the Government in Sir Bernard's words "to deal generously with the Banabans, both financially and politically" so that the United Kingdom may relinquish with honour, not disgrace, our last responsibility in the South Pacific. Australia and New Zealand have a moral, if not a legal, responsibility too, and as Pacific powers an even stronger incentive to make Ocean Island a healed wound, not a festering sore in that part of the world.

Yours faithfully,

FRANK HOOLEY,  
House of Commons.  
January 11.

*18/2/77*

# UN aid sought

GENEVA, Thursday (AAP-Reuter). — The London-based Anti-Slavery Society called on the UN Human Rights Commission in Geneva yesterday to take up the case of the people of the British South Pacific island of Banaba, otherwise known as Ocean Island.

The Society's secretary, Colonel Patrick Montgomery, accused Britain, Australia and New Zealand of depriving "a small defenceless people" of their single wasting asset, phosphate mined on Ocean Island.

Ocean Island was annexed by Britain for its phosphate in 1900 and the Banabans have been moved to Rabi Island, 2,400 kilometres away in the Fiji group.

amount in damages, although they earlier failed to get an increase in mining royalties.

Colonel Montgomery said that Banaba, once covered with coconut and almond trees, within two years would be turned into "a sterile moonscape of jagged coral pinnacles".

"A small defenceless people have been deprived by three rich nations of its single wasting asset", he told the 32-State commission at its annual meeting.

The Banabans had been campaigning for compensation to re-establish themselves on their home island, and for separation from the Gilbert Islands colony to which Britain attached it in 1916, Colonel Montgomery said.

Their case was urgent because the colony was due to become independent of Britain soon.

## Claims for damages

Claims by the 3,000 Banabans for damages from the British Australian-New Zealand consortium mining their island led to the longest and most expensive court case in British legal history.

The court judgment last December awarded the islanders an unspecified

PLIGHT OF THE BANABANS.

From Sir Michael Gass.

Sir, Sir Bernard Braine's letter (January 21) leaves the impression that the Banabans have been totally impoverished by the mining of phosphate on Ocean Island. Yet, as the landowner whose rights have always been recognized and protected by the law of the Gilbert Islands (and, indeed, were recently reinforced by explicit provisions in the latest Constitutional Order-in-Council) the Banabans have received an income from phosphate royalties at a per capita level well above the aspirations of most Pacific islanders. It has been large enough to deflect them from the productive use to which the average islander would have been forced to put their present home of Rabi, a large and richer island than Ocean could ever have been for a Pacific life style.

The response to the present claims of the Banabans should surely be directed towards their social and economic integration as a community on Rabi Island with its high development potential and not at an emotional and illogical redrawing of nineteenth-century colonial boundaries.

I am, etc.

MICHAEL GASS,

Formerly High Commissioner for the Western Pacific

Broadway,  
Butleigh Wootton,  
Glastonbury,  
Somerset.  
January 25.

# Special envoy to study aid for Banabans

By JOHN BULLOCH

**B**RTAIN is to send a special envoy to Ocean Island to see what can be done to help the Banabans, the people moved out of their homes while the island was worked as a huge phosphate deposit.

Mr Richard Posnett, a former Governor of British Honduras, is to leave "as soon as possible."

The announcement was made in the Lords yesterday after Lord Brockway had asked what the Government intended to do following criticism of British policies in the High Court.

## Low prices claim

The Banabans, the original inhabitants of Ocean Island, sought compensation for phosphates they claimed had been sold at low prices, and the proceeds used for the benefit of the Gilbert Islands, of which they denied they were a part. They also asked that their island home should be restored to its former state.

A judge decided he could not give the Banabans any redress, but severely criticised British Government actions which had caused the destruction of Ocean Island and the Banabans' removal to Rabi, in the Fiji group of islands.

Since then, a number of British and Australian documents have been published which appeared to be evidence of a deliberate attempt by Britain and Australia to avoid payment to the Banabans.

## Help 'always intended'

In the Lords yesterday, Lord GORONWY-ROBERTS, Minister of State at the Foreign Office, said the Government had always intended to help the Banabans, subject to the results of the legal actions.

There had been discussions with the Australian and New Zealand Governments, who were also involved. "Our aim is to achieve as soon as possible a settlement which takes account of the legitimate interests of all the parties concerned, including the Banabans."

FISI TIMES 4/2/77

# Gilberts key to Ocean Is solution

LONDON: — Any final solution of the problems of Ocean Island in the Pacific must take account of Gilbertese interests, a Foreign Office minister said yesterday.

Mr Evan Luard, answering Parliamentary questions, said: "The population of the Gilbert Islands is over 50,000 and the Banabans (who come from Ocean Island and now live in Rabi Island in Fiji) is between 2000 and 3000.

"We have to consider that Ocean Island now is in receipt of very large revenues from phosphates.

"Is it right and fair that this should go exclusively to two or three thousands people, or should the benefit be shared more widely among a larger number of people?"

The Banabans were removed from Ocean Island to Rabi 30 years ago while the British Phosphate Commissioners exploited the phosphate resources of Ocean Island.

The Gilbert Islands group, which included Ocean Island, is due to receive full independence next year from Britain.

The Banabans want their former homeland to be separated from the Gilberts so that it can become a separate state associated with Fiji.

— AAP-Reuters.

# The Banabans

From Mr Henry F. Naisali

Sir, To us Pacific islanders, reading of the reactions of the British Parliament and press to the judgment given in the Banaban case, the ironies of the situation are almost more than we can bear.

The Banabans, by Pacific island standards, are a rich, well off people living in a fertile island conveniently placed near to metropolitan Suva, capital of Fiji. They have received many millions in phosphate dollars. To us they seem a very lucky people. And yet the British talk of giving them more money.

By comparison, my people in Tuvalu (formerly Ellice Islands),

four times as numerous, have nothing. We are tiny specks in the middle of the Pacific far from anywhere. After 70 years of colonial rule we still have no safe way of getting ashore through the reef passages to our islands, no air service, little employment and scant hopes of economic development. And yet the British Government has recently cut its aid allocation to us.

To those that have, more shall be given, and Britain does not want to know about those who really are in need!

Yours faithfully,  
H. F. NAISALI,  
Ministry of Finance,  
Funafuti,  
Tuvalu.  
January 26.

London Times 8/2/77

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## The Banabans

*From Mr Jeremy Thorpe, MP for North Devon (Liberal), and Mr Emlyn Hoosen, QC, MP for Montgomeryshire (Liberal)*

Sir, You are entirely right in saying that the British Government should make a generous payment to the Banabans.

To its credit, the British Government has accepted responsibility. Lord Goronwy-Roberts told the House of Lords on January 24 1977 "There is no question of the Government evading its responsibilities. . . . I am anxious that it should play its full part—indeed perhaps more than its full part—in rectifying as far as possible with others concerned the enormities of past colonial policy."

It is true that the mistakes of the past cannot be wiped out. Ocean Island can never be rehabilitated. In the recent litigation it became clear that it would cost at least 30 million Australian dollars partially to restore one sixth of the Island. But a prompt and fair money settlement can do much for the Banabans.

Clearly it is for the United Kingdom Government to act. The gross breaches of duty identified by the Judge were breaches of duty of the Colonial Government for which Britain is directly responsible. The fact that Australia and New Zealand have received considerable economic benefit is a reason why they as well should share in the discharge of this responsibility.

*Times 12/2/77*  
The British, Australian and New Zealand Governments retain 21 million dollars in the reserves of the British Phosphate Commissioners. In 1975 the Governments were prepared to use some of this money to settle the litigation. It still offers an honourable way out. The 21 million dollars should be paid to the Banabans at once without strings as some reparation for past wrongs.

Any prevarication by the British Government will not be acceptable to public or parliamentary opinion. It will compel the Banabans to turn to the Court of Appeal as the only hope of impressing on the British Government that their duties are enforceable in the courts. Such a judgment would come as no surprise. The only issue now is whether the Banabans will be compelled to ask the Court of Appeal to seek legal grounds on which unquestioned moral obligations of HMG might be legally enforceable, or whether the Government, who have indicated from the beginning that they intend to discharge those obligations, will make a sufficiently generous ex gratia settlement. In so doing they would spare the Banabans further worry and expense, and themselves the odium of appearing to act in a mean and defensive way.

We have the honour, Sir, to be your obedient servants,

JEREMY THORPE,  
EMLYN HOOSSEN,  
House of Commons.

# IS HOLIDAY DIVIDEND

By KATHLEEN WELSH

**O**UR annual New Year bonus of a cut in egg prices is, like many bonuses, welcome but smaller than last year. While some shops have reductions up to 7p a dozen, the average is about 4p, compared with 7p or 8p a dozen last year, and a record 9p to 11p the year before.

White eggs now cost from about: 48p-49p a dozen (large), standard 45p-47p, and medium 43p-45p. The reduction is brought about by the stockpiling of eggs during the holidays, when hens go on laying although shops do not go on selling.

This year, however, the egg mountain is little more than a gentle hill, because of a cutback in production coupled with increased export. A rise of 60 per cent. in feedstuffs over eight months has meant farmers reduced their laying flocks.

On the other hand, since September there has been a growing egg export trade, notably to the Middle East. Other countries, such as France, are sending eggs there too, and so have no surplus to sell cheaply to us.

Oven-ready frozen chickens are now costing about 38p to 40p lb in the shops, and fresh chickens about 45p to 49p lb.

## Vegetables dear

Rain, snow, frost and long holidays are meaning fewer vegetables and higher prices. The changeable weather has not only delayed lifting and cutting but slowed growth and affected quality. Brussels sprouts cost 25p to 35p lb, and cauliflowers, at 35p to 50p each, are too dear for many greengrocers to stock.

Cabbages, at 10p to 12p lb, and swedes, at 9p or 10p, remain the cheapest vegetables, followed by turnips, about 12p to 16p lb. Carrots, from about 13p, parsnips and onions from 18p, all range up to 20p lb or more. Potatoes can still be bought from 11p lb, with new ones at 16p to 25p.

Bananas at 12p to 16p lb are now in good supply. There are good quality grapefruit at 7p to 16p each, and lemons from 3p each.

FIN TIMES 29/11/77

# The defence rests ... on a radio link-up

LONDON QC John MacDonald is preparing to conduct one of the world's most unusual cases.

When Russian dissident Dr Yri Orlov goes on trial in Moscow soon, Mr MacDonald will present his defence in London.

The case for the defence will be broadcast by the BBC overseas service to Russia.

"There is only an outside chance I will be allowed into Moscow," Mr MacDonald told me today.

"So I will present the defence in London, and the BBC relay will ensure that both sides of the story are heard in Russia."

Professor Orlov is chairman of the Soviet Committee for Monitoring the Helsinki Agreement.

He was arrested last February after the committee had published carefully documented evidence to show that the Soviet Government was not honoring its human rights pledges in the Helsinki Agreement.

He was recently charged with fabricating statements to defame the Soviet Union.

After his arrest, Dr Orlov's wife tried to phone Mr MacDoland in London. In a 15-second plea, before a KGB monitor cut off the call, she asked the London barrister to defend her husband.

Mr MacDonald, 45, is a commercial lawyer with a commitment to human

By

**CHRIS MILNE,  
in London**

rights. In 1958, he drafted a bill of rights for Britain, and he is a veteran of the 220-day legal battle by the Banabans of Ocean Island against the British Phosphate Commissioners, the mining company owned by the British, Australian and New Zealand governments which devastated the island.

For months, he has been gathering evidence from 17 Soviet witnesses to defend Dr Orlov and studying Soviet law.

He has discovered that under Soviet law it is a proper defence to show that the statements by the defendant are true, or that the defendant believed them to be true.

He says there is "a very great deal of evidence" to show that the statements of Dr Orlov's committee about violations of the Helsinki Agreement are true.

One of his witnesses is Soviet lawyer Mrs Lyudmila Alexeyeva, a member of the monitoring committee, who left Russia in February.

Others include the writer Vladimir Bukovsky and the mathematician Leonid Plyushch, both of whom can provide evidence to substantiate the statements of Dr Orlov's Committee on Psychiatric Abuse in Russia.

Mrs Alexeyeva has offered to return

to Russia, where she risks arrest by the KGB, to give evidence at Dr Orlov's trial.

But Mr MacDonald does not believe he will be allowed to defend the dissident in Moscow.

"I applied for a visa to Moscow earlier this year and it was refused," he says.

"I have written to the Soviet Ambassador in London, to see if he will discuss the possibility of a visa, but he has not replied.

"When a date for the trial is announced, I will make another attempt.

"But there is only an outside chance of my defending in Moscow."

So far, no date has been set for Dr Orlov's trial, but it will probably start early next year.

Mr MacDonald has sent defence statements to the chief procurator in Moscow.

"The prosecution evidence will be relayed to us, and we will get together some sort of answer to their points within 24 hours. Our defence will then be relayed back to Moscow through the BBC foreign service."

To John MacDonald, QC, it will be legal injustice if the Moscow court refuses to hear his evidence, or consider his defence statements.

In the words of Russian expert Nicholas Bethell, to ban Dr Orlov's defence "will be a massive demonstration of the meaninglessness of Soviet justice."

# Britain puts squeeze on Pacific islanders

By CHRISTOPHER SWEENEY

A package deal, in the form of a trust fund is likely to be forced on the former inhabitants of Ocean Island by the British Government later this year—50 years after they first complained to the House of Commons of the devastation of their island by phosphate extraction.

The money would be offered to settle the bitterly-fought claim by the 3,100 Banabans that they were cheated out of royalties and their tiny Pacific island ruined by more than 70 years of mining.

The proposal, in its initial form, is already being opposed by the islanders. Their advisers in London and Australia have recommended that if such a

trust fund is offered, it should be rejected. The actual sum, which has not yet been finalised, is in any case bound to be disputed. Certainly, the establishment of a trust would cut down Britain's overall payout.

One problem is that relations between the Banabans and the Foreign Office have been soured by the long court case and distrust of Britain's intentions. At the end of the High Court action, the longest in British legal history, Mr Justice Megarry last December severely criticised the British Government for exploiting the islanders.

The Banabans believe that Britain is still trying to outmanoeuvre them and are expected to adopt an uncompromising line over settlement proposals.

In confidential briefings with MPs, the Foreign Office has argued that the islanders have squandered money in the past and would do so again if given a large lump sum. The Banabans, while conceding that there has been mismanagement in the past, want a lump sum which could be managed in a similar way to that of the other phosphate rich Pacific island, Nauru.

Detailed estimates, from both the Banabans and the British Government, disclose that the islanders received a mere £8 millions since 1920 from royalty payments made by the British Phosphate Commission (42 per cent owned by Australia and Britain, 16 per cent by New Zealand).

Total royalty payment during this period for the phosphate in fact came to around £54 millions but 85 per cent of this was used by London to cover her costs in administering the Gilbert and Ellice Island colony. By the time the phosphate runs out the Banabans claim that the British Crown will have benefited by some £63 millions.

7/7 Guardian

Guardian  
11/8/77

# Banabans planting scheme runs aground

By Christopher Sweeney

The Banaban community from the Pacific was yesterday officially warned by the British High Commissioner in Fiji not to go ahead with their plans to re-invade their island homeland and replant it with coconut and other fruit trees.

In an official telegram, transmitted on behalf of the colonial administration in the Gilbert Islands, the commissioner said that the Banabans would not be permitted to replant the island because of a little known ordinance concerning importation of seedlings.

The decision means that the Banaban fishing trawler, stocked up with coconut and other plants from Fiji, will now not be allowed to land on Ocean Island. The boat, with a landing party of more than 100 mainly young Banabans, set off for Ocean Island over a week ago.

The ordinance seeks to protect the Gilbert Island group, still a British colony though with limited self-government, from the possibility of new plant and fruit diseases. According to the wording of the regulation, it is aimed at protecting the Gilberts' agriculture from Taro blight, rhinoceros beetle and other diseases.

The Banabans had planned to try to restore areas devastated by British Phosphate Commission mining by introducing dwarf coconuts, which grow more rapidly than normal varieties and bear fruit very quickly.

But both the Fijian Government and the Banabans yesterday indicated that the real reason for the ban was to abort the Banabans' plans to re-establish a symbolic presence on their homeland.

A similar scheme in 1975 ran into trouble when the Gilbert Island administration rushed through a regulation requiring most Banabans to obtain a licence to live on Ocean Island. The so-called closed districts ordinance, announced only days before the Banabans were due to land in March 1975, put barriers in the way of the community re-establishing itself on

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to land in March 1975, put barriers in the way of the community re-establishing itself on the island.

The ordinance required all people not actually born on Ocean Island to get the licence, which had to be renewed every six months. Because the Banabans have lived in exile since 1948, few of their children were born on Ocean Island, making almost all of them liable to the licence and its restrictions and controls.

The Banaban leader, Tebuke Rotan, said in London yesterday that this latest regulation was clearly aimed at aborting their replanting programme and stopping them going back.

Earlier this month, the Banabans were awarded a mere £9,100 in damages by the High Court because of the failure of the phosphate company to restore the land to its original condition in a decision that has been widely criticised.

"We were given an undertaking in 1947 by the British that we could return to our homeland. But every time we try there are obstacles and attempts to stop us. The British and the colonial administration on the Gilberts are using every trick," said Tebuke Rotan.

In the prohibition order, the Gilbert Island administration yesterday said that under its legislation, coconuts, bananas, paw-paw and bread fruit from anywhere in the world are banned. It said similar legislation existed in other areas of the Pacific.

It adds, however, that "given sufficient warning, it should be possible for our agricultural division to provide the Banabans with all the planting material they require."

The Banabans fear that if they were forced to rely solely on the Gilbert administration for agricultural assistance, nothing would get done.

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*London Times 16/2/77*

# Ocean Island separation still opposed

By Marcel Berlins

The government of the Gilbert Islands has again made clear its opposition to the separation of Ocean Island from the Gilberts.

The original inhabitants of Ocean Island, the Banabans, have been pressing for independence from the Gilberts and association with Fiji. They now live on Rabi, an island near Fiji, although they still regard Ocean Island as their homeland.

Mr Naboua Ratieta, Chief Minister of the Gilberts, a British colony moving towards independence, said: "We believe Ocean Island to be an integral part of the Gilbert Islands and we are not prepared either now or in the future to see it taken away either as an independent island or to be integrated with another colony."

He emphasized that there was no question of the Banabans losing their land rights to Ocean Island.

LONDON TIMES 24/1/77

## Plight of the Banabans

From Sir Bernard Braine, MP for South East Essex (Conservative)

Sir, Both Sir John Peel (letters, January 14) and Mr Bernard Thorogood (letters, January 12) take issue with one aspect of my article of January 10 calling for justice to be done to the Banabans. Both contend that the Banabans are Gilbertese and that the latter have, for this reason, the right to enjoy the assets of the former.

Only Sir John produced any evidence of pre-colonial links between Gilbertese and Banabans, namely "an important chief marriage" between Beru in the Gilberts and the Banabans.

I hesitate to question a former Resident Commissioner of the Gilberts, but a paper I have before me by a predecessor of his, Mr H. E. Maude, the acknowledged authority on the area, dates this link at AD 1650 when some fugitives from political upheavals in the Gilberts arrived on Ocean Island and inter-married freely with the Banabans.

There was scarcely any other contact because Ocean Island was virtually inaccessible to the Gilberts until the arrival of European sailing ships. In short, there is no evidence that Ocean Island was regarded as part of the Gilberts until it was made so by British officials after the discovery there of rich phosphate deposits.

The right to tax Banaban phosphates to finance the administration of the Gilbert Islands, a charge which would otherwise have fallen to the British Treasury, derives from the exercise of British sovereignty over the area, not from any kinship links between the indigenous inhabitants.

No Member of Parliament, as far as I am aware, has any wish to ignore the interests of the Gilbertese people. But it is Ocean Island, not any one of the 16 Gilbert atolls, which has been totally ravaged for British, Australian and New Zealand benefit. It is the Banabans, not the Gilbertese, who have been mercilessly bullied and cheated by successive British administrations. The Government must not be allowed to continue to thwart the Banabans' profound emotional and cultural attachment to their homeland until the proceeds from the last tone of phosphate has been used to absolve Britain from her financial obligations towards her Gilbert Islands Colony.

Yours sincerely,  
BERNARD BRAINE,  
House of Commons.



# Banaban leaders adjourn meeting

The Rabi Council of Leaders postponed their meeting yesterday to await information from their team of advisers in London.

The eight-member council has been meeting in Suva for the past two days to consider an offer of \$10 million from Bri-

tain, New Zealand and Australia to settle their Ocean Island claims.

The council secretary, Mr Thomas Teai, said the council expected to meet Fiji Prime Minister Ratu Sir Kamisese Mara late tomorrow afternoon.

*Fiji Times 2/6/77*

*2011 Times 3/6/72.*

# Banabans see PM about London talks

Banaban leaders yesterday met the Prime Minister, Ratu Sir Kamisese Mara, to discuss their call for independence of Ocean Island.

The question of independence for phosphate-rich Ocean Island will be raised at a Commonwealth Heads of Government meeting in Londong next week which Ratu Sir Kamisese will attend.

Ocean Island is seeking associate independent status with Fiji.

## NO OPTION

Asked whether he felt the Banaban issue would be raised at the Commonwealth heads meeting, Ratu Sir Kamisese said there was no option, because the British Prime Minister and Foreign Minister wanted to raise the issue.

The British Phosphate Commissioners, representing Britain, New Zealand and Australia, have offered the Banabans \$10 million for the ravaging of

Ocean Island as a result of the phosphate mining.

Ratu Sir Kamisese said he felt that the Banabans did not regard the offer of \$10 million as generous. They had applied for a much larger sum.

Ratu Sir Kamisese added that he would know how to respond to the offer after he had consulted the Banaban leaders.

Ocean Islanders, commonly referred to as Banabans, have re-settled in Rabi Island, off Vanua Levu.

THE FIJI TIMES 1/6/77

# Gilberts welcome UK line on Banabans

The Gilbert Islands Government has interpreted British Parliamentary statements on the Banabans as meaning Ocean Island will continue to remain part of the Gilberts.

A Gilbertese Government statement said the Gilberts welcomed the statement by the British Secretary for Foreign and Commonwealth Affairs, Dr

David Owen, to the effect that Ocean Island would continue to remain part of the Gilbert Islands state.

In his statements, Dr Owen said there were strong legal, constitutional and historical objections to making Territorial changes involved in detaching Ocean Island from the Gilberts.

The Banabans have been seeking independence from the Gilberts and lately considered attachment to Fiji.

There could be no perfect

solution, but given goodwill there could be an agreed compromise, Dr Owen said.

There had been discussions with Gilbertese ministers about additional guarantees and safeguards which could assure the Banabans of a special autonomous position for Ocean Island with the Gilberts, he said.

The Gilbertese Government statement said that two years ago the Chief Minister, Mr Naboua Ratieta, made a generous 15-point offer to the

Banabans which still held good.

In the light of Dr Owen's statement the government would reconsider the statement with a view to revising and perhaps expanding it.

The Government would continue to advance the interests of all the inhabitants of all the islands, including members of the Banaban community living on Ocean Island or Rabi Island in Fiji, the statement said.

The Rabi Council of Leaders is continuing to meet in Suva to

consider the offer of \$10 million from Britain, New Zealand and Australia to settle their Ocean Island claims.

In a statement issued late yesterday the council said the 15-point offer was rejected in its entirety.

It fell far short of creating a situation in which the Banabans would be able to exercise sovereignty over Ocean Island, their ancestral homeland, and the only revision which would be of interest to the Banabans

would be one providing for self-determination for Ocean Island.

"We have already indicated that self-determination for our homeland would include agreements for economic and financial co-operation between Ocean Island and the Gilberts," the statement said.

"We want to do things in the spirit of the Pacific Way and such co-operation would be a manifestation of this spirit."

## LETTERS TO THE EDITOR

Guardian 11/3

# How the Banabans settled on Rabi

Sir,—Mrs Brahams (March 8) writes that the tragedy was that no steps were taken to ensure that the Banabans had proper advice before they entered into the 1947 Agreement to lease more land for mining to the British Phosphate Commissioners. That is only part of the story. It was an equally serious breach of the Government's duties to the Banabans that it did not ensure that the Islanders had independent advice about where they should settle.

The contemporaneous documents, which Mrs Brahams does not seem to have considered, show that in 1945 the Banabans were given no real choice.

At the beginning of October, 1945 Mr Vaskees, the Secretary to the Western Pacific High Commission wrote "it is considered most desirable that this unique opportunity should be taken for taking the Banabans to Rabi instead of returning them to Ocean Island. It is essential that the BPC should lend the Government a vessel for the purpose of transporting the natives.

This request is made with confidence since the removal of the Banabans and the settlement of the Banaban question is even more to the essential benefit of the BPC than the Government."

The BPC provided a ship. The Banabans, worn out from their long ordeal under the Japanese, were collected at Tarawa. They were told they could not return to Ocean Island because their houses had been destroyed by the Japanese. They do not appear to have been informed that the BPC were recruiting 600 Gilbertese to work on Ocean Island in the phosphate industry. No one suggested that some Banabans might work in the phosphate industry. No one told them there would be no houses waiting for them on Rabi and they would have to live in tents. No one suggested they could live in tents on Ocean Island.

Major Kennedy the British Officer in charge of the move, records in his report that he told the Banabans that no person would be forced to go to Rabi against

his will but that those who remained behind "would be obliged to fend for themselves in the Gilbert Islands in the same way as they had done during the Japanese occupation."

It is not surprising that the Banabans decided to go to Rabi.

It is not an episode in our colonial history in which we can take much pride, and it is not made any better by the fact that, as Mrs Brahams rightly records, in 1940 the Banabans were understandably a second island in addition to Ocean Island. They never wanted or intended to abandon their homeland.—Yours sincerely,

Jenny Barraclough,

Producer: "Go Tell It To The Judge."

BBC,  
Kensington House,  
London W14.

Sir,—In her letter Mrs Brahams criticises the description of Ocean Island as a lost paradise. I do not know whether she is justified. I have never been there. How-

ever, as a former Administrative Officer of Fiji who was directly concerned with the agricultural development of Rabi Island by the Banabans I would like to modify the impression of Rabi, given later in her letter, as a paradise gained. She says that Rabi is ten times the size of Ocean Island and has far greater potential.

She does not say that nine tenths of Rabi is mountainous, with difficult access and only moderately fertile — as the Wright & Twyford soil maps show. In fact its fertility is in marked contrast to the neighbouring island of Taveuni. I must also query the assertion that "the annuities produced by the phosphate industry and distributed to the Banabans did their recipients nothing but harm." I understood that a small hospital, a school, a road, a wharf and housing were among the projects paid for out of these funds. —Yours faithfully,

Peter Westwood,

102 Alric Avenue,  
New Malden,  
Surrey.

The sudden end of a ballet group

Pakistan at the polls: unfair?

LONDON TIMES 6/8/77

## Justice for the Banabans

From Sir Bernard Braine, MP for Essex, South East (Conservative)

Sir, Your leading article "The Disappointments of the Banabans" (August 4) rightly emphasizes the moral injustices suffered by this people. In the event, recourse to law did not wipe away these wrongs.

Last December the Vice-Chancellor found that the British Phosphate Commissioners were liable to pay the Banabans damages for their failure to replant a certain acreage of their devastated homeland of Ocean Island. In awarding damages last week, he presumably had his reasons in law for rejecting the Banabans' demand for £50,000 per acre and for ordering £50 per acre instead.

As for the case which the Banabans brought against the Crown, the Court deemed itself powerless to award the Banabans a penny.

Whatever the legal sense of these judgments (and the Court of Appeal could have other views) they have no bearing whatsoever on the moral issue. The Vice-Chancellor explicitly recognized this when he directed the Attorney-General's attention to the wrongs done to the Banabans which his Court was unable to right.

The British Government's offer was not made, as suggested by the Judge, as compensation for past grave breaches of the Government's higher trust towards the Banabans. Indeed, Dr Owen subsequently denied any such liability on the part of the Crown. Instead, the payment is designed to provide the Banabans with a future annual pension of £225 per head to save them from becoming destitute as a result of past British misdeeds.

Before the Banabans were forced to proceed with their actions against the Government and the Phosphate Commissioners, Mr John Lee, MP and I, after an on the spot investigation, urged Mr Callaghan, the Foreign and Commonwealth Secretary, in a joint report submitted in April, 1975, that redress would have to be made to this wronged community irrespective of any pending High Court actions. Our advice was ignored.

Over two years later, and at an expense to the taxpayer for which Parliament will surely expect an account, all that has been achieved is a detailed narration of the contemptible treatment this small people have received at British hands over a long period of time. Indeed, the inability of the High Court to remedy the injustice done to the Banabans seems likely to drive them to the Court of Appeal where we will once again have the painful experience of listening to this shameful story.

What can now be done? May I suggest that the Government should grasp the opportunity of bringing to an end this dismal colonial episode by agreeing to the terms upon which the Banabans accepted Dr Owen's "ex-gratia" offer. These terms were:

(i) that the capital sum of £6.3 million be paid into a fund within the control of the Rabi Council of Leaders (the elected representatives of the Banaban people) with advice from the Government of Fiji;

(ii) that Ocean Island be separated forthwith from the Gilbert Islands and administered by a Commissioner directly responsible to the Secretary of State until such time as a reasonable constitutional settlement is reached; and

(iii) that the right of the Gilberts Colony Government to tax Banaban phosphates be deemed to have ceased as from March 31, 1977, irrespective of the date upon which separation is formally arranged, and the British Phosphate Commissioners be instructed by the partner governments to adjust payment of the proceeds accordingly.

"Should these conditions be fulfilled", as the Banabans go on to say, "they will enable the Banaban people to reestablish a presence on their ancestral homeland and, with the aid of the capital which will become available together with the healing powers of nature, restore at least a part of the ravages of colonial exploitation."

It goes without saying, of course, that the Government, in accepting these conditions, should in fairness ensure that the Gilberts Government are compensated for the loss of phosphate revenue and that the separation of Ocean Island will be without prejudice to its final constitutional status.

We would then, and only then, be able to leave the Pacific with our heads high.

Yours sincerely,  
BERNARD BRAINE,  
House of Commons.

August 5.

# Justice to the Banabans: what they asked for and what they received

Sir,—My attention has been drawn to certain articles which have appeared in the Guardian concerning the Banabans. They present a very incomplete picture, as did the BBC documentary.

Put shortly, Ocean Island has been described as a lost paradise, and exceptionally fertile. There has been no mention of the fact that the island has suffered 26 droughts in 65 years, and was considered to be one of the least fertile islands in the Gilbert and Ellice group.

Before the coming of the white man in 1900, with the phosphate industry, the 500 Banabans had eked out a bare subsistence on Ocean Island. During the severest droughts they died in their hundreds.

A picture of coercion to go to Rabi and stay there has been built up and fostered. In 1940 the Banabans with no outside prompting, presented a petition to the Government in which they asked for a new home instead of and in addition to Ocean Island. They requested that the new island should be in the Fiji Group, so that they might remain under the same High Commissioner. Rabi Island was bought in 1942. War conditions made it impossible to take the Banabans on a

voyage of inspection. When the Japanese invaded Ocean Island they killed or deported most of the inhabitants and destroyed nearly all the Banabans' houses and many of the trees. It was not practicable for the Banabans to return there immediately after the war. All the Banabans consented to go to Rabi for a two year period on a trial basis; it had not been ravaged by war, and although it had a far greater rainfall than parched Ocean Island, which proved an initial disadvantage, it was obviously a sensible step in the long run.

In 1946 a report was compiled on the plight of the Banabans by Professor Maude. It noted the progressive decline of the people over the past 17 years, and concluded that the best hope for the Banabans was for them to settle on Rabi and build a new life. Rabi is an island more than ten times the size of Ocean Island, and has far greater potential—if one excludes the phosphate revenues, which could only be produced by the destruction of Ocean Island. Unfortunately the annuities produced by the phosphate industry and distributed to the Banabans did their recipients nothing but harm.

Once on Rabi, the Bana-

bans refused to consider the question of remaining there until a new agreement was entered into with the British Phosphate Commissioners. They were anxious to sell more land at that time. The Maude report recommended one final deal with the Banabans which would incorporate all commercially minable land. The tragedy was that no steps were taken to ensure that the Banabans had proper advice, and that they received the best possible terms.

The deal was concluded in a morning, and the next day signing began. In the meantime, the Banabans had by an overwhelming majority, indicated that they wished to stay on Rabi and make it their new home and headquarters, so long as their rights over Ocean Island were preserved. In April 1947 a secret ballot was held; there was a 95 per cent turn out, and 85 per cent voted to stay on Rabi permanently.

The Banabans want compensation. Not so that they can replant one sixth of Ocean Island—a task which the Judge dismissed as futile, and in terms of return for expenditure, quite absurd—but to make up the difference between the market price and the price that they were allotted. They have

a strong moral claim to this money, but how much this should be remains a moot point.

In my view it is disappointing that an assessment was not made on the basis of underpayment from 1931 onwards. It must be remembered however, that the plaintiff's claim in law failed in its entirety, in the Crown Action. In such circumstances it is not normal chancery procedure to make an assessment of the amounts to which a plaintiff would have been entitled should he have succeeded. On the basis that the action might go to appeal, however, he could have done so although this procedure is not followed in the Chancery Division; but he did not choose to exercise his discretion in this way. It could be argued in support of his decision, that for him to have made such an assessment, coupled with his directive to the Crown through the person of the Attorney-General, would have amounted to a usurpation of the powers of the Executive.

Certainly the judgment was long, but to say that it said nothing is simply not true. The general background ran to some 140 pages.

Diana Brahams (Mrs),  
London WC2.

*Guardian 8/3*

*London Times*  
 9/8/77

## Compensating the Banabans

*From Mr Anthony Kershaw, MP for Stroud (Conservative)*

Sir, There is not in the House of Commons a more doughty fighter for any underdog than my colleague from Essex South-East, Sir Bernard Braine. But in his fervid championship of the Banabans (letter, August 6) I think he has allowed his generous heart to overwhelm his judgment of what is fair and reasonable.

No one denies that for a time the Banabans were paid rather less than was fair in royalties for the phosphate on their island. This injustice Her Majesty's Government seek to put right by an *ex gratia* payment. Nor does anyone deny that the Banabans, like everyone else in the area, suffered cruelly during the Japanese war.

But the Banabans' demands go far beyond compensation. They say they should be paid virtually all the royalties, not just a special proportion, basing their claim on the assertion that they were never part of the Gilbert and Ellice Islands Protectorate or Colony, and that they are of different race to the Gilbertese. This is frankly nonsense, on both counts. The Banabans' Ocean Island was for a time the capital of the Territory; and even the Banabans admit that there are probably no pure blood Banabans still extant, so much intermarriage with the Gilbertese there has been.

The Banabans' claim that they wish to return to Ocean Island is equally spurious. Ocean Island is almost entirely of phosphate: when the rock is removed a desert is created. Even if millions of tons of soil were transported there, as the Banabans demand, the island could only support about 100 people. There are 2,000 Banabans, living on Rabi Island, in the Fijis; a fertile and uncrowded island which they were given when Ocean Island became uninhabitable. None, or very, very few, even want to move back to Ocean Island, and the furore that they have worked themselves into is a phoney demand worked up by their leaders recently in order to screw some more money out of some one, whether it be Her Majesty's Government, the British Phosphate Commission, Australia, New Zealand, or the Gilberts.

As it is the Banabans, because of royalty payments, have a considerably higher standard of living than the Gilbertese, the Fijians or any other inhabitants of the area, and if they would get down to developing their island of Rabi, instead of waiting around for more dividends and cash, they would be better off still.

It is quite impractical to administer Ocean Island separately from the Gilberts, as Sir Bernard suggests. The island is only 24 hours' steaming from the Gilberts, whereas it is 1,400 miles from Rabi. The Gilbertese are absolutely adamant that Ocean is part of their group and its exclusion would wreck the constitutional conference about Gilberts' independence. Administratively, any aid, medical, police or whatever must come from the Gilberts. Finally the Government of Fiji, which is the sovereign power in relation to the Banabans on Rabi, would refuse to take over Ocean against the wishes of the Gilbertese.

The Banabans are entitled to our sympathy and support. They have had both. It is sad to be displaced. But any idea that the Banabans are living in some kind of refugee camp, longing to return to the home of their ancestors, is the reverse of the truth. Their trouble is emotional and psychological, not material. Their refusal to negotiate, even to talk to the Gilbertese, immures them behind an even higher wall of misunderstanding and ill-will. But it is a wall they have built themselves.

I beg to remain, Sir, your obedient servant,

ANTHONY KERSHAW,  
 House of Commons.

August 6.

# THE DISAPPOINTMENTS OF THE BANABANS

17 Aug  
1977

The unfortunate Banabans have had another setback. To their disappointment at the attitude of the British Government towards their financial claims and their desire for independence from the Gilbert Islands has now been added a feeling of disillusion with British justice, following Sir Robert Megarry's judgment last week that they were entitled to less than £50 an acre—a total of less than £10,000—as damages for the breach of the British Phosphate Commissioners' obligation to replant trees and shrubs on Ocean Island, the Banabans' original homeland, now utterly devastated by the detritus of phosphate mining. The Banabans' distress is all the stronger for their having two years ago refused an offer of nearly £500,000 and, earlier this year, one of about £1m.

The judge's award appears to be parsimonious. It does not require any deep knowledge of arboriculture to appreciate that very little can be done for £50 an acre when the terrain in question has been described as resembling a lunar landscape. It was not an award realistically designed to allow the Banabans effectively to replant the island

to the extent that it could become capable of sustaining a reasonable subsistence agricultural economy, which is what they wanted. Their claim, however, for nearly £50,000 an acre, to include the filling in of all the craters by the importation of huge quantities of soil, was equally unrealistic in the other direction.

The Banabans are now considering an appeal, which would mean that many of the issues raised in what has already been one of England's longest lasting cases—more than 220 working days—would have to be repeated before another court. The appeal would not be as long as the hearing before the High Court, but it would inevitably be very lengthy and very costly. It would be to the benefit of all the parties to avoid continuing the litigation. The British Government in concert with the governments of Australia and New Zealand has made an offer of £6.5m as an *ex gratia* payment to the Banabans to compensate them for the exploitation of Ocean Island and the moral—though not legal—wrongs done to them in the past. But that offer is conditional on there being no further litigation and

would therefore no longer be on the table if an appeal were to be lodged. The Banabans have also been told that the door is open for negotiations about their future status. Those talks, too, would be prejudiced by an appeal against Sir Robert Megarry's decision.

The Banabans are not happy about the amount of £6.5m offered them, and it would not be offensive if the Government were to increase that offer. On the separate issue of the British Phosphate Commissioners' liability for their failure to replant Ocean Island, it would be better all round if the Commissioners were not to treat Sir Robert Megarry's award as the limit of their obligation to the Banabans. They should be generous in victory, and resume negotiations with the islanders on the basis of the kind of sums they had previously offered, around £1m. The Commissioners may have the law on their side in sticking strictly to the court's decision, but few would deny that the luckless Banabans have a great deal of moral justice on their side. They should be treated generously and not forced to retreat to their Pacific home in bitterness and disillusionment.



# Banabans rejected offer of higher damages

Tito and Others v Waddell and Others  
Tito and Others v Attorney General

Before Sir Robert Megarry, Vice-Chancellor

[Judgments delivered July 28 and 29]

After hearing argument on the quantum of damages, his Lordship awarded, in a reserved judgment, the Banaban owners of land in the Ocean Island 75 Australian dollars an acre against the British Phosphate Commissioners for their breach of replanting obligations (*Tito v Waddell*, *The Times*, December 6, 1976; [1977] 2 WLR 496).

His Lordship then heard argument on costs and delivered judgment on the following day.

Mr J. R. Macdonald, QC, and Mr C. L. Purler for the plaintiffs; Mr D. K. Rattee, QC, for the British Phosphate Commissioners in Ocean Island No 1; Mr J. E. Vinelott, QC, Mr Peter Gibson and Mr D. C. Unwin for the Attorney General in Ocean Island No 2.

HIS LORDSHIP said that the measure of damages was considered at some length in *Ocean Island No 1* and was adjourned for further argument, in default of agreement. At the same time, it was suggested that if the parties so desired, the matter could be decided without further argument in the exercise of the rusticum judicium: see *Tito v Waddell* (No 2) ([1977] 2 WLR 496, 709). The parties had now asked for the matter to be decided that way.

His Lordship was further asked to express his decision in the terms of a sum of money in Australian dollars for every acre of land, on the assumption that the amount of damages appropriate to each acre of land was the same, whatever its actual location and condition, and on the footing that all the land had ceased to be used by the commissioners, so that the obligation to replant had arisen.

As was pointed out in *Tito v Waddell* (No 2), his Lordship had

to consider the loss caused to the owner of an acre of land by reason of the commissioners' failure to replant in accordance with the obligations in two deeds and the loss of the advantage of having his land planted with coconuts, almonds and pandanus, with the consequent improvement in its appearance and such possibility as there was of edible fruit being produced in due time. On the whole, having regard to all the circumstances, including the nature of the terrain, an appropriate sum by way of damages was \$A75 an acre. That sum in no way represented damages on the basis claimed by the plaintiffs, with its levelling of the pinnacles and importation of vast quantities of soil, for that claim had already been rejected.

Another matter was the order in respect of a plaintiff who had shown title to a defined share in a plot of land but had failed to establish sole ownership and whose co-owners were not parties to the action, and would not be bound by the judgment. Could the plaintiff recover the damages appropriate to the share? Mr Macdonald contended that the authorities showed the answer was yes.

In his Lordship's view there was no distinction in principle between a plaintiff establishing title to the whole of a plot of land and a plaintiff establishing title to some partial interest in it: in either case there was the possibility that some person who was not a party to the proceedings might establish that he, and not the plaintiff, was the true owner of the land or the interest in it.

After delivering the judgment, his Lordship heard argument on costs, during the course of which Mr Vinelott stated that the Crown was not seeking any order. As his Lordship's judgment had drawn the Attorney General's attention to matters of criticism concerning the discharge of governmental functions in relation to Banabans, and there had long been concern about the future, when phosphate royalties ran out, there

had been discussions. The Crown had appointed Mr Posnett, a former Governor of Belize, to investigate and report on the situation. That report was made available.

Following that report and further discussions, the partner governments had proposed that \$A10m would be set aside as a fund 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. That money would come from reserves of the commissioners derived from activities unrelated to mining on Ocean Island.

The proposal was indirectly related to the action in two ways. First, no order for costs was sought. It was hoped that forgoing the costs would not be seen as an admission that there was any legal merit in the actions, or that the Crown had any alternative but to contest them. Secondly, the proposal could not be finalized unless the Crown was satisfied that his Lordship's judgment would be an end to all litigation arising out of the mining of Ocean Island subject only to any appeal.

HIS LORDSHIP, giving judgment, said that between the plaintiffs and the commissioners a material factor was an open letter sent by the commissioners' solicitors to the plaintiffs' solicitors on May 7, 1975, Day 22 of the hearing. Neither the existence of the letter nor its terms were revealed to his Lordship until the argument on costs began. The letter offered \$A3,000 an acre in satisfaction of the replanting claims, and a further sum in respect of all other replanting claims, so that the two sums would give a payment of \$A750,000. While \$A3,000 an acre was far more than the \$A75 that had been awarded, it was far less than the plaintiffs' claim for \$A73,140 an acre. The letter also offered to pay the plaintiffs' costs of the actions up to May 16, Day 28, to be taxed if not agreed. On May 16 the plaintiffs' solicitors declined the offer.

Order 22, rule 3 of the Supreme Court relating to the acceptance of money paid into court was not of assistance in relation to the case of an open offer in circumstances such as the present. It would be welcome if the rules could contain some provisions to regulate offers which remained undisclosed until after judgment of the type so familiar in compulsory acquisitions under the title of "scaled offers". The concept was valuable, particularly in cases where a payment into court was not appropriate.

In litigation on the present scale the nine days given to consider the offer were not enough. Even if they were enough, the offer should be considered in relation to the time-scale of the case as a whole. It was made about a quarter of the way through the hearing of the case.

A very large sum must have been incurred as costs by Day 1, and far more than a quarter of the costs must have been incurred by the quarter way stage. By Day 23 one of the Banabans had begun to give his evidence, and others had already arrived in England. The costs of nearly all the vast bulk of documents and the preparation of most of the evidence, and the great majority of the preparatory work by lawyers and others must have been incurred. If one were to draw a line rather more than a quarter way through the hearing, it was doubtful whether the costs subsequently incurred would outweigh the costs previously incurred.

His Lordship had come to the conclusion that broad substantial justice would be done if in *Ocean Island No 1* no order as to costs were made.

Solicitors: Davies, Brown & Co; Freshfields; Treasury Solicitor.

The Race Relations Board ceased to exist on June 13, and its functions were taken over by the Commission for Racial Equality.

London Times 29/7/77

published

*Liji Times 4/16/77*

# BANABANS INSIST ON SEPARATION

## ... or they will not take the \$10 million

The Banabans will refuse Britain's offer of \$10 million to settle their Ocean Island claims unless they also get immediate separation of the island from the Gilbert Islands and all phosphate royalties.

At present 85 per cent of the royalties go in tax to the Gilberts which have received a total of about \$90 million.

The Banabans retain 15 per cent, which has amounted to about \$7,500,000.

This week the British Foreign Secretary, Dr David Owen, offered the Banabans \$10 million on behalf of the British Phosphate Commissioner, who mine Ocean Island phosphate.

"We will accept the offer of compensation for phosphate exploitation only if we are given our political freedom

as well," Rabi Council of Leaders secretary Thomas Teai, said in Suva yesterday.

"We can never consider justice has been done until we have been given the right to determine our own future on our ancestral homeland."

In London another Banaban leader, the Rev. Tebuke Rotan, handed the British Government a letter after a meeting in Suva of the Council of Leaders.

Mr Teai said the letter insisted on a British Government order separating

Ocean Island from the Gilberts "forthwith."

It called for the island to be administered separately by a commissioner directly responsible to Britain "until such time as the Rabi Council determines the future status of their homeland in negotiation with the Government of Fiji."

The letter points out that the Banabans want Gilbert Island rights to Ocean Island phosphate royalties stopped from March 30 this year.

The Banabans stipulated that the fund to be set up with the \$10 million

must be under the control of their council. They say the money would help them to "re-establish a presence on their ancestral homeland and "restore at least a part of the ravages of colonial exploitation."

Mr Teai said that if the conditions outlined by the Banabans were met, no further claims would be made against the partner governments and no further legal action taken once the food tree replanting action still pending before the High Court in Britain was settled.

The Methodist Church in Britain has supported the Banaban cause at the request of the Fiji Methodist Church.

Mr Teai said the Rabi Council had given the Fiji Prime Minister, Ratu Sir Kamisese Mara, a mandate to speak for them when he gets to the Commonwealth Conference in Britain next week.

Fiji Times - February 3<sup>rd</sup> 1977

# BANABANS

**LONDON.** — The British Government should direct any aid given to the Banaban Islanders "towards their social and economic integration" as a community on their present home Rabi Island, a former High Commissioner to the Western Pacific said yesterday.

In a letter to The Times, Sir Michael Gass said that as the landowners of Ocean Island, the Banabans' rights "have always been protected by the laws of the Gilbert Islands . . ."

Last December the Banabans were awarded unspecified damages for the alleged devastation on their former home, Ocean Island, by British phosphate mining.

In the High Court Mr Justice McGarry dismissed their \$35 million claim but said they should get damages.

He left the figure to be worked out between the phosphate commissioners and the islanders.

Sir Michael wrote "the response to the

present claims of the Banabans should surely be directed towards their social and economic integration as a community on Rabi Island, with its high development potential and not, at an emotional and illogical redrawing of nineteenth century colonial boundaries."

He was replying to a letter written by Conservative MP Sir Bernard Braine, who has called on the Government to deal "quickly and generously" with the islanders.

Sir Bernard said it was time for the Government to heed the Banabans' petition for the separation of Ocean Island from the Gilberts colony, now on the verge of independence.

"Sir Bernard Braine's letter leaves the

# SETTLED — EX-ENVOY

impression that the Banabans have been totally impoverished by the mining of phosphate on Ocean Island," wrote Sir Michael.

"Yet as the landowners whose rights have always been recognised and are protected by the Gilbert Islands (and indeed were recently reinforced by explicit provisions in the latest constitutional order-in-council) the Banabans have received an income from phosphate royalties at a per capita level well above the aspirations

of most Pacific Islanders.

"It has been large enough to deflect them from the productive use to which the average islander would have been forced to put their present home of Rabi, a larger and richer island than Ocean Island could ever have been for a Pacific life style."

Foreign office envoy, Mr Richard Posnett is to leave on a fact-finding tour of the area later this year.

Fiji Times 11/2/77

7

# Aust may join Banaban fund

CANBERRA. — The Australian Government will be asked to contribute to a three-nation fund to safeguard the economic future of the Banabans, the dispossessed inhabitants of Ocean Island.

Details of Australia's share of the fund are expected to be negotiated soon, when a British Government envoy visits Canberra.

A senior Government official confirmed that Australia would consider contributing to the fund.

Britain and New Zealand, who are Australia's partners in the British Phosphate Commission, also will be asked to contribute.

The British Government has proposed the aid plan to ensure that the former Ocean Islanders,

who settled on Rabi Island in Fiji in 1947, do not suffer economically from their re-settlement.

The BPC has mined phosphate on Ocean Island for the past 70 years, since it became a British possession as part of the Gilbert and Ellice Islands colony.

The 2500-odd islanders have been fighting long and costly legal battles in Britain claiming compensation for the BPC's operations in Ocean Island.

They claimed — and were refused — millions of dollars in compensation for royalty payments from the British Government.

They also have submitted to the English High Court that Australian and New Zealand farmers benefitted by about \$27 million from the BPC's pricing policies on phosphate mined from Ocean Island.

# The islanders who needed no persuasion to make Rabi their permanent home

Sir,—I was glad to see Mrs Braham's letter on the Banabans (March 8) which helps to set the record straight. Both she and Mr Hiley (February 16) are right to point out that the Vice-Chancellor brought out very clearly in his judgment that the picture that has been deliberately painted of the Banabans having been "conned" or coerced into settling on Rabi is entirely false.

Mr Hooson (February 21) seeks to suggest that British officials "interpreted" a ballot by the Banabans about staying on Rabi as a vote to make Rabi their permanent headquarters and home. But two months before the ballot the Banabans had written, on March 7, 1947, to the High Commissioner for the Western Pacific, stressing their desire to make Rabi their new headquarters and home. The secret ballot in May 1947 gave the whole community the opportunity to vote on the plans for the future set out in the statement of intentions prepared by the Government. Under it the Banabans' rights as landowners on, and of access to, Ocean Island were confirmed, and they remain effective today.

Mr Hooley argues (February 25) that the passage he quotes from one of the thousands of documents before the Vice-Chancellor shows that Mr Hiley's emphasis on the voluntary nature of the Banabans' move to Rabi is inaccurate. Anyone who reads the Vice-Chancellor's judgment will find that Mr Hiley is right. What was said and done in 1945 has to be seen in its context.

Even before the First World War officials were concerned at the effect of mining on Ocean Island, and the idea of a second home began to be discussed. As Sir Robert Megarry noted: "The Colonial Office was emphatic that there could be no question of removing the Banabans from Ocean Island unless the transfer was most clearly for their benefit and also voluntary in the full sense of the word."

During the 1930s, 2d per ton of the Banabans' royalties were set aside in the Banaban Provident Fund for the specific purpose of buying a new island. In 1940 the Banabans petitioned for an island in the Fiji group, and in 1942 Rabi was purchased at a cost

of £A25,000 from the accumulated funds. The year 1945, when the Japanese occupation of Ocean Island ended, was the "moment of truth" both for the phosphate industry on Ocean Island and for the Banabans.

Were the British Phosphate Commissioners to restore the phosphate workings and plant and carry on mining (in which case fresh land would need to be leased within a couple of years and much of the rest of Ocean Island would become uninhabitable)? Or were they to concentrate on the larger scale Nauru operation and close down Ocean Island (in which case there would be no further royalties for the Banabans and the Gilbertese)? Were the Banabans, who had been deported by the Japanese to different parts of the Pacific and collected up by the British after the war, to go back to Ocean Island (where their village had been destroyed and there were no food stocks)?

They agreed unanimously in 1945 to go to Rabi for a period of two years, with the option of permanently settling there; if at the end of

two years any or all of them wished to return to Ocean Island, transport would be provided free by the Colony Government.

Myths and arguments about the past do not help to tackle the future. The British Government has made clear that it is prepared to help the Banabans. I hope that Britain, Australia, and New Zealand can work out a sensible plan to help the Banaban community as a whole secure their economic future on Rabi after phosphate revenues end.

This surely is the right way ahead. Mr Hooley is wrong to say that the Foreign Office tries "to play off Gilbertese interests against the Banaban claims." The fact that the phosphate revenues from Ocean Island are shared between the two communities is surely something to be welcomed.

(Sir) John Peel,  
(Resident Commissioner  
G & EIC 1949-51).

51 Cambridge Street,  
London SW1.

Sports letters,  
page 17

Excerpt from "Atoll Pioneer" of 17th November, 1977.

Dear Sir,

Please allow me to spare few lines in your Atoll Pioneer. I have read with great interesting an article written by Mr. Teburea Bakaoti concerning Ocean Island, published in your recent AP. I'm sure the people in the Gilberts would in fact like Ocean Island remains an integral part of the Gilberts until Kingdom comes, while on the contrary the Banabans are rapacious and clamouring for its utter emancipation from our spherical jurisdiction.

I know personally that many people have been wrongly induced and imbued with such flimsy dogmas taught and instilled into their susceptible minds by the egoistic Banabans; pinpointing and claiming their racial diversity, privileges, etc. But may I warn the Banabans that splitting Ocean Island from Gilberts and placing it under somebody's dominion is an anomaly.

Yours faithfully,

Mr. Taaiku Ruruteki,

Taborio Causeway.

# Referendum on Ocean Island

Fiji  
TIMES  
18/11/77

A historic breakthrough had been achieved in an agreement between Gilbertese and Banaban representatives in Tarawa, on Ocean Island, a Banaban spokesman, Mr Thomas Teai, said in Suva yesterday.

The agreement is that a referendum supervised by the United Nations will decide the future of Ocean Island.

Voting is expected to be by the middle of next year with Britain paying the costs.

The Banabans have been pressing for Ocean Island, their ancestral homeland, to be independent in association with Fiji, but the Gilberts have been insisting it remain part of their territory.

Mr Teai said a new spirit of co-operation had developed

between the Gilbertese and Banaban leaders, who had decided a joint approach was the best way to solve the Ocean Island problem.

The referendum plan seemed the most sensible course and was a compromise involving concessions by both sides.

Mr Teai said the people of the Gilberts and Rabi would be asked whether they felt Ocean Island was part of the Gilberts.

The Tarawa agreement includes clauses on phosphate royalties, fishing rights and freedom for Gilbertese to work at Ocean Island.

There is provision that if the referendum goes against the Banabans they will retain their land ownership rights on Ocean Island, be given dual citizenship, and elect a representative to the Gilberts House of Assembly.

# SPECIAL BRITISH ENVOY TO VISIT OCEAN IS

*Fiji Times.  
26/1/77.*

Mr Richard Posnett, a former governor of Belize, will visit the area as soon as possible, Britain's House of Lords was told yesterday.

The Banabans, moved 30 years ago to Rabi, were awarded damage last month by the British High Court, although losing a claim for extra mining royalties.

But the amount is yet to be worked out and Lord Goronwy-Roberts, Minister of State for Foreign Affairs, said in his statement yesterday.

## POLICY

"Our aim is to achieve as soon as possible a settlement which takes account of the legitimate interests of all parties, including the Banabans."

But Lord Goronwy-Roberts denied this. "There is no question of evading responsibility. It is a question of identifying responsibilities," he said.

"I will not allow this country to be pilloried on its own for the mistakes of the past. I am anxious Britain should play its full part, perhaps more than its full part, in rectifying as fast as possible with others concerned, the enormities of past colonial policy."

The island, once luxuriant in tropical growth, has been described as looking like a lunar landscape after the mining operations by the British phosphate commissioners.

Discussions would continue to be conducted in consultation with Fiji, Australia, New Zealand, the Gilbert Islands and the Banaban leaders.

Lord Shinwell (labour) said there was an impression that the Government was seeking to evade its responsibility by "passing the buck" to Australia, New Zealand, Fiji and other countries.



THURSDAY

## Dispossessed: the Banabans scandal

OCCASIONALLY a programme demands to be watched, both for its overall purpose and its detail. Such is Jenny Barraclough's **Go Tell It To The Judge** (10.10 BBC1), which must, even at this early stage, be a candidate for best documentary of 1977.

It deals with the extreme exploitation by the UK government and a UK mining company of the Banabans, now 3,000 strong, "a very small, innocent and peaceable people" who used to live on Ocean Island in the Pacific. The Banabans were exploited because their island contained a great deal of valuable phosphate, which was systematically mined on payment of insultingly tiny royalties. About 30 years ago the government and the company had to decide whether to continue mining the phosphate, or to leave and let the Banabans live on what remained of their island. The government shipped the Banabans to Fiji, 1,000 miles away, where they were forced to live in tents. The brutality continued. Even as late as 1976 the Labour Government declared that no Banaban who was

11 not born on the island could return without a special permit.

The Banabans eventually managed to bring a case against the British government for breach of trust, among other things. It became this country's longest and most expensive court case. The trial, which ended in December, was unsatisfactory. The judge said he was powerless to rule on most counts, but spoke of his sense of outrage at what he had witnessed. The Government is expected to respond to the judgment very soon.

The postures and deceptions of government officials from 1906 until today, the pathetic sums that the Banabans received for their valuable phosphate, their puzzlement and bewilderment and, finally, the extraordinary way in which Britain's most complex civil action came to be handled by a little-known Wimbledon lawyer with a staff of one, make a story which should not be missed.

Fiji Times 24/2/79

# COMMITTED TO THE CAUSE OF BANABA



THE report of the November constitutional talks in London is burnt by the Banabans in front of the monument of Sir Albert Ellis who discovered phosphate on Ocean Island. The "white paper" as the Banabans call it was not acceptable to them.

By NEMANI DELAIBATI

TWENTY BANABAN men working for the British Phosphate Commissioners on Ocean Island will lose their jobs if the management finds evidence to prove that they took part in the petrol bomb attack on mining installations last week.

They would then forfeit the comparatively comfortable flats given by the BPC to them and Gilbertese workers and return to live in squalor with their folks in the Banaban village.

The BPC manager, Mr Ron Elliott told me men would certainly be sacked if they were found to have taken part.

After the Banaban protest march last week the 20 Banaban workers did not go to work and were listed as absent by the management.

Some of the Banaban workers I talked to said they had committed themselves to the cause of their struggle and were prepared to face the consequences.

They have been pressing for recognition that they are the landowners and are entitled not only to a proper share in the riches that have poured out of their tiny island, which has been left looking like a desolate moonscape, but also

to have the freedom to run the island.

To them money is of secondary importance. This is the reason that the Banabans are prepared to live in miserable conditions, hoping that eventually they will once again rule Banaba as their ancestors did until 1900.

Many do not know what the future holds for them, especially after the whole island is mined out. Perhaps their leaders have got something planned which they have not yet revealed.

Hopes are floating around the Banaban camp that when the BPC winds up its operations in November the Banabans will occupy the empty houses and flats.

The Banabans hope to take over the mine, form a Banaban Government and make a unilateral declaration of independence of Banaba.

But how they will do it is the big question.

One councillor said: "Don't worry, we'll manage."

The leaders were not prepared to disclose any details of their plans.

The Banabans considered the outcome of their petrol bomb attacks on mining equipment and installations last week as a great moral victory in their latest efforts to per-

# Where, when and how?

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To Sydney	DEPARTS	To Singapore	DEPARTS
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Sat.	4.35pm	plus Tues.	
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THE Cape Hawke loads more than 20,000 tonnes of phosphate for Australia.

suaide the British government to grant Banaba, separation from the Gilbert Islands.

There is no going back for them. While the heat generated by the petrol bomb attack stimulated discussions, the Banabans continued to live normally, carrying on their daily activities in their scruffy little settlement at one point of the island.

Although they have no resentment towards the Gilbertese community there is apparent friction between them. Most Gilbertese tended to think that the Banabans had committed a stupid act in trying to destroy the mine.

The Banabans stopped going to the workers' club to try to prevent any open confrontation with the bigger Gilbertese population.

But they still met in the local trade store and in the public bus.

The relationship between Banabans and Gilbertese is generally good because the Banabans had re-iterated earlier that their action did not

necessarily mean that they had a grudge against the Gilbertese. But the fear still hangs of future clashes.

This is why the Banabans were taking great precautions.

In fact, the future of the people living on the island seemed uncertain. The Gilbertese and Tuvaluan workers are going to be repatriated back to their home islands.

Apart from mining, if it continues after the BPC pulls out, no viable commercial project could be envisaged other than fishing. Farming is out of the question as two thirds of the island have been turned into barren wasteland with pinnacles jutting out of the surface. "Vaivai" trees have grown wild among these pinnacles.

In the remaining one third of the island there is a contrasting green.

It gives the island its touch of natural beauty when it is viewed from the sea. It is all that is left.



THE main shopping area on Ocean Island and the main street. A car is parked outside the only supermarket, the Trade Store.



ONE-year-old Tapaia Tapita was one of the youngest participants in the Banaban protest march on Banaba last week. Like everybody else she also wore a black arm band.



# Bank of New South Wales and SUBSIDIARY COMPANIES

CONDENSED CONSOLIDATED BALANCE SHEET AS AT 30th SEPTEMBER 1978

LIABILITIES		ASSETS	
	SA'000		SA'000
Issued and Paid-up Capital	135,665	Coin, Bullion, Notes, and Cash at Bankers	125,524
Reserve Fund and General Reserves of Subsidiaries	174,495	Loans to Authorized Dealers in Short Term Money Market	
Other Reserves	90,445	— Australia	119,300
Balance of Profit and Loss Accounts	104,701	Money at Short Call Overseas	39,434
Minority interest in Subsidiaries	138,889	Call and Term Deposits with Reserve Banks	187,200
Public Borrowings of Subsidiary Companies	1,778,631	Australian Public Securities —	
Final Dividend Proposed	11,532	(a) Commonwealth of Australia —	
Balances Due to Other Banks	359,480	(i) Treasury Notes	110,071
Deposits, Bills Payable and all other Liabilities, including Provisions for		(ii) Other Securities	1,207,822
Income Taxes and for Contingencies	9,351,994	(b) Local and Semi-Governmental Authorities	751,576
	12,145,632	Public Securities — Other Countries	242,593
		Other Securities	7,101
		Term Loan and Farm Development Loan Fund Accounts	
		with Reserve Bank of Australia	115
		Statutory Reserve Deposit Account with Reserve Bank of	
		Australia	150,470
		Statutory Deposit Accounts — Other Countries	3,481
		Cheques and Bills of Other Banks and Balances with and due	
		from other Banks	271,628
		Bills Receivable and Remittances in Transit and Sundry Debtors	573,428
			2,1743
		Advances Includes Loans, Leased Goods, and Local Bills Dis	7,258,146
		Shares — Listed Companies	13,344
		Unlisted Companies	29,820
		Premises, Sites, Furniture and Equipment	276,313
		Accrued Interest and Sundry Balances	148,366
			12,145,632
Contingent Liabilities on Outstanding Letters of Credit and Guarantees		Contingent Assets including Liabilities of Customers and	
as per contra	659,414	Other Letters of Credit, Guarantees, etc. as per contra	659,414
	SA12,805,046		SA12,805,046
Net Profit for year ended 30th September 1978	SA 72,851		

# Bank of New South Wales

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Lanyon and Copeland the true facts regarding our language and culture. We had a language of our own. It gradually disappeared as a result of inter-marriage between the Gilbertese and Banabans, also from the teaching of Gilbertese language by the Gilbertese teachers and missionaries who worked on Ocean Island.

As for our culture, of course ours still exists and in no way does it imitate the Gilbertese culture. It is entirely different in every way. Lanyon and Copeland's grandparents are fully aware of this.

We are proud of our gentlemen who are gaoled on Tarawa. It is true they deserved their treat but they have volunteered to fight and face death. That's what we call "patriotism."

Lanyon and Copeland's Government and people are still opposing our separation, claiming we are 'brothers and sisters' and that our separation would hurt them.

The fact they are already shying away from is that our separation will hurt them financially. If Ocean Island is granted separation, the Gilbertese will be like jelly fishes drifting with the tides.

One most important Gilbertese custom is that one would rather die than to steal or beg on his knees. Now Lanyon and Copeland's people have forgotten this custom, all for the love of our money.

They already have \$80 million reserved funds in their bank. That's what we Banabans state as "dirty money."

Let me <sup>for you write</sup> you write Bible scripture: "Give to Caesar the things that belong to Caesar and to God the things that are God's." In the same way the Gilbertese should give to the Banabans the thing that is theirs — their homeland, Ocean Island. —

TERIKANO TAAKE  
Fiji Institute of Technology  
Suva.

# Banaban battle

Fiji  
Times 14/3/79

Sir, — Kale Lanyon and Josephine Copeland's letter March 6 deserves a reply.

Lanyon and Copeland, Gilbertese kids of yesterday only, know nothing about the history of Ocean Island, according to their letter. They should have studied our history carefully or got their facts right before misleading the public.

We Banabans welcome and accept facts that would help solve our problem but have no time for such tomfoolery. I condemn Lanyon and Copeland's so-called "true facts" as fake.

Let me now clarify to

Fiji Times 8/3/79

# Not fair to make us choose — Ratu Mara

Fiji will not take a role in the Ocean Island row in which it would have to choose between the Banabans and the Gilbertese.

The Prime Minister, Ratu Sir Kamisese Mara, said yesterday he made this clear to a British official in reply to a suggestion that Fiji might protect Banaban rights if it was agreed that Ocean Island should remain part of the Gilbert Islands.

He told the House of Representatives that since the Banabans had been excluded from constitutional talks on their island's political future: "The Government of Fiji therefore fully understands and sympathises with the Banabans in the decision they have now taken."

Pressing for the island's separation from Gilbertese rule, the Banabans have made petrol bomb attacks on mining gear at Ocean Island and rejected all British proposals not fully meeting their wishes.

The British Under Secretary for Foreign and Commonwealth Affairs, Mr Evan Luard, saw the Prime Minister late on Tuesday to discuss the dispute after visiting the Banabans at Rabi Island earlier in the day.

Reporting on the meeting in a ministerial statement, the Prime Minister said Mr Luard had made it clear that the Banabans wanted the island

separated from the Gilberts and nothing else.

But Britain opposed separation because it was against the wishes of the Gilbertese people.

The Prime Minister said he replied that the situation put Fiji "in a very difficult position."

"I told Mr Luard that we could not remain insensitive to what the Banabans feel strongly to be just and fair," he said.

But Fiji did not want to be put in a position of choosing between the Banabans and Gilbertese.

Britain had full responsibility for the island's constitutional future, the Prime Minister said.

It was "quite unfair" of Britain to ask for Fiji's help when it had ignored a 1975 meeting at which he had got the Banabans and Gilbertese to agree to talks.

But the talks, which should have also involved Britain, Australia and New Zealand,

had not taken place and the Banabans were kept out of direct participation in later conferences on independence for the Gilberts.

The best thing Britain could do now was to get the Banabans and Gilbertese talking again in the hope that they could agree.

The Prime Minister added: "Finally, I did volunteer a statement that the relations between the Banabans and the

Gilbert Island people will probably change by this time next year when phosphate mining on Ocean Island ceases and the Gilbert Islands Government has no further interest in Ocean Island or Banabans."

Meanwhile, Fiji Council of Trade Unions leaders are seeking a total ban on all shipping to Ocean Island and the Gilbert Islands in support of the Banaban independence cause.

MEMBER of Parliament Mr Fred Caine says he will "do penance" for the sins of the British with a fast in the Sigatoka sandhills.

Mr Caine, an Alliance backbencher who was with Banaban leaders on the trip that led to last month's petrol bombing on Ocean Island announced his plan at Rabi on Tuesday.

He said on March 16 when the next House of Lords session began in London he would go into the sandhills of Sigatoka with a Bible and no food or water.

He would remain there for the length of the sitting, he said.

Mr Caine said it would be a "penance for the sins of the British" in the Ocean Island dispute.

He felt his move appropriate now because Lent.

# CHIEF MINISTER OF GILBERTS HITS AT FIJI UNIONS

The Chief Minister of the Gilbert Islands, Mr Ieremia Tabai, says he hopes his country does not get a Fiji colony on its door-step.

Fiji trade unions had no right to meddle in an internal affair concerning the Banabans and Gilbertese, he said in Tarawa after the Ocean Island (Banaba) petrol bomb attacks last month for which some Banabans from Fiji are now facing criminal charges.

Mr Ieremia's remarks were reported by the Atoll Pioneer, the weekly official Gilbertese newspaper.

He said his people were puzzled by the attitude of the Banabans and "worst still, their foreign allies that work with them."

"The whole matter is purely an internal affair concerning the Banabans and the Gilbertese," he said.

"The Fiji unions have no right to meddle in these matters."

"We are all working hard to end colonialism. Let us hope that we do not get a Fiji colony on our door-step," he said.

The Banabans and their advisers have intensified their campaign for the separation

of Ocean Island from the Gilberts by threats and violence, including threats to interfere with the passage through the British House of Commons of a bill to give the Gilberts independence in July, he said.

"Our approach to independence is not threatened, but marred by recent incidents at Banaba."

Before the year was out Banaba would be finished, as phosphate mining ended, and would "just become bare rocks."

"Surely the Banabans would not want to live there in preference to Rabi," the Chief Minister said.

"But if they wish to, who stops them?"

"It would not be the Gilbertese Government."

Banaban leaders had never replied to invitation to meetings at which his Government wanted to discuss Ocean Island, Mr Tabai said.

"If the Banabans do not know it, the Gilbertese are always ready to receive them with open arms and minds," he said.

"Why do they not come to the conference table and work out an acceptable solution to all these problems with their Gilbertese brothers?"

*Fiji Times 13/3/79*

Fiji Times 15/3/79  
Hear!! Hear!!

# LETTERS TO THE EDITOR

education courses. But surely the careers section of the Ministry must realise that an interviewing is a very lame excuse for the Ministry to say that an intelligent student has scored poorly in an interview. The Ministry could make use of aptitude tests to help in selection.

It is a strange situation when we find that a student who has passed all the subjects in UE, with very high marks has not been selected but a student who has repeated New Zealand School Certificate Examination for at least three years has been selected.

By fixing failures, how can the Ministry improve the quality of teaching?

Does selection depend on "not what you know, but who you know"?

FIROJ ALI,  
Ba.

## Banaban problems

Sir, — I am writing because I'm so concerned about the Banaban case which has been exploiting our newspapers.

Who wants to know about their business with the Gilbertese?

I suggest if they want to settle this matter, why don't they all take-off to Ocean Island and talk it over out there since they're both fighting over it, or whatever they're fighting over.

I'm sure we don't get anything out of it. I am sure Fijians and other races aren't interested in this case, so why should they exploit our local papers about their trash.

I for one am quite fed up with the headlines about "Banabans this and Banabans that" everytime I pick up the paper. I am sure we have enough troubles to cope with amongst us. If it's possible why don't they make their own pamphlets and put their views in them and distribute them only to those who are interested, rather than taking up space in the local papers —

space which could've been used for other interesting articles which concern us.

JOANA S KOTOBALAVU  
Adi Cakobau School  
Suva.



# Banabans' cause

Fiji Times  
9/2/79

Sir. — I heard a few weeks ago that the Rabi Council has written to all town councils in Fiji seeking support of the Banabans' claim for independence of Ocean Island, and that Ba Town Council accepted their request. Good on them.

But we people of Cakaudrove do not want to support their claim.

In November 1978 Rabi Enterprises dismissed without notice 48 Fijian seamen of the "Ai Sokula" and "Tovata" without giving them one month's notice and handed the two vessels to Wong's Shipping without guaranteeing some their jobs.

Before giving up their business, they didn't let the people of Taveuni and Natewa Bay know that they were not carrying on with the shipping business. Since their Company started, we have been patronising the company by giving them freight on cargo and copra.

During the dispute with the seamen in December, copra started to rot in all grading stations operated by the Cakaudrove co-operative Association.

I urge the people of Cakaudrove and other parts of Fiji not to support the Banabans' grievances.

PETRO NAULUMATUA  
Natewa Bay  
Vanua Levu.

Fiji Times 27/2/79

## Workers' wages

Sir, — Readers of the Fiji Times who are interested in the position of workers on Ocean Island had an opportunity in the issue of February 21 to judge the relative value of information coming from a politician and from a trained and impartial reporter.

They were able to learn that at a Lautoka meeting Mr Caine said that when he went to Ocean Island he was 'shocked' to learn that a phosphate mine labourer earned only \$60.00 a month."

On another page they were able to read Nemani Delaibatiki's report that "The basic wage is only \$73.00 a month, but the B.P.C. (British Phosphate Commission) provides free education, free medical service, free food rations, free bus transport and free accommodation."

L.G. USHER,  
Suva.

*Fiji Times 16/3/79*

## Banaban's 'ammo' seized in raid

BAIRIKI, Gilbert Islands. — Police made an arms raid on villages at Ocean Island and found what they were looking for — scores of marbles.

According to a radio report received here yesterday from the phosphate-rich island, the marbles were being kept by dissident Banaban villagers as ammunition for sling-shots.

The Banabans are seeking autonomy for Ocean Island — otherwise known as Banaba — separate from the Gilbert Islands, which are due to achieve their independence from Britain on July 12.

Another 150 Banabans

"reinforcements" were expected to land on Ocean Island yesterday from the Nauruan freighter Cenpac Rounder, after a week-long voyage from Fiji.

Sources here said about 100 police reinforcements were still on Ocean Island, where they have had to deal in the last few weeks with petrol bomb attacks on equipment used by the British phosphate commissioners.

Fifteen Banabans have appeared in court on charges of intimidation and unlawful assembly, and have been released on \$500 bail. Another 40 are due to appear in court next Monday.

Fiji Times 22/11/78

# SAILORS REFUSE TO BUDGE

Rabi Holdings yesterday faced a sit down strike by 43 officers and crew at Princes Wharf as it moved to end immediately its inter-island shipping services.

Officers and crew from captain to cook of the ships Ai Sokula and Tovata staged the wharf protest, claiming they had not received back pay, holiday pay and a 10 per cent arbitration award for a pay rise from October 1, 1977.

They refused to leave their ships until they received every cent owing to them.

Rabi Holdings said in a statement that it was ending its shipping services immediately after deciding on advice from its consultants to scale down trading operations and become more of an investment company in real estate and other properties.

It said it was leasing its two major ships, Ai Sokula and Tovata, to Wong Shipping Ltd.

Its two remaining ships, Nei Kuana and Nei Mon, would be sold as soon as possible.

The company also said it would pay a total of \$18,000 to crew members today.

The secretary of the Maritime Officers and Engineers' Association, Mr Sepesa Bale, said money from the arbitration award had been outstanding for more than three months since the award was made.

He said crew members of Ai Sokula and Tovata were handed notice on Monday and were given only two hours notice of dismissal instead of one month, as required in their agreement.

The crew also wanted Rabi Holdings Ltd to find them alternative work.

Mr Josefa Telua, the representative of all the crew on both the vessels who are not either officers or engineers, said they would sign off only if they were assured of jobs elsewhere.

"And we are not going to move until we receive very cent owed to us by Rabi Holdings Ltd," he said.

Mr Bale said also that the

Marine and Labour Departments had failed to help the crew members despite being asked to do so.

In the notices to the men, Rabi Holdings advises them to seek employment with Wong Shipping.

But a spokesman for this company refused to comment yesterday.

The lease of the two vessels to Wong Shipping will earn Rabi Holdings about \$60,000 a year, according to a Rabi spokesman.

## \$4½m loss by Rabi Holdings

Rabi Holdings Ltd, the Banaban investment company, had lost an estimated \$4,500,000 by the end of September this year, its general manager, Mr Henry Spring, said yesterday.

He told the Fiji Times this after the company issued a statement saying that in future it will be "more of an investment company".

It has decided to "scale down" its business on the advice of consultants, the statement said.

Rabi Holdings was formed by the Banabans about seven years ago as the company from which royalty earnings from mining Ocean Island phosphate would be invested.

The company launched itself into shipping, a grocery store, real estate, engineering and other businesses, but got into managerial problems and lost money badly.

Earlier this year changes in the leadership of the Banabans, changes in the company's management also.

Mr Spring said Rabi Holdings was immediately suspending its shipping business and had leased its two ships for \$60,000 a year.

Revenue from property rents was earning another \$100,000, and early next year the company would revive its plan to build an eight-floor office block at the corner of Pratt and Joske streets.

Most of its activities would be concentrated in real estate and income from rents and the elimination of overheads would restore the company to profitability.

Mr Spring said reorganisation was still in the preliminary stages.

But Banaban shareholders would get a report on the affairs of the company when an extraordinary meeting was held at Rabi on Friday.



SOME of the 43 crew members of the ships Tovata and Ai Sokula, who are refusing to sign off unless they receive all the money owed to them by Rabi Holdings Ltd and are assured of alternate employment.

# 'More talks needed on Banabans'

Fiji Times  
2/2/79

The Prime Minister, Ratu Sir Kámises Mara, has urged the British Government to hold further talks with and between the Gilbertese and the Banabans in order to find a peaceful and mutually acceptable solution to the constitutional future of Ocean Island.

In a communication to the British Government at the weekend, the Prime Minister said that whilst Fiji warmly welcomed the impending grant

of Independence to the Gilbert Islands, it was concerned that there was as yet no solution to the Ocean Island issue, which was acceptable to the parties directly concerned.

"Neither the resort to violence nor an imposed solution which is not acceptable to all the parties directly concerned, can contribute to a permanent settlement of the Ocean Island issue," he said.

# The Fiji Times

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## EDITORIAL COMMENT

### Deplorable change of tactics

THE irresponsible actions of a group of Banabans who fire-bombed the phosphate mine on Banaba on Thursday night must be deplored and condemned by all responsible and law-abiding citizens of this country.

It was fortunate that no one was killed or seriously injured in the 30-minute blitz on mining equipment, machinery and installations at the mine. But by resorting to guerilla tactics, the Banaban people have damaged their cause.

More significantly, they appear to have forsaken peaceful and legitimate means of voicing and demonstrating their protests. They have instead chosen violence, sabotage and terror as a means of articulating their grievances and claims.

The Banabans have enjoyed considerable international support and sympathy in their battle to win back their island home. They are a wronged people, and provide a classic illustration of how colonial governments uprooted people from their homes and dispersed them around their empires for the sake of political or economic expediency.

Banabans' friends have cause for worry at the way events turned out on Banaba. Many people had thought that the Rabi Islanders who left Fiji last week for Banaba would organise some form of a Gandhian passive resistance movement. But they had apparently much more than that on their minds.

There is very real fear now that there might be aggravated violence in future demonstrations. This time it was home-made petrol bombs; the next time it could be real bombs.

Because many Banabans are Fiji citizens, they have a responsibility towards our Government and people. We are a peace-loving nation and are particularly sensitive about our relations with our Pacific neighbours.

The Banabans' change of tactics could embarrass us all.



# LETTERS TO THE EDITOR

## Banaba visit

Sir. — The letter in the Fiji Times of February 21 from Mr R.W.D. Acraman cannot pass unchallenged.

I find it extremely difficult to assess why the actions of Mr Caine must be applauded and why all General Electors should rally around a man who, while not only an MP but also of recent times a trade unionist, is interfering in the affairs of another country.

I recall in July 1977 a large peaceful demonstration held in

Suva against such interference by other countries in the affairs

of Fiji, and here we are now being asked to do just the same.

Mr Acraman cannot be serious when he asks all General Electors to applaud his (Mr Caine's) actions.

As an elected member he should confine his actions and obvious energies to the people who put him where he is and give him the right to have MP after his name and to be referred to as "Honourable".

H.K. MARLOW,  
Catalina Road,  
Suva.

## TARGET

HOW many words of four letters or more can you make from the letters shown here? In making a word, each letter may be used once only. Each word must contain the large letter and there must be at least one nine-letter word in the list. No plurals; no foreign words; no proper names. TODAY'S TARGET: 21 words, good; 24 words, very good; 29 words, excellent. Solution tomorrow.

W	O	K
E	R	R
S	C	C

### YESTERDAY'S SOLUTION

Eight gilt glist glen glint glisten gneiss heling ingest ingle legist length light lighten LIGHTNESS ling neigh night NIGHTLESS shingle sigh sight sign signet sing single singlet sleigh sleight slight sling sting thegn thing ting tinge tingle.



## OFF THE CUFF

THIS WEEK'S QUESTION: "What do you think of the Banaban fire bomb attacks at Ocean Island?"



VISHWA DUTT SHARMA, clerk/interpreter, Lautoka: "The Banaban community has won a victory against great odds. They have demonstrated to the world that they are ready to take action to back their claims. Their sabotage mission was well planned and successful."



Suresh, Lautoka: "The fire bombing by a group of Banabans can only be seen as irresponsible and their actions must be deplored. Though their cause of action seems legitimate, they should seek a peaceful means of voicing and solving their problems."



Uma Ram, merchandise manager, Suva: "You don't achieve anything by violence. You must have patience and talk it over."



RODNEY SAMUELS, airline officer, Auckland: "It's okay if they're getting a raw deal after an unsuccessful negotiation."



MITIEL NAIVALUVOU, clerk, of Suva: "They should not be refused their claims. They did that to gain their right of possession."



TIMAIMA SALAYAWA, waitress, Savusavu: — I think that the British Phosphate Commission is being unfair in the dispute over the island's future."



MESULAME NAINOCA, businessman, Suva: "Look all over the world — Iran, Vietnam, Kampuchea, or the Middle East — People die for what they believe to be rightfully theirs."



BOLA VULI, Taxi proprietor, Raiwaqa: "They could be right with their action. I think this is the only way they can get their rightful land back, especially when they have gone through the right channel."

# Banaban protest group arrives

*Fiji Times  
14/2/79*

BANABA. — A group of islanders arrived here yesterday threatening to disrupt phosphate mining operations to back their claims of unfair exploitation.

The delegation, from islanders who have been settled in Fiji for many years, are also demanding separation of Banaba, their ancestral homeland, from the Gilbert Islands, which are soon to become independent from Britain.

A spokesman for the British Phosphate Commission (BPC) in Melbourne, which runs the mines on Banaba (or Ocean Island), said that the 15-strong group had arrived.

He declined to comment on their threatened move, saying "that would be anticipating the situation."

The Banabans sailed from Nauru. They said they planned to block roads and destroy mining equipment on Banaba.



Fiji Times 12/2/70

## Banaban leaders extend deadline for end to mining

MELBOURNE. — A spokesman for the British Phosphate Commissioners said yesterday that a Banaban delegation had extended by 10 hours a 24-hour ultimatum demanding suspension of mining in Banaba (Ocean Island).

The original ultimatum was to have expired at 10am. There was no further word of developments before this edition went to press.

The Banaban group arrived at the phosphate-rich island on Tuesday after travelling from the home in Fiji via Nauru.

The seven members of the Banaban Rabi Council of Leaders, accompanied by Alliance Member of Parliament Fred Caine, said they would protest against "the unfair exploitation" of Banaba, and the refusal of Britain to grant separation from the Gilbert Islands, which will become an independent Commonwealth nation on July 12.

They said they would give the British Phosphate Commissioners 12 hours to halt phosphate mining in Banaba, or they would disrupt mining operations.

The spokesman for the commission in Melbourne said it was unfortunate that the Banabans had confused their aspirations for self-government with "a simple mining operation."

He said he hoped they could amicably solve their differences with the British Government and the Gilbert Islands.

*Fiji Times 30/11/78.*

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## EDITORIAL COMMENT

# Banabans must look forward

THERE are many in Fiji who will commiserate with the Banabans on the loss of their claim for independent status for their homeland, Ocean Island.

It has been a long and expensive losing battle and a frustrating situation for them, which gives cause for sympathy no matter where you stand on the actual issue.

The defeat comes at a time when the Banabans will feel it sorely.

It is a time when their financial course has become worryingly rocky.

They have lacked the Midas touch which marked some of the Nauruan projects, for instance.

They will need all their resources, human and financial, to secure their future.

But it is time to look at the future and now study closely just what their situation will be in the independent Gilberts and what status and privileges they will have.

They have been promised some safeguards of their rights in the new Gilbertese Constitution.

How will these fit in with the status of the Rabi Islanders, the Banabans of Fiji.

Most of the population of Ocean Island lives in Rabi and has Fiji citizenship.

Fiji does not permit dual citizenship, the practice of many countries.

What will the Gilberts decision be, and how will it affect the people of Rabi?

These are the questions of the future for the Banabans to work on now, without letting disappointment overwhelm them.

# New move on Ocean Island

LONDON. — A British Opposition Member of Parliament has attacked the British Government's latest rejection of the Banaban plea for independent sovereignty of Ocean Island (Banaba), as the ultimate injury to them.

Sir Bernard Braine (Conservative) warned that the British Government should not underestimate the reaction in Fiji to the rejection.

Britain's Foreign Office Minister of State, Lord Goronwy-Roberts, announced the decision at a session on Tuesday of a constitutional conference on independence for the Gilbert Islands.

Fiji is not represented at the conference although the Banabans are Fiji citizens.

The Minister of State said Britain had decided the Banaban homeland would be included within the Gilberts state when it becomes independent in mid-1979.

## 'Ultimate injury' to the Banabans

The Justice for the Banabans Committee of which Sir Bernard Braine is chairman, said here yesterday: "The Banabans" plea for the separation of Banaba from the Gilberts colony with which it was arbitrarily merged by Britain in 1916 has thus been refused.

The British Foreign Office declined immediate comment, saying that details would be published only when the conference ends in about a week.

The 3,500 Banabans who now live on Rabi Island in Fiji have been offered six million sterling compensation by Britain, Australia and New Zealand for the ravaging of Banaba by phosphate mining.

The Gilbert Islands colony has about 60,000 people. Its delegation was against the separation of Banaba from the Gilberts.

Sir Bernard, who attended the conference as an adviser to

the Banaban delegation, said the Government's decision would lead to bitterness and tension within the new Gilbertese state, which would start off on the wrong foot by insisting on coercion of the Banaban people into becoming an unwilling part of it.

The Banabans were not prepared to release Britain from its solemn and binding undertakings of 1947 in which their rights to their ancestral homeland were guaranteed in perpetuity.

Mr Tom Teai, secretary to the Banaban Council of Leaders, said in a press statement that anything apart from the separation of Banaba from the Gilberts would be regarded as death by the Banabans, who felt they had been summoned to a constitutional conference halfway round the world not so much to negotiate a settlement as to justify the British Government in maintaining the status quo on the Banaban issue.

# US SAILORS LEND A HAND



MEN from the United States naval task force, from left, Jim Rosenkrans, Jim Reed and John Ekman, repair furniture at St Giles Hospital, Suva, watched by matron, Sister Qamrul Nisha Mohammed. The man, from USS Cochran, Robert E. Peary and Roark, which were in port last week, spent several days at the hospital helping with repairs and entertaining patients.

## Development meetings

District rural development committees in the Western Division have begun meeting to review rural projects and discuss funding of community programmes for this year.

The first meetings were held at Ba and Tavua on Thursday, the second at Rakiraki on Friday, and the next will be at Nadroga/Navosa tomorrow, Lautoka on Wednesday and Yasawa on Friday.

The meetings are to review rural community self-help programmes, minor works and major development programmes done by the government and other agencies.

The agenda includes also the capital works programme for this year and the distribution of a \$100,000 self-help fund as government contribution to projects approved by the committees.

## Will you marry me? — and the Pope said yes

VATICAN CITY. — People are calling souvenir shop salesgirl Vittoria Ianni the Pope's Cinderella. She asked Pope John Paul II to marry her, and he said yes.

"I realised immediately I was not using the proper words," Vittoria said. "But His Holiness was looking at me so nicely that I felt encouraged and I went on."

She explained she was getting married and wished the Pope could celebrate the wedding Mass.

"He smiled and said yes. I thought I was dreaming and asked him: 'You mean it? And he nodded and said yes again.'

Vittoria popped the question on January 5 when the Pope went to meet a group of street cleaners and visit the creche they had set up for Christmas in a garage.

Vittoria, the eldest of six children of streetcleaner Giuseppe Ianni, recounted; "he moved a few steps on, then turned back and asked: 'But how old are you? And I said: 'Twenty-two.' He looked reassured. I must have looked too young."

"This is the best wedding present of all," said her mother, Anna. "Vittoria told me what she had in mind minutes before the Pope entered the garage. I said Mamma Mia and thought she was joking... that it was something impossible."

Now, the Vatican has officially announced that Pope John Paul will preside over the wedding of Vittoria and her fiancé, Mario Malfese, 23, on February 25.

The decision came to the dismay of some veteran prelates who say that for centuries Popes have never presided over a wedding of commoners. Instead, they have reserved their presence to ceremonies involving the nobility or papal relatives.

About 160 relatives and friends will accompany Vittoria and Mario past the Swiss Guards through the bronze gate into the Apostolic Palace. The 10am wedding will take place in the Pauline Chapel — AAP

## America drops Tuvalu claim

Tuvalu and the United States have signed a friendship treaty under which the Americans have dropped claims to four of Tuvalu's nine islands.

The US is discussing another treaty with the Gilbert Islands aimed at settling a dispute over the ownership of the Line and Phoenix groups, says a statement from the American Embassy in Suva.

Britain and the US disputed four of the Tuvalu group — Funafuti, Nukufetau, Naukualilai and Nurakita — since last century.

Britain administered them as part of the colony of the Gilbert and Ellice Islands until Tuvalu gained independence last year.

The friendship treaty calls for consultations on security and marine resource matters.

Waters near Tuvalu are an important fishing ground for the US and other foreign fishermen, the embassy said.

The treaty becomes effective when it has been ratified by the US Senate and instruments of ratification have been exchanged.

The four Tuvalu islands are among 26 South Pacific Islands over which the US, Britain and New Zealand have had conflicting claims.

Political changes in the region, such as independence for Tuvalu and for the Gilberts this year had prompted the need to settle the claims, the embassy said.

## Coins at bargain prices

Some of the \$250 gold, \$20 and \$10 silver coins to be issued in Fiji in the world's wildlife conservation coin series will be put on circulation here at face value.

The Central Monetary Authority, which is issuing the coins, said this meant a "significant saving on the price which will be charged to collectors."

People wishing to obtain the coins at face value should apply to their bankers before March 16.

Only one coin of each denomination would be issued to one person, the CMA said.

The coins feature a banded iguana (\$250), golden cownie (\$20) and pink-billed parrot finch (\$10) on their reverse sides.

## BRITISH ARMY MEN ARRIVE

Fiji is about to give 135 British soldiers their first experience of jungle warfare.

A company of the Royal Green Jackets Regiment arrived from Hong Kong on Saturday in an RAF VC10 transport plane for exercises in Viti Levu lasting six weeks.

An advance party of 17 men arrived earlier last week.

"We are here to learn because most of us have not been in the jungle before," Captain Robert Martin, second-in-command of the company, said.

"We will do our training in four phases, with the help of the Royal Fiji Military Forces."

The British troops, a company of riflemen, will start their first exercises near Namosi by marching inland, building a camp, and then rafting down the Sigatoka River.

In another course they will live in tren-

ches and finish off with a hike of more than 80 miles from north-west Viti Levu across the island to Suva.

They will also do community work at some inland villages.

Captain Martin said Fiji was one of the few tropical training areas still open to the British Army.

The Green Jackets got their name in the American War of Independence when the regiment's red-coated officers found that their uniforms were easily visible targets for rebels and swapped them for less obvious green.

The regiment has three battalions, with the men now in Fiji drawn from one based in Hong Kong.

One battalion is serving in Northern Ireland and another is in England.

Captain Martin said the regiment had numerous connections with the army since some of its officers had served in Fiji on secondment and Fiji officers had trained with it in Europe.

## One seeks endorsement

The Indian Alliance has so far received one applicant for endorsement as its official can-

didate in the by-election for the Labasa/Bua Indian communal seat in the House of Representatives.

Applications would be received until tomorrow.

The party's president, Mr James Shankar Singh, will then go to Labasa to discuss the selection with the district committee, the party's general secretary, Mr K.S. Reddy, said.

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# The Fiji Times

THE FIRST NEWSPAPER PUBLISHED  
IN THE WORLD TODAY

*See Also overleaf*

Suva is just west of the international  
Date Line where the new day begins.



FORECAST: Mainly fair.  
Details Page 12.

109th Year No. 43

MONDAY, FEBRUARY 19, 1979

20 PAGES

12c

## BANABA CALLS UP MORE MEN

By  
**NEMANI  
DELAIBATI**  
who has just returned  
from Banaba

A Nauruan ship is on its way to Fiji to pick up a further 100 Banabans from Rabi Island to strengthen the Banaban presence in Ocean Island (Banaba).

The 100 men are expected to leave for Banaba this week on Cenpac Rounder to continue Banaban efforts to halt phosphate mining in the island.

Eight Banabans, including three Rabi Island councillors, have been arrested and locked up in Banaba after a series of petrol bomb attacks on phosphate mining equipment and installations.

The sabotage followed the British Phosphate Commissioners' rejection of an ultimatum by the Banaban people to stop all mining operations by 6pm on Thursday.

Those detained are the Rabi Island Council's deputy chairman, the Rev. Kaitangare Kaburoro, assistant secretary Teem Takoto, councillor Tekai Tabuariki, Takaro Tauakitari, Betero Tionikai, Rokouea, Tebika Tebetang and Teiaua.

Details of charges are not yet available.

More than 30 men struck at six target areas on Thursday night.

Explosions lit the sky and in half an hour three huge excavators, a hydraulic control box and two crushers were in flames.

Police and BPC Gilberts workers battled for half an hour to extinguish the fires.

Australian Donald Begbie who is in charge of maintaining the machines and has spent 18 years in the island, said the incident was a "bloody terrible" experience. "I was shaking like a leaf," he said.

He thought those respon-



ABOVE: Maintenance chief Donald Begbie (right) looks in disgust at the hulk of a burnt out excavator after the petrol bomb attacks in Banaba on Thursday night.

BELOW: The deputy chairman of Rabi Island Council of Leaders, the Rev. Kaitangare Kaburoro (left) and parliamentarian Fred Caine lead the protest march on Wednesday.



sible "must have been mad." The replacement cost of one excavator was \$50,000.

The BPC's manager on the island, Mr Ron Elliott, burned his right hand while trying to fight a fire in the hydraulic control box. He told reporters he expected something to happen after

the Banaban petition to stop mining was rejected, "but I did not expect it to be so serious."

He did not think there was extensive damage, but could not put a figure to it.

Two Banabans were hurt in the raid. One tumbled into a ravine and broke his right leg. The other

received only minor injuries.

Police ambushed a Banaban vehicle and fired tear gas at it. The five occupants were arrested after they abandoned the car.

Police were planning to impose a curfew from Friday night at 10pm as a precaution against future similar incidents.

### Chinese invade Vietnam

TOKYO. — Chinese forces backed by tanks, fighter planes and artillery have launched a "large-scale invasion" of Vietnam.

The Japanese news agency Kyodo, quoting a dispatch from Hanoi, said Chinese forces had penetrated about 10 kilometres into Vietnamese territory.

Vietnam's Ambassador to France, Mr Vo Van Sung, told French television that the Chinese attack stretched 1000 kilometres from Mong Cai on the Gulf of Tongking to Lai Chau province near the Laotian border.

The Soviet Union denounced China's attack as "brazen aggression" and warned that it endangered world peace.

The Communist Party daily Pravda said Vietnam was capable of standing up for itself and "furthermore, its friends are not few."

Radio Hanoi said Vietnamese forces had checked a number of border areas.

Chinese troops and vehicles had been reduced to charred remains and were lying scattered on streets, rice-fields and hills on Vietnam's northern border, it said.

— AAP-Reuters.

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THERE was no first prize winner in Fiji Fives Game 40...so the minimum guaranteed first prize in Game 41 is now \$10,000. We hope to publish the names of second and third prize winners within the next few days. Meanwhile, your Game 41 coupons are on Page 11 today.

Siji Times 21/2/79



**ABOVE:** Banaban elder Mr Tebetang, 64, mends a fishing net while his Gilbertese wife Alwi, 53, weaves a basket in front of their shack. They left Rabi four years ago to settle on Banaba.



**LEFT:** Some of the 200 Banaban settlers living on Ocean Island.

**BELOW:** The living quarters of British Phosphate Commission workers. The housing area is called "location."



# Banabans want to continue mining

By  
**NEMANI DELAIBATI**

THE Banabans want to go into the mining business themselves when the British Phosphate Commissioners wind up operations on Ocean Island (Banaba) in November.

The BPC is having to pull out, leaving behind about one third of the island unmined because the Banabans have refused to issue any more leases to the company.

It is part of the Banabans' long political battle with the British Government to win separation of their ancestral island from the Gilberts.

The remaining unmined area contains one million tonnes of phosphate worth about \$37 million at present prices, according to a top BPC official.

The Banabans want to mine the area themselves and consequently assert their presence as the rightful owners of the island.

Their battle reached its peak last week when they decided that dialogue was ineffective. They went on a rampage and sabotaged machinery and installations, using petrol bombs.

The motive behind the bomb attacks was to tell the British Government "Look, we mean business."

While Gilbertese officials declined to comment, ordinary Gilbertese people are divided on the issue. Some think that Banaba is part of the Gilberts, because of similarities in language and culture. Those who have Banaban relations feel that the Banabans should be given their freedom to govern their own island as were the people of the Ellice Islands, now Tuvalu.

The Gilbert Islands are due to become independent in July.

Meanwhile, life on Banaba goes on. The petrol bomb attack on mining equipment caused a bit of stir among the predominantly Gilbertese

population, but the fear subsided after they learned that the attack was aimed only at destroying machines.

The 2800 Gilbertese and Tuvaluans who work for the BPC in the mine live in flats similar to the Raiwaqa Housing Authority two-storey flats in Suva.

Most enjoy their life so much that they felt it was no good returning to their homeland because prospects there are not as good as on Banaba.

The basic wage is only \$73 a month, but the BPC provides free education, free medical service, free food rations, free bus transport, and free accommodation.

The staff quarters occupied mostly by European expatriates, are surrounded by lush gardens where flamboyant trees flank the winding cement paths to the houses.

The Banabans, most of whom have "returned" to their homeland in the past few years to establish a Banaban "presence," live in makeshift shelters between pinnacles at one point of the island.

They have planted cassava between the pinnacles, and also coconuts, which are growing well.

One of the village elders, Mr Tebetang, 64, said: "We are here to build up our Banaban community. This is our island."

Mr Tebetang moved from Rabi with his wife four years ago, "because I love Banaba."

He told me: "Life is sometimes difficult but knowing that you are on your own island helps you to keep struggling to survive."

The Banabans, like all the other people on the island, depend on the local super market, the Trade Store, for supplies ranging from food to cosmetics. They have the run of BPC facilities.

Films are shown at least three times a week, in both the workers' and staff clubs.

Recreational facilities ranging from billiards to lawn tennis are available.

Dances are held every Saturday.

On an island which is six miles in circumference it is not bad for the population of about 3000.

In the next seven months the population will drop dramatically as repatriation goes into full swing.

In the mess for bachelor staff the same high quality dishes are being prepared. But only four people are using the mess today and the expatriate chef has left.

Fewer people attend the clubs now and the main street is quiet after dark. Many of the workers' flats are empty.

Two weeks ago 90 people including Gilbertese and Tuvaluans, left the island. Fifteen Gilbertese are due to leave this week.

The European expatriate population has dwindled from more than 60 a year ago to 28.

As one Gilbertese remarked: "It will soon become a ghost settlement."

Fiji Times 21/2/79



# LETTERS TO THE EDITOR

one person who decides according to his own feelings or conscience which may be religious or otherwise.

Government would be wise to use great caution in considering any further restrictive measures affecting nightlife.

There are plenty of illegal operations going on in Fiji that should be investigated.

Instead of restrictions a relaxing of the present restrictions would be more appropriate.

JAMES CRAWFORD  
Suva.

## Banaban mission

Sir, — I am amazed at the tenor of Mr Usher's letter of February 19 and disgusted at the implied blackmail in his statement "I hope that the General Electors represented by Mr Caine will remind him that he was elected under a Constitution based on the rule of law".

As a General Elector, I personally will do no such thing. I am proud that Mr Caine showed the great humanity that is more particularly inherent in those of us with island blood, and without counting the cost went to the aid of an unfortunate people who have been kicked from pillar to post by a former imperial power and to whom the final insult is about to be offered in that, over their heads, their country is about to be given to another people.

A crisis situation calls for strong measures and the Banaban people are now taking them.

Where were you Mr Editor when the Prime Minister warned that if Fijian land rights were tampered with "blood would flow"? Were you ad-

vocating "Gandhian passive resistance" then? Or were you too frightened to speak out?

Fellow part-Europeans, a man for our times has at last emerged in the person of Mr Caine. His political future is in your hands. Rally around him and nurture the qualities of selflessness and leadership that he is undoubtedly showing. He is not afraid to talk out, and he is man enough to apologise when he is wrong.

He has guts and his speeches are a breath of fresh air in the stultifying atmosphere of cant and hypocrisy that too often pervades the House of Representatives.

R.W.D. ACRAMAN,  
Lami.

● We refer Mr Acraman to our editorial comments of March 22 and 31, 1978. They state our position on the subject on which he questions our integrity. — EDITOR.



**LETTERS  
TO THE  
EDITOR**

Nevertheless, it may surprise your readers to know that of the 260,000 Fijian population today, only about 5000 are unfortunately regular everyday drinker. Of the Fijian females I would place the number at about 500. I estimate that at least 150,000 of the Fijian population have never touched the stuff in their whole life.

I estimate that total abstainers in the Indian population is far higher.

By the same token, the over-sea tourist does not come to Fiji because of liquor. He can get drunk as a lord everyday in his own country for far less money.

Pray tell me then what justification (apart from Government revenue of dubious net worth) is there for not totally banning liquor from this country, where untold misery is caused to the law abiding majority by a section of the drinking minority? (I disregard the simple, but politically difficult, solution that races, not liquor, be banned.)

The best answer I can suggest to honest skeptics is, of course, to hold a public referendum on this question as it is done in other democratic countries.

I can see one slight difficulty though as to whether this can be implemented, — our politicians drink.

**SEMISI RAYAWA**

Samabula North.

# Caine on Banaba

Sir, — I resent the racial undertones contained in a letter by R.W.D. Ackraman in your open column, on February 21.

He strongly hits out at Mr L.G. Usher for questioning Mr Fred Caine's visit to Ocean Island.

What Mr Caine chooses to do in his own time is his affair. It does not worry me whether he wants to 'Caine the West,' or go off on a wild goose chase

after "noodles" on the ocean bed.

But I do take exception to what Mr Ackraman said; and I quote: "Mr Caine showed great humanity which is more inherent in those of us with island blood."

What Mr Ackraman implies is that only islanders, or those with island blood, as he likes to call them, are humans and show more compassion than others. What utter rubbish.

I think for Mr Ackraman to raise that argument against Mr Usher is below the belt and completely uncalled for. Mr Ackraman, as a lawyer and a long serving officer in the Ombudsman's office, should be ashamed of his petitions by bringing in racialism.

It's well known that Mr Ackraman is connected with a company that handles public relations for the Babanans; so perhaps that is why he chooses to hit out at all those who criticises anything to do with the Banabans' cause.

Furthermore, for Mr Ackraman to call on part-Europeans, as he calls them, to rally around Mr Caine as a long lost leader, is an insult to our intelligence.

As one who is of European and Fijian descent and a general elector, I don't need Mr Ackraman to tell me who to rally around.

**ANDREW WILLIAMS**

Rewa Street  
Samabula.



Fiji Times 21/2/79

# BANABANS GET THE SUPPORT OF WFTU

International trade union support was promised yesterday for the Banabans in their dispute with the British Government over their island homeland.

The first session of the Fiji Council of Trade Unions seminar at Lautoka, being attended by about 40 delegates from Fiji and overseas, was dominated by the Banabans' dispute.

A firm commitment of support was made by the secretary of the World Federation of Trade Unions, Mr Mahendra Sen, who said the WFTU would build international support for the Banabans.

Although the nature of support was not stated, a resolution from the session placed responsibility for the dispute "squarely" on the British Government and called on it to "immediately release" all Banabans locked up after bombing of phosphate mining installations on Ocean Island (Banaba) last week.

The resolution, passed unanimously,

branded the British as taking an "irresponsible attitude" on the matter and affirmed WFTU support for the Banabans.

A copy of the resolution was sent yesterday to the British High Commission in Suva.

Australian and New Zealand delegates, one of whom described the phosphate mining operations as a "gigantic confidence trick", said they would take up the matter with unions in their own countries.

Earlier, Fiji Member of Parliament Fred Caine, who has just returned from Ocean Island, said he planned to go back there later this month.

"If they don't let me land on the island then the riots will commence again," he warned.

Mr Caine said when he went to Ocean Island he was "shocked" to learn that a phosphate mine labourer earned only \$60 a month and the Banabans lived in shacks in their villages.

A "minority" lived in big houses with

"floodlit" tennis courts, swimming pools and other luxuries he said.

He said the Banabans had resorted to violence to get their rights because there was no alternative left for them after exhausting all legal channels.

Giving India, Northern Ireland and Rhodesia as examples, Mr Caine said the British administration acted only "WHEN SOMETHING HAPPENS."

Mr Caine accused the British administration of using 80 per cent of phosphate royalties that were due to the Banabans to administer the Gilbert and Ellis Islands.

A Banaban spokesman, Mr Henry Spring, told the seminar the Gilberts, due to become independent in July, already had \$80 million in a reserve fund that rightfully should have gone to the Banabans.

He said the continued exploitation of phosphate on Ocean Island had reduced the Banabans to a sorry state. He himself was born in a tent on Rabi Island.

Mr Caine said the \$80 million was

the sum accumulated over the years from phosphate royalties and stored in a fund for use by the Gilberts when they became independent.

Since the Banabans want Ocean Island to be separate from the Gilberts they will lose out on this.

Meanwhile, it was announced in London on Monday that British Foreign Office minister Evan Luard will visit the Gilbert Islands early next month to discuss provisions in the Gilberts' Independence Bill which cover the Banaban community there.

The announcement of the visit by Mr Luard, a Parliamentary under secretary of state, was made in the House of Lords following a report by Banaban police of the bomb attacks.

The new constitutional bill which gives independence from Britain to the Gilberts, also guarantees the 3500-member Banaban community a veto on changes affecting their island.

It also provides financial aid for the Gilberts.

Fiji Times 19/2/79

## Violent campaign

Sir, — The action of a group of Fiji Citizens, accompanied by a member of Fiji's Parliament, in seeking to achieve a political aim through threatened violence is a matter for very serious concern.

I hope that the Government of Fiji will tell the Rabi Islanders who have talked of disrupting phosphate production on Ocean Island by smashing the mining plant that this manner of conducting a political campaign will not be tolerated.

And I hope that the General Electors represented by Mr Caine will remind him that he was elected under a Constitution based on the rule of law.

The expensive expedition to Ocean Island via Nauru was preceded by an apparently spontaneous but nevertheless curiously concerted approach to the British Government through the High Commission in Suva by mayors of several Fiji towns and by the Leader of the Opposition, in support of Banaban claims.

I wonder if these worthy gentlemen will now give their views on the threats of violence which were shortly afterwards employed by Rabi Islanders to reinforce the same claims.

L.G. USHER  
Suva.

Fiji Times 12/3/79

# 55 BANABANS NOW FACE

## CHARGES

Forty Banabans on Ocean Island had received summonses to face charges in court in Tarawa, a cable to Suva said at the weekend.

This will bring to 55 the total number of Banabans being prosecuted over event on their homeland, Ocean Island.

Fifteen men now in gaol custody in Tarawa in the Gilbert Islands were due to appear in court on Tuesday, the cable from Banabans representative on Ocean Island, T. Taiborua, said.

They include the deputy chairman of the Rabi Council of Leaders, the Rev. Kaitangare

Kaburoro, and assistant secretary, Teem Takoto.

Charges against them arise from the petrol bombing of British Phosphate Commission mining equipment on February 15 after the commission rejected a Banaban ultimatum to cease operations.

The summonses against the additional 40 Banabans order them to travel to Tarawa to appear in court on Monday, March 19.

The cable to Suva did not state what the charges against them were but Banaban sources in Suva said they were thought to be a result of the petrol bombing.

No reports have reached Suva of any further incidents on Ocean Island.

Another 150 Banabans are meanwhile on their way to the island in the Nauru freighter Cenpac Rounder to strengthen the Banaban presence there in their fight for its separate independence from the Gilbert Islands.

Teem Takoto told Rabi Council secretary Tom Teai by telephone from Tarawa at the weekend that the Banabans in custody were in good spirits.

# Banabans threaten sabotage

A showdown is likely on Ocean Island either today or tomorrow when a high-powered Banaban delegation lands there to "occupy" the island.

The eight-member delegations arrival is a last resort by the Banaban people in their protest against exploitation of the island and its resources and the refusal of Britain to grant separation of Ocean Island from the Gilberts.

Speaking through his interpreter, delegation leader, the Rev Kaitangare Kaburoro, said: "We are all prepared to meet the consequences, come what may."

He is the deputy chairman of the Rabi Council of Leaders.

During a top level meeting with other councillors on Wednesday here in Nauru they resolved that an ultimatum be handed to the manager of the British phosphate Commission on Ocean Island to stop all mining operations.

The BPC will have 12 hours in which to reply. If no satisfactory reply is obtained, the delegation and the 200

From  
**NEMANI DELAIBATI**  
in Nauru

Banabans on Ocean Island will sabotage and destroy all mining equipment and machinery on the island, Mr Kaburoro said.

They will block roads and obstruct operations in the mining areas. Asked whether they had considered the consequences, Rev Kaburoro said: "Yes we have. We are all prepared."

He said the plan would be implemented even if they were going to be arrested.

"This is our last resort in trying to get back a stolen property. The ultimate aim, if worse comes to worse,

is to announce a unilateral declaration of independence of Ocean Island after the formation of a Banaban government."

As soon as the delegation lands it will assemble all the 200 Banabans on the island and tell them its intentions and there will be a protest march to the BPC office where Rev Kaburoro will read out their petition to the manager.

Fiji Parliamentarian Mr Fred Caine, who is accompanying the delegation, will read a letter from the Fiji Council of Trade Union threatening a world-

wide shipping ban on Ocean Island if the Banaban wish is not honoured.

The seven councillors, including Rev Kaburoro, will remain on the island until March 12 when they hope to eventually achieve their aim.

Meanwhile, a decision on Ocean Island's future will be decided between now and February 23 when a bill will be debated in the House of Commons in London.

The council chairman, Mr Tebaiti Tawaka, is in London canvassing support.

Meanwhile, Rev Kaburoro has asked all the councillors to pray for God's help in their mission.

An Assembly of God minister, Rev Kaburoro held a joint prayer meeting on Rabi with all Banaban pastors and ministers before the delegation left on Tuesday.

"We are not equipped with firearms, but with the truth," a confident Rev Kaburoro said.

The council, hopeful that it will achieve its aim, has allocated about \$50,000 for this exercise.

Fiji Times 13/3/79



# Banaban independence

Sir, — It is historically unfortunate that the Banabans have found themselves living on Rabi Island instead of Banaba. Historical records shared by both historians and the Banabans show that it was on their own accord that they (the Banabans) chose to live on Rabi rather than Banaba.

It is also historically unfortunate that they have not been in a position to support their claim that they are of a different language from the Gilbertese except to quote one or two examples of Banaban words.

Rabi is an Island which used to be Fijian land but was bought by the Banabans for about 30,000 pounds not long after BPC took over mining from Pacific Phosphate Commission.

As a people the Banabans, by virtue of their Fiji citizenship, are politically independent of Kiribati (the new name for Gilberts). What they now want apparently, is separation and independence for Banaba, their ancestral homeland where they can live, die and be buried without having to be bothered by Kiribati government.

I personally would be in favour of the Banabans taking their island out of Kiribati constitutional boundaries, if and

only if they could prove beyond doubt that:

- a. They gave up their landowning titles on other islands of Kiribati.
- b. They could achieve political separation and independence of Rabi island from the Fiji government; or
- c. They could hand Rabi island back to Fiji if the Fijian landowners claimed it back.

Ideally speaking, the most feasible solution is to physically drag Banaba out of Kiribati and tie it next to Rabi island. With the help of some sophisticated technology yet to be invented, I am sure this will not be a very distant solution.

T. KATA,  
USP, Suva.

~~Salty butter~~  
Sir, — It's about time the

~~quality of butter was improved so that it becomes more palatable.~~

~~It is very salty.  
I urge the manufacturer to produce a non-salty butter.  
MOHAMMED KHAN,  
Nasinu 9½ miles.~~

pledged to support the Banabans. So Mr Caine had to do his duty as a union official.

I hope the next person who writes to you about the Caine-Banaban issue uses his brains and doesn't talk rubbish.  
CARL GIBLIN,  
Lautoka.

# Caine and Banabans

Sir, — I understand as a committee member of the General Electors' Association, Lautoka branch, that the Hon. Fred Caine did not represent the GEA during his trip to Ocean Island.

Mr Caine is the secretary of the Building Workers' Union and the secretary for the Fiji Council of Trade Unions.

Before Mr Caine took up his new post, the union had

Fiji Times 20/2/79



## LETTERS TO THE EDITOR

~~So come on you bureaucrats, the taxpayers of this country pay your salaries: you at least, in return, could provide us with a reasonable service.~~

~~MARTIN C.D. TYLER,  
Suva.~~

## Banaban mission

Sir, — The Fiji Times editorial (February 19) says "Many people had thought that the Rabi Islanders who left Fiji for Banaba would organise some form of a Gandhian passive resistance movement".

I am afraid that such people could not have been reading the Fiji Times, which on February 12 quoted an earlier statement by the leader of the costly and carefully planned expedition on its aims and proposed tactics.

The Rev. Kaitangare Kaburoro was reported to have given notice that he and his companions intended to demand that mining operations stop on Ocean Island (Banaba).

If no satisfactory reply was given, "the Banabans would destroy mining equipment, block roads and obstruct mining operations", the report said.

The member of Fiji's parliament who has been receiving considerable personal publicity because of his association with the venture, Mr Fred Caine, has been quoted by another newspaper as saying that the "sabotage mission" was "well-planned".

He claimed also that the men arrested, following the wilful and criminal destruction of property belonging to the mining company, were "political prisoners".

Some very disturbing possibilities begin to emerge.

The South Pacific has hitherto been generally spared the effects of the odious apparatus of

international terrorism, but the door has now, unhappily, been opened.

There are plenty of people and organisations in the world who will be happy to urge the Banabans to go further, now that they have made the first use of violence and destruction as political weapon.

If the political gangsterism that occurred last week is in any way condoned by the Parliament and people of Fiji, and if the fundamental principles of the rule of law are not vigorously restated and uncompromisingly upheld, further steps down a slippery path will be fatally easy.

This gives special urgency to the Prime Minister's suggestion that no time be lost in trying to get the Gilbertese and Banaban people together for further talks, aimed at finding an alternative to, on the one hand, an imposed settlement not acceptable by both parties, and on the other the danger of expanded political violence.

Nothing should be left undone which gives any chance of averting the tragedy which otherwise is now so clearly in the making.

L.G. USHER  
Suva

# Gilberts move to stop Banabans

Fiji Times 12/2/79

A party of Gilbertese officials left for Ocean Island at the weekend to guard against a Banaban move to sabotage phosphate mining equipment and disrupt mining operations.

Radio Tarawa reported a team of reinforcements was being sent to the island, but did not say whether they included police.

Meanwhile, a delegation of the Rabi Council of Leaders was waiting at the weekend for weather to improve so that they could set sail for Ocean Island in the ship Cenpac Rounder.

The delegation leader, the Rev Kaitangare Kaburoro, said last week that the leaders would assemble the 200 Banabans on Ocean Island and march on the British Phosphate Commission Office.

There they would hand an ultimatum to the commission manager to cease mining until the Banabans' demand for separation of Ocean Island from the Gilberts was met.

If no satisfactory reply was given the Banabans would destroy mining equip-

ment, block roads and obstruct mining operations, he said.

A Foreign Affairs spokesman in Suva said that the Fiji Government's position on the Ocean Island dispute was that the parties should settle it between themselves.

The Government had not been notified officially of the Banaban group's voyage to the island, he said.

"The Fiji Government has always taken the view that the future of Ocean Island is a matter to be settled between the Banabans and Gilbertese with the British Government," he said.

Alliance backbench Member of Parliament, Mr Fred Caine, who is accompanying the delegation, was with the delegation in a personal capacity, Mr Kotobalavu added.

A British High Commission spokesman in Suva said it had not been notified of the delegation's voyage. The first it knew of the move was a news report yesterday morning.

The High Commission was taking no action and had no comment on the matter.

# Fiji Times



Suva is just west of the international Date Line where the new day begins.

FORECAST: Mainly fine.  
Details Page 21.

BLISHED  
AY

SATURDAY, FEBRUARY 17, 1979

36 PAGES

12c

# BANABANS BOMB MINE — 8 HELD

Eight Banabans, including three councillors, were arrested and locked up here on Thursday night after a series of petrol bomb attacks on phosphate mining installations.

More than 30 men on foot and in Landrovers, moving under cover of darkness, struck at target areas within half-an-hour of each other.

Phosphate mining was partly halted yesterday as the British Phosphate Commission assessed damage done by the bombings.

A police curfew was imposed from 10pm.

The delegation of Banabans arrived on Tuesday, a Gilbert Islands Government spokesman said.

It includes seven members of the Rabi

— From —  
**NEMANI DELAIBATI**  
in Banaba

Council of Leaders, three other Banabans and MP and trade unionist Fred Caine.

All were allowed to land, despite the fact that the district is closed to anyone except Banabans, the Gilberts spokesman said.

It was understood that two letters were handed to the British phosphate company.

One asked the company to stop mining operations "within 24 hours." The other expressed the intention of the Fiji Council of Trade Unions to "demonstrate its solidarity with the Banabans."

A British Foreign Office spokesman said in London he was aware of the protest but because of bad weather in the area and bad communications he did not know if mining had been stopped.

Earlier this month, the London-based "Justice For The Banabans" campaign said in a statement that the delegation would protest against "the unfair exploitation of their island homeland, Ocean Island (Banaba), and the refusal of Britain to grant separation from the Gilbert Islands colony."

The campaign added that if mining was not stopped within their time deadline, the delegation would assemble the 200 Banabans still living on Ocean Island and obstruct mining by damaging equipment and machinery.

Dagger used



GPO Box 1404,  
Suva,  
Fiji.

*Max Nixon*

27th February, 1979.

I know in my heart (and mind) that this letter should really have been addressed to Honor, to thank her so much for the generous hospitality at 77, Arthur Circle, and enduring my presence as a day-boarder for the better part of four days. Failure to address the lady of the house would, of course, horrify a purist in the social sphere like our one and only Eric Bevington, but I hope Honor will forgive me, since the greater part of this letter will (though not to your or her surprise) deal with 'shop'. Further, though I fully recognize the imperative necessity to keep the Professor informed, if possible blow by blow of the Banaban activities in Ocean Island, I see no reason why an OHEMS envelope should not be used for such a crucial service. Alas, further or is it farther? - the "Burne free postal service" will have to end in the not too distant future. Nevertheless, I shall be surprised if Honor is not as interested as you are by the attached cuttings and my comments on some of them below.

2. The cuttings are in order of date and should be read sequentially.
3. On a general point, I am informed on pretty good authority that this whole business of the current invasion of Ocean Island has been cooked up by a public relations firm (so called) here in Suva, which consists chiefly I believe of part-Europeans. I am glad to feel that old Rotan is not associated with it in any way, and I really find it hard to believe that it is the Banabans who are indulging in this violence. It seems so out of character, and so unlike the Banabans we knew many years ago. But, of course, it may all stem from that day when the then Resident Commissioner (ahem! - no pun intended by that word!) brutally expelled them from the Gilbert Islands to land on Rabi Island in the depths of the Fiji winter.
4. Now for some odd comments on certain of the cuttings; where I refer to a cutting of which there is more than one on any one day, I shall call it (2) or (3) in brackets. So, here goes:-
  - (a) 9/2/79(1) - I wonder who the chairman of the Council is - Tebaiti Tawaka? I had always thought the Rev. Kaburoro was;
  - (b) 9/2/79(2) - This letter from a Fijian of Natewa Bay - opposite Rabi - is interesting, since the Fijians generally have supported the Banaban community; now Ratu Mara and others have changed their coat;
  - (c) 12/2/79 - the Gilbertese officials arrived before the Banabans so I do not understand why the latter were permitted such freedom as enabled them to sabotage equipment, etc., especially as the Banabans had categorically stated that they intended to do just that;
  - (d) 14/2/79 - as the invasion, with its stated intention to sabotage equipment, emanated from Nauru and on a Nauruan ship the "Cenpa Rounder", relations between the Nauru and Gilbert Islands Governments must be pretty tense;
  - (e) 16/2/79 - a Fred Caine, a Fiji M.P., appears in the news for the first time. He is a part-European member (with a European seat in Parliament), and obviously a link with the firm mentioned in paragraph 3 above. He is an ineffective insurance agent, but with "the gift of the gab". As Ratu Mara has now dropped his support of the Banabans, and as Caine is a member of the Fiji/European/and to some extent, Indian, Alliance party, it is certain that Caine will not be re-elected next general election. But the Banabans may be paying him to make his presence worth his while. Later cuttings show what effect his presence has had on others;
  - (f) 17/2/79 - Fred Caine is here described as a trade unionist. That is only superficially true. He joined a trade union only a few months ago and may well have done so, realizing that his future as an Alliance M.P. is in serious jeopardy. He knows no more about trade unionism than the man in the moon, and, as far as I know, has no sympathies for the movement;

- (g) 17/2/79 - mention is made of the solidarity of the Fiji Council of Trade Unions with the Banabans. The union movement in Fiji is split; the Fiji Trade Union Congress is far and away the largest union, and the FCTU is quite small; its "solidarity" with the Banabans is not therefore of much significance;
- (h) 19/2/79 - I have heard nothing more, nor seen anything in the news, about the collection of these reinforcements for the Banabans on Ocean Island. But this cutting is only eight days old and maybe something will eventuate. But surely the Gilbert Islands' authorities will not permit any more Banabans to land, after the sabotage they have caused? I wonder if you know any of the Banabans named as having been detained?
- 19/2/79 - see the reverse of the opening page. This has nothing to do with the Banabans but it is most interesting that the US Government has dropped its claim to Funafuti, Nukufetau, Nukulaelae and Niulakita. Nor can the US have been bought off by the Tuvalu Government, which has no money of its own, though HMG might have done so. However, the paragraph marked X may explain it. Fiji, the Gilberts, Solomons, PNG are against allowing the US to fish in their 200 mile zones, whereas, Samoa, Tonga, and the Cook Islands take the opposite view. Maybe Tuvalu has agreed, or been forced to agree, with the second group. I shall always wonder if the barrage of information in the Macdonald report on the Ellice and Tokelau Islands was a contributory factor in the US withdrawing its claim. Presumably we can now expect to hear that the US has dropped its claims to the Gilbert (Line Islands) and Phoenix Islands?
- (i) 19/2/79 - as stated in (b) above, the Fijian (and Indian) public are now turning against the Banabans;
- (j) 19/2/79(2) - Usher is a former Education Officer, a New Zealander, and a former P.R.O. in Government, and later Mayor of Suva. He has never forgiven Government (in the person of Ronald Garvey) since the latter refused to make him an O.B.E. when he was PRO at the time of the Queen's first visit to Fiji (for the reason that he was then living openly with another officer's wife!) Nor was he introduced to the Queen, as he expected. He was PRO for 2 years after I became CS but I found him pompous, dogmatic, know-all, and generally useless. Be all that as it may, he has now become a sort of professional letter writer to the Fiji Times on all or any subjects.
- (k) 20/2/79 - this is as typical a Ratu Mara effort as one could envisage. Mara himself has tried to solve the problem and failed, but he dares not openly say what he really now believes, i.e. that further discussions are useless since any decision to excise Banaba from the Gilbert Islands must offend one of the parties and put HMG in an invidious position as regards Belize, the Falkland Islands, etc. How can there be a solution acceptable to all parties, as Mara says? His motto is "Never reach a decision if there is any disagreement but just hope that the problem will be solved by effluxion of time";
- (l) 21/2/79 - WFTU support is better than FCTU support, but what can the former do about it, since the UK and other western nations support the IGFTU. But maybe the Australian and NZ delegates, who are presumably WFTU supporters, might make life difficult for the Gilbert Islands in respect of shipping, supplies, etc.;
- But why, oh why, do not the Gilbert Islands Government refute a lot of Caine's remarks. Their public relations have not improved since the time of the Banaban High Court cases;

- (m) 21/2/79 - so the Ba-na bans want to continue mining - what ? the little phosphate land left would not long provide a livelihood even if they had the know-how to develop and mine it, and could ship it and find markets ? It sounds like Alice in Wonderland to me. And what ships will be prepared to run to Ocean Island, and take supplies there I wonder;
- (n) 21/2/79(2) - Acra-man is, needless to say, another part-European. A silly pompous little man who got his NZ BA after 10 years study, eventually became Secretary to the Ombudsman, and thinks he knows all the answers;
- (o) 22/2/79 - typical Usher letter - "international terrorism", "political gangsterism", etc.;
- (p) 23/2/79 - more part-Europeanism!;

5. I will keep you briefed; it will be interesting to see what action the Government takes against the saboteurs.

6. You must forgive the appalling standard of typing in this letter; I have now 28 letters to write and this machine would almost make one commit suicide. Its an Olivetti (Italian) made under licence in Barcelona - so what can you expect of it - and to make matters worse it was a generous gift from Neil and Nora; I only wish they had consulted me about the make before buying it!

My love to Honor. I did enjoy reading your book so much, and I only regret that half the time I was watching out for errors and so was unable to enjoy it as much as I would otherwise have done. I just hope that you are not extradited to Peru and that that lady who got all that stuff out of the Peruvian archives is not sent to the tin mines!

*W. K. Rae*

## Christmas Island

For centuries, Christmas Island lay unobtrusively 1,200 miles south of Hawaii, notable as the largest atoll in the Pacific and as a fuel stop for island-hopping American warplanes during World War II. In 1957 and 1958 the island became the focus of world attention when Britain exploded hydrogen bombs off its shores. It re-emerged to public view in 1962 when the United States conducted atomic explosions in the vicinity.

In the 15 years since then: silence. But now, British-controlled Christmas Island appears destined to be in the news again, along with 24 smaller Pacific islands. The ownership of all is in dispute, and that dispute is headed

for settlement after more than a century, an American State Department official says.

Eighteen of the islands, including Christmas, are claimed jointly by Britain and the United States, and seven by New Zealand and the United States. A showdown over ownership is imminent because Britain is planning to let Christmas and other islands in the area vote on independence by early next year.

In London, Garth Pettitt, assistant head of the Pacific Dependent Territories Department in the British Foreign and Commonwealth Office, reports that 60-square-mile Christmas Island is inhabited by 1,000 people today, mainly Gilbert Islanders. The atoll, he says, has two airfields, produces coconuts

## Follow-Up on the News

(800 tons expected this year), houses a Japanese satellite tracking station and is engaged in the experimental cultivation of brine shrimp.

Mr. Pettitt says that if the islanders vote for independence, "we're prepared to grant it."

In Washington, William Gallagher, the State Department's country officer for New Zealand and Pacific island affairs, comments: "Neither we nor the British want to see any of these island groups pass into independence with any dispute to claims to their territo-

ry." He says the United States will open negotiations with Britain shortly, and "in the next six months we hope to have resolved the dispute."

# Statement shortly on Banabans

*Amber Trade*  
*5/5/77*

The Government will make a statement within a month or so on the subject of possible compensation to the Gilbert Islands and Banabans, Mr Euan Luard, Under Secretary for Foreign and Commonwealth Affairs, indicated in reply to questions on what progress there had been towards a settlement. The constitutional position of Ocean Island would also be covered by the statement, he said.

**Mr Paul Dean** (North Somerset, C) asked what progress was being made in the discussions between the British Government and the Australian and New Zealand Governments towards a satisfactory settlement for the Gilbert Islands and the Banabans.

**Mr Luard** (Oxford, Lab)—Close consultations are continuing with the Australian and New Zealand Governments. Mr Richard Posnett, the emissary appointed to visit the area and to report to the Government, had discussions in Fiji with

the Prime Minister and with the Banaban community. He also had talks in the other countries concerned.

As soon as our consultations are complete, we will advise the House of their outcome.

**Mr Dean**—While welcoming that reply, does Mr Luard accept that a satisfactory financial settlement is vital to the Gilbert Islands and the Banabans, especially when phosphate revenue ceases?

Can he give an assurance that the Government are seeking the agreement of the Australian and New Zealand Governments about the future of the accumulated reserves of the Phosphate Commission?

**Mr Luard**—I agree that the position that will come about when the phosphates are exhausted, which is only in about two years' time, will create difficulties not only for the Banabans but for the Gilbertese.

We have been pursuing consultations with the Australian and

New Zealand Governments on that question, including the possibility Mr Dean has mentioned.

**Sir Bernard Braine** (South East Essex, C)—Some five months have elapsed since the judgment in the Banabans versus the Crown case. The vice chancellor drew attention to the grievous wrong done to a defenceless people which his court was powerless to put right.

How much longer do they have to wait before justice is done?  
**Mr Luard**—I do not think the judge used the words "grievous wrong". He suggested that the conduct of the British Government in an earlier period was not all it might have been perhaps.

Lord Goronwy-Roberts, Minister of State for Foreign and Commonwealth Affairs, hopes to be able to announce a decision within the next month or so. The constitutional future of Ocean Island is one of the important matters that have been considered. The statement, when it is made, will also cover that point.

# BRITISH GOVT TO MOVE SOON ON BANABANS

*Fiji Times  
8/5/77*

LONDON. — The British Government would make a statement in about a month on the problems of the Banabans, Foreign Office Junior Minister, Mr Evan Luard said in Parliament yesterday.

Several politicians had urged the Government to find a settlement to the problem of the islanders.

The British Council of Churches meanwhile strongly criticised the Government and the Foreign Office over its treatment of the Banabans.

The council called on the Government to make a generous financial settlement to the islanders.

The council also indirectly criticised the governments of Australia and New Zealand, which received phosphate from Ocean Island at cheap prices from 1919 onwards but as the controversy continued over compensation had stalled over making a settlement.

The resolution calls for a constitutional conference in the Pacific area between interested governments. — AAP-Reuter.

FIRST TIMES 24/5/77

# Statement due on Banabans

LONDON. — A statement is expected soon on the British Government's intentions towards the Banabans after their marathon lawsuit over the devastation of their homeland by phosphate mining, a High Court judge was told yesterday.

Mr John Vinelott, for the Crown, told Vice-Chancellor Sir Robert Megarry that high-level discussions had been taking place on the future of the Banabans and the Gilbert and Ellice Islanders.

The expected statement would relate to their long-term economic development, he said.

The judge provisionally earmarked July 4 for a hearing to decide the amount of damages the Banabans should receive from the British Phosphate Commissioners, and other outstanding matters of their legal action.

He was told no agreement had been reached on the amount of compensation they should get from the commissioners, held liable to the islanders for their failure to replant mined parts of Ocean Island with trees.

Mr John MacDonald, for the islanders, said it was hoped that in the light of the Government statement it would be possible for some agreement to be worked out.

— AAP

# Moscow refuses visa to Orlov defence lawyer

By Our Foreign Staff

The Soviet Union has refused a visa to Mr John Macdonald QC who has been retained to assist in the defence of Professor Yuri Orlov, leader of the Soviet group monitoring observance of the Helsinki agreement. The Soviet Consulate in London has explained that Soviet legislation does not permit the use of foreign counsel.

If he is not brought to trial by June 1, Mr Macdonald will travel to Belgrade to present his evidence to the conference there which is to review implementation of the Helsinki agreement of 1975.

*London Times 5/5/77*



There are several other reasons why the opposition should take Mr Bhutto up on this offer. The strongest is that, unless it acts quickly, the initiative will pass from the politicians to the mobs (in some places this has happened already), making an explosion and/or an army takeover inevitable. The army, which contains no outstanding public figures these days, has so far been responsive to Mr Bhutto's orders. If it decides to defy him, it is unlikely to do so—as the opposition seems to be hoping—in order to put his rivals into power, but rather to impose its own form of military order. So the opposition will lose as much as Mr Bhutto if it pushes its campaign that far.

But Pakistani democracy, such as it is, will lose the most. Unlike its neighbour, India, Pakistan has never settled comfortably into imported parliamentary ways. Mr Bhutto's chief appeal to his countrymen, when he came to power after the 1971 Bangladesh war, was his promise to restore civilian democratic government after 13 years of military rule. He did not exactly fulfil those promises about democracy; his rigid restrictions on

civil liberties and press freedom attracted less international censure than Mrs Gandhi's relatively milder emergency only because of the lower expectations that were the result of Pakistan's authoritarian past. Yet he did call the first election ever held under a civilian government in Pakistan. If this election is to be abrogated now by a power seizure, even the limited gains that democracy made under Mr Bhutto will be wiped out.

Mr Bhutto's angry enemies should reflect that their own interest would be served by a peaceful, legal transition. Even if Mr Bhutto should be returned to power, the chances of a subsequent democratic contest would still be greater than if the army assumed control. And if the opposition should somehow get itself installed in power by what Mr Bhutto has called a "civilian coup", one coup would all too likely be followed by another and another until even a rigged election would come to savour of the good old days. With events moving so quickly, the election option may not remain open for long. Grab it, somebody.



## The Orlov defence

Not a chess game this week, but a British lawyer making legal history by helping a Soviet dissident to demand his human rights

The Soviet citizen is Professor Yuri Orlov, a respected physicist and since May last year the leader of a small group of Soviet intellectuals who have been investigating their government's performance, or non-performance, of the promises it made at the Helsinki conference in 1975. Professor Orlov was arrested on February 10th, but has not yet been charged with anything (in the Soviet Union you can be held in custody for nine months without being charged). The British lawyer chosen by Mrs Orlov to advise her husband is John Macdonald, a London barrister who conducted the case of the Banabans when the inhabitants of that tiny Pacific islet took the British government to court in 1975 because it had exploited their phosphate without proper payment.

Mr Macdonald announced on Wednesday that he hopes to fly to Moscow next month to advise Mr Orlov. Although an American attorney is trying to help another arrested Soviet dissident, Alexander Ginsburg, Mr Macdonald's public statement this week means that he may be the first western lawyer to try to oblige the Soviet government to respect its own laws.

When the Soviet government signed the declaration of the Helsinki conference in August, 1975, it undertook (paragraph 7) to encourage "the effective exercise of civil, political, economic, social, cultural and other rights and freedoms" and said that a Soviet citizen was entitled "to know and act upon his rights and duties in this field". Mr Orlov and his colleagues have been checking whether the Soviet government has allowed its citizens the human rights set out in the Helsinki declaration. They have not tried to conceal their activities. Copies of the 19 reports they have drawn up have been sent to the Soviet government, and to the

other 34 governments which signed the Helsinki declaration. In all this they seem to have broken no Soviet law.

The fact that Mr Orlov has been under arrest for more than two months, without having been charged, suggests that the authorities cannot put together a plausible case against him. Mrs Lyudmila Alexeyeva, a co-founder of the Orlov group, who took part in all its work, was allowed to leave the Soviet Union on February 22nd, unarrested and uncharged. That supports the belief that there is no convincing evidence against Mr Orlov. Now that Mrs Orlov has called in Mr Macdonald, the Soviet government can do one of three things.

### Before the court of western opinion

It could let Mr Orlov go free, having nothing to accuse him of. That would be the best outcome of Mr Macdonald's entry into the case, even though it seems unlikely (because the main purpose of Mr Orlov's arrest was presumably to silence him until the end of the Belgrade conference, which assembles this summer to review what has happened since Helsinki). Or, second, the Soviet authorities could bring Mr Orlov to trial, probably under the catch-all article 70 or article 190 of the Russian penal code ("undermining the Soviet system" or "anti-Soviet slander")—although the Soviet government should be embarrassed to apply either of those phrases to the factual reports prepared by the Orlov group. Or, third, the Russians could simply keep Mr Orlov behind bars, without a trial, until the Belgrade conference is over.

If Mr Macdonald is given a visa to go to Moscow, he will try to advise Mr Orlov on the best way to conduct his

defence if he is brought to trial, or the best way to demand his release if he is not to be tried. If the Russians refuse to let Mr Macdonald go to Moscow, he will then in effect conduct Mr Orlov's defence from London. The necessary items of evidence—what the Orlov group did, the reports it produced, the careful way it kept its actions within the confines of Soviet law—are available in Britain. The Soviet government has

failed to silence Mr Orlov by arresting him, because the result has been to transfer his case to the court of western opinion. The issue now is Soviet law, and the Soviet authorities' willingness to respect that law. If Mr Brezhnev wishes to avoid the accusation that he lets Soviet citizens be arrested for nothing more serious than criticising their government, he will order Mr Orlov's release.



## How long, oh Lord, how long?

If parliament takes two years to implement its own decision to broadcast itself, because it cannot find desks for 40 people, it is led by a slowcoach

Britain's house of commons has sovereign power to run its own affairs, as well as to run the country. It is not advertising its capability to do so very brightly by the delay it is chaotically creating for the radio broadcasting of its proceedings. Its members decided more than a year ago to allow this cheep for democracy, while unfortunately and timidly still keeping out the television cameras. But parliament is still unheard, mainly because the organisation of the house looks like taking two years to flounder with the sort of problem which most heads of major businesses would settle in a few minutes with a single memo: namely the siting of office space for about three dozen people.

At first, paradoxically, matters moved with commendable speed. It took less than four months after the commons gave the go-ahead in February, 1975, to organise the first public experiment of sound broadcasting of parliament. The month-long experiment was widely regarded as a success, with few teething problems. When MPs decided, on March 1st last year, by 299 votes to 124, to make the experiment permanent few of them suspected that it would take more than another month or two for parliament to get back on the air.

### Where the problem isn't

Yet 13 months later the microphones are still silent. The earliest estimate of when they will be switched on is this autumn, and many MPs fear that at least another year will go by. The delay is not due to technical problems. The cramped commentary boxes during the experiment have been replaced by permanent structures erected during last year's summer recess. The bogus problem of who should be in charge of the production (a special parliamentary unit, the BBC or the IBA and Independent Radio News?) has proved very easy to resolve. A report\* this Wednesday from a committee of both houses of parliament says that the IBA and IRN have agreed that the BBC should have this responsibility, with the output made freely available to independent local radio stations and ITV, and with a joint committee of both houses established to oversee the arrangements. Live transmissions from parliament are expected to be relatively infrequent—though Dr David Owen's statement this week on his African tour would have been a likely candidate. The major use will

be of recorded extracts in daily reports on parliament and in radio news and current affairs programmes and in television news bulletins—sound only.

None of the other problems—concerning the broadcasting of committee proceedings, copyright, parliamentary and legal privilege and the establishment of a sound archive—raised real difficulties. The committee has produced unanimous recommendations on all these points.

The problem has been one of too many cooks. The inclusion of the lords forced the joint committee to proceed at the slowest pace of both houses. But the major delay has been caused by an impasse between (a) the joint committee, (b) the house of commons services committee and (c) the treasury, over where to accommodate the broadcasting staff, who, together with typists, recording engineers, etc, would probably be 30-40 people.

There is no shortage of possible sites. The environment department proposed three possibilities for permanent accommodation and no fewer than eight for temporary accommodation. The joint committee, which wants to get on with the job, opted for one of the temporary alternatives, which involves erecting possibly unsightly huts on Cromwell Green, a once attractive patch alongside Westminster Hall, which is now dominated by builders' huts and a boarded-up statue of Cromwell. The services committee objects to the use of Cromwell Green for aesthetic reasons; it proposes instead a permanent provision in the Norman Shaw South building on the embankment (formerly the home of New Scotland Yard). Too expensive, says the treasury, which balks at the estimated £200,000 (which would also provide some extra accommodation for MPs). The treasury would like the broadcasters to pay part of the capital cost, but the BBC and IBA refuse on the ground that the cost of facilities provided for the press is not borne by newspapers.

Mr Michael Foot, the leader of the commons and chairman of the services committee, has a duty to act. The best solution is buried in Appendix 9 of the joint committee's report. Another of the environment department's proposals for temporary accommodation was that it should be sited in Number 1 Bridge Street—just across the road from Big Ben. It would take four months to do the job, no ugly huts would need to be built, and the cost would be just £30,000.

\*Second Report, Joint Committee on Sound Broadcasting. House of Commons Paper 284. £1.85p.

[1977]

A

## [CHANCERY DIVISION]

## TITO AND OTHERS v. WADDELL AND OTHERS (No. 2)

[1973 R. No. 2013]

## TITO AND OTHERS v. ATTORNEY-GENERAL

[1971 R. No. 3670]

B

1975 April 8-11, 14-18, 21-25, 28-30; Megarry V.-C.  
 May 1, 2, 5-8, 12-16, 19-23;  
 June 3-5, 9-13, 16-20, 23-27, 30;  
 July 1-4, 7-11, 14-18, 21-25, 28-31;  
 Oct. 22-24, 27-31;  
 Nov. 3-7, 10-14, 17-20, 24-28;  
 Dec. 1-5;

C

1975 Dec. 15-19;  
 1976 Jan. 12-16, 19-23, 26-30;  
 Feb. 2-6, 9-13, 20, 23-27;  
 March 1-5, 8-12, 15, 18, 19, 22-26, 29-31;  
 April 1, 2, 5-9, 13, 14, 27-30;  
 May 3-7, 10-14, 17-21, 24-28;  
 June 8-11, 14-18;

D

Nov. 29, 30;  
 Dec. 1-3

E

*Crown—Colony—Trusts—Phosphate island—Compulsory acquisition of land for mining under colonial legislation in name of Crown—Lease by colonial official to mining commissioners—Royalties to be held "in trust" for islanders—Funds applicable for benefit of island community and landowners—Whether fiduciary obligation on Crown—Whether indivisibility of Crown imposing liability for colonial government's obligation—Applicability of limitation period or doctrine of laches—Whether bar against Crown proceedings—Whether conflict of interest and duty—Whether breaches of self-dealing or fair-dealings rules—Mining Ordinance 1928 (Gilbert and Ellice Islands Ordinances No. 4 of 1928), ss. 6, 7—Limitation Act 1939 (2 & 3 Geo. 6, c. 21), s. 2 (2) (7)—Crown Proceedings Act 1947 (10 & 11 Geo. 6, c. 44), s. 40 (2)*

F

*Trusts—Nature of trust—Crown—Colonial official acting under local legislation in name of Crown—Compensation and royalties to be held on "trust" for natives—"Trusts in higher sense" and "trusts in lower sense"—Whether enforceable trust or governmental obligation—Whether Crown trustee*

G

*Mines—Mining lease—Construction—Right to extract phosphates from Pacific island—Obligation to "replant" with trees and shrubs—Prescription by resident commissioner—Mining undertaking passing to mining commissioners—Abolition of office of resident commissioner—Appointment of governor—Extent of obligation to replant—Whether prescription of trees enforceable obligation—Whether condition precedent—Whether mining commissioners liable under doctrine of novation—Whether liable under doctrine of benefit and burden—Appropriate remedy—Damages*

H

*Mines—Mining lease—Construction—Removal of sand and shingle from "beach" of Pacific island—Extent of beach—Jurisdiction of English court in relation to foreign land*

2 W.L.R.

Tito v. Waddell (No. 2) (Ch.D.)

- A *Contract—Benefit and burden—Pure or conditional doctrine—Mining leases with replanting obligation—Government appointees taking benefits—Changes of appointees—Whether present appointees liable on obligation to replant—Whether obligation running with land—Whether in law as well as equity*
- B *Specific Performance—Obligation to replant—Suitability of remedy—Phosphate mining on island—Obligation to replant with trees and shrubs prescribed by colonial official—Whether prescription contractual or governmental obligation—Whether court able to prescribe—Difficulty of supervision—Need for concurrence of all parties—Whether damages more suitable*
- Damages—Contract—Breach—Obligation to replant devastated land—Measure of damages*

C In 1900 phosphate was discovered on Ocean Island, a small island in the Pacific. The island was called Banaba by the inhabitants, and they themselves were known as the Banabans. In the same year the island became a British settlement. In 1900 and 1901 the Crown granted to a British company exclusive licences to occupy the island and mine the phosphate. In 1902 those were superseded by the third and last licence, granted to a subsidiary of the company for a term of 99 years from January 1, 1902, and providing for certain payments to be made to the Crown. From 1907 onwards the payments were to be a royalty of 6d. per ton on all phosphates exported; and in 1909 that royalty was made payable to the Government of the Gilbert and Ellice Islands Protectorate by which the island was administered. In 1916 the protectorate became the Gilbert and Ellice Islands Colony, and Ocean Island became part of it. At all material times English law applied to the island, apart from any relevant native customary law. The colony had a Resident Commissioner who administered it under the High Commissioner for the Western Pacific.

E The land on Ocean Island was divided up into a large number of small plots (most of them being less than one acre in extent) owned by individual Banabans or groups of Banabans. Under King's Regulations made by the High Commissioner under the Pacific Order in Council 1893 there were severe restrictions on the purchase and lease of land from native landowners, and the transactions that were permitted required the approval of the Resident Commissioner. The company sought to avoid those restrictions by evoking "P and T deeds," under which the company merely bought the right to remove phosphate and trees from the land for five or ten years. By 1909 the legality of the P and T deeds was being questioned, and the company was finding it difficult to obtain further land for mining from the Banabans. Prolonged negotiations took place between the company on the one hand and the Colonial Office in London and the High Commissioner and the Resident Commissioner on the other hand. Finally, the terms that should be put before the Banabans for the acquisition of further land were agreed. In November 1913 an agreement based on those terms (the "1913 agreement") was made between the Banaban landowners and the company, with the Resident Commissioner as witness to the signatures or marks. The 1913 agreement provided, inter alia, for the acquisitions to be made only in three specified areas of the island. In addition to agreeing to pay certain sums to each landowner who granted mining rights to the company, the company agreed to pay the government an additional royalty of 6d. per ton. The first year's additional royalty (apart from £300) was to be expended for the benefit of the existing Banaban community. Subject to that, the £300 and the interest on those royalties were to be distributed as annuities to all Banabans who thereafter leased mining land

F

G

H

**Tito v. Waddell (No. 2) (Ch.D.)**

[1977]

to the company. The agreement also provided that the company should return all worked-out lands to the original owners, and should "replant such lands—whenever possible—with coconuts and other food-bearing trees, both in the lands already worked out and in those to be worked out." A

Pursuant to that agreement many Banaban landowners executed deeds granting the company the right to remove phosphate and trees from their lands for a term ending in 1999. Two forms of deed were used, the A deeds where a P and T deed was to be replaced, and the C deeds for new acquisitions. Each form of deed provided that when the company ceased to use the land the company "shall replant the said land as nearly as possible to the extent to which it was planted at the date of the Company's operations under Clause I (i) hereof with such indigenous trees and shrubs or either of them as shall be prescribed by the Resident Commissioner for the time being in Ocean Island"; and the land was to revert in the landowner when in the Resident Commissioner's opinion that might be without prejudice to the company's operations. B C

In 1920 the governments of the United Kingdom, Australia and New Zealand purchased the undertakings of the company on Ocean Island and Nauru, a nearby phosphate island which had become mandated to the British Empire. All the rights of the company on those islands were vested in three British Phosphate Commissioners, one to be appointed by each of the governments; but the governments agreed not to interfere with the conduct of the phosphate business. Though they were referred to as the "Board of Commissioners," the commissioners were never incorporated. The agreement was that phosphates were to be allotted to the three countries on a non-profit-making basis and according to their percentage interests, though in the event very little was ever sent to the United Kingdom. The change of ownership from the company to the commissioners was explained to the Banabans, who all seemed satisfied. From 1923 onwards the commissioners were seeking to acquire more land for mining. By 1927 they had agreed with the Colonial Office, the High Commissioner and the Resident Commissioner upon the terms that were to be put before the Banabans for a further 150 acres. The Resident Commissioner then put those terms before the Banabans; but with minor vacillations they strongly opposed any further acquisitions. D E F

The Mining Ordinance 1928 of the Gilbert and Ellice Islands Colony was then enacted, authorising the compulsory acquisition of land in the colony for mining purposes. Under the Ordinance the Resident Commissioner was empowered to take possession of land, thereby making it Crown land. He could then lease it to the holder of a Crown licence to mine in return for compensation for the land (apart from minerals), which was to be fixed by arbitration, and a royalty for minerals, which was to be prescribed by the Resident Commissioner. Under the Ordinance any compensation or royalty was to be held by the Resident Commissioner "in trust" for the former owners of the land, subject to the directions of the Secretary of State for the Colonies. In 1931, the Resident Commissioner, acting under the Ordinance, by proclamation took possession of 150 acres of phosphate land and leased it to the commissioners ("the 1931 transaction"). The proclamation and lease provided for the commissioners to pay a royalty of 2d. per ton, to be accumulated in a "Banaban Provident Fund," and a further royalty of 8½d. per ton, to be held (not saying by whom) "in trust" for the Banaban community generally as the Secretary of State should direct. The provision in the Ordinance of 1928 for royalties to be paid to the former landowners was ignored. In 1937, however, the landowners concerned agreed to waive their G H

2 W.L.R.

Tito v. Waddell (No. 2) (Ch.D.)

- A rights to royalties, and the Mining (Amendment) Ordinance 1937 was enacted which amended the Ordinance of 1928 by (inter alia) removing any mention of a trust. It also provided that royalties should be paid to the Resident Commissioner who was to pay or apply them as the High Commissioner directed for the benefit of the natives of the island or atoll from which the minerals were derived. There was also a retroactive validation of past payments.
- B In 1940 the Banabans petitioned the Secretary of State, seeking to acquire an island in the Fiji group which would serve as a second home for them, in view of the extent of the mining on Ocean Island; and in 1942 Rabi, which was part of Fiji, was bought for them out of their funds. In the meantime the commissioners had made proposals to the Banabans for the acquisition of a further 230 acres of mining land on improved terms. The Banabans found the terms acceptable, though they wanted to have paid to them more of the money that was going to the funds being held for them; and no firm agreement was made. In 1942 the Japanese occupied Ocean Island. They killed or deported to other islands most of the Banabans, and devastated the island.
- C After the war ended in 1945 the High Commissioner arranged for the Banabans to be collected together; and as Ocean Island was uninhabitable they agreed to go to Rabi for an initial period of two years. In 1947 the commissioners negotiated with the Banabans for the acquisition of most of the remaining phosphate land on Ocean Island, with an area of 671 acres. The terms offered were an improved version of the 1940 offer, but although the High Commissioner thought them reasonable, they did not fully allow for inflation. The Banabans had little knowledge of the value of phosphates and the effect of inflation, and the officer whom the High Commissioner had appointed to assist them on Rabi was instructed to take no part in the negotiations. Subject to a small improvement the Banabans accepted the terms offered. Soon afterwards, by a majority of some 85 per cent. in a secret ballot that they conducted, the Banabans decided to make Rabi their headquarters and home. In 1948, in return for an annual payment, the Banabans agreed to the commissioners removing sand and shingle "from the beach at Ocean Island" for making concrete and other work. From 1956 onwards the Banabans sought increases in the royalties, and although they were not legally required to do so, from time to time the commissioners made certain increases; but they were considerably less than those which the Banabans claimed. In 1971 the office of Resident Commissioner was replaced by that of Governor.
- D After various claims had been made by the Banabans politically and internationally, in 1971 they caused a writ to be issued against the commissioners and Her Majesty's Attorney-General. For convenience, in 1973 the action was divided into two actions, one mainly against the commissioners but with the Attorney-General a defendant ("Ocean Island No. 1"), and the other against the Attorney-General alone ("Ocean Island No. 2"). By consent, No. 2 was heard first, and No. 1 immediately afterwards.
- E After various claims had been made by the Banabans politically and internationally, in 1971 they caused a writ to be issued against the commissioners and Her Majesty's Attorney-General. For convenience, in 1973 the action was divided into two actions, one mainly against the commissioners but with the Attorney-General a defendant ("Ocean Island No. 1"), and the other against the Attorney-General alone ("Ocean Island No. 2"). By consent, No. 2 was heard first, and No. 1 immediately afterwards.
- F In Ocean Island No. 2, the plaintiffs were a Banaban landowner and the Council of Leaders, a Banaban body that had been incorporated by a Fiji Ordinance which provided for all royalties accruing to the Banaban community to be paid into a fund under the Council's control. The plaintiffs claimed that the rates of royalty payable under the 1931 and 1947 transactions had been less than the proper rates, and that in relation to those transactions the Crown had been subject to a trust or fiduciary duty for the benefit of the plaintiffs or their predecessors. The Crown was therefore liable to the plaintiffs
- G
- H

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to make up the amounts actually paid by way of royalty to the amounts that ought to have been paid. A

In Ocean Island No. 1, 12 Banaban landowners sued the three British Phosphate Commissioners and the Attorney-General, with 14 Banabans as nominal defendants who took no part in the proceedings. One plaintiff sued the commissioners for damages for the conversion of sand removed from his land and the destruction of a burial ground. Other plaintiffs sued the commissioners for the specific performance of contractual obligations to replant the worked-out land with trees and shrubs, or alternatively for damages, and claimed against the Attorney-General a declaration that the United Kingdom Government, acting by the Governor of the Gilbert and Ellice Islands Colony, was bound to prescribe the trees and shrubs that were to be planted:— B

*Held*, (1) that in Ocean Island No. 2 the use of the term "trust" in relation to the Crown did not necessarily create a true trust, enforceable by the courts (a "trust in the lower sense"), but might create a "trust in the higher sense," or governmental obligation, not enforceable in the courts; that it was a question of construction whether in all the circumstances a true trust had been created, one material factor being whether the person required to hold on trust was described in his personal or in his official capacity; and that as there was nothing in the Ordinances or in the various instruments or other documents which sufficed to show that the Crown had undertaken any enforceable trust or fiduciary obligation such as was alleged, none had been created (post, pp. 596G—597A, B—E, 602 G—H, 603B, 605D—E, 607H, 610B, 614H—615A). C

*Kinloch v. Secretary of State for India in Council* (1882) 7 App.Cas. 619, H.L.(E.) applied. D

(2) That neither the statutory duty under the Ordinance of 1928 to fix a royalty and hold it in trust nor any statutory duties imposed by the Ordinance of 1937 sufficed to impose on the Crown any enforceable statutory obligation of a fiduciary nature; and that the principle that the Crown was one and indivisible did not make the Government of the United Kingdom liable for any equitable obligation of the Government of the Gilbert and Ellice Islands Colony (post, pp. 607D—H, 608 A—B, 609F—H, 611C—D, 613B—D, 614G). E

(3) That in Ocean Island No. 1, under the agreement of 1948 for the removal of sand and shingle from the "beach," the term "beach" was not confined to the foreshore, but included both the foreshore and all that lay to landward of it and was in apparent continuity with the beach at high water mark, or was more akin to the foreshore than to the hinterland; that the burial ground was not part of the beach and had not been destroyed by the commissioners; that the sand taken by the commissioners in about 1964 had been removed only from the beach, as so construed, and not from the burial ground; that jurisdiction was not excluded merely because the sand had been removed from foreign land; and that in any case the claim was barred by limitation and should be dismissed (post, pp. 644B—D, 646D, H—647A, 648D—F, 649A). F

*Government of the State of Penang v. Beng Hong Oon* [1972] A.C. 425, P.C. applied. G

(4) That the obligation to "replant" in the 1913 agreement and in the A and C deeds must be construed in its context, and, so construed, it was an obligation to replant the land as it was after it had been worked out or had ceased to be used by the company; that in the circumstances existing when those documents were signed "replant" meant planting in suitable positions in the worked-out land in a few feet of loose phosphate and did not require the extensive levelling and other engineering operations and the massive importation of soil for which the plaintiffs contended; that that construction was sup- H

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A reported by the qualification of the replanting obligation by the words "whenever possible" in the 1913 agreement, and "as nearly as possible" in the A and C deeds, which referred to what was reasonably practicable and not to what could be achieved only by a vast expenditure of time, effort and money; and that merger might take place distributively, so that despite the differences in language between the replanting obligations in the 1913 agreement and in the A and C deeds, the former had merged in the latter for all land subject to an A or C deed (post, pp. 654B, 655E-H, 658C-D, 660F, H-661B).

B (5) That the defendant commissioners, who had not been parties to the 1913 agreement or the A and C deeds, could not be made liable to the plaintiffs on the obligations to replant under any doctrine of novation, because on the facts it was impossible to infer the making of the multiplicity of new contracts in place of the old that novation required (post, pp. 663B-C, 664D-E).

C (6) That as a matter of construction the benefits of the 1913 agreement and the A and C deeds had not been made conditional upon bearing the burdens of them, and the defendant commissioners were accordingly not liable to the plaintiffs under the doctrine of conditional benefits and burdens; that nevertheless there was an independent doctrine of pure benefit and burden; that whether a person was subject to the pure doctrine depended upon whether the circumstances in which he came into the transaction showed that the doctrine was intended to apply, and whether he had some claim to the benefit; that the circumstances of the present case showed that each commissioner was intended to take the benefits and also the burdens; that although the defendant commissioners had not sufficiently taken any benefits under the 1913 agreement to make them liable for the burdens of it, they had taken enough benefits under the A and C deeds to make them subject to the burdens of those deeds; that as the plots of land subject to those deeds had been treated globally and not individually by the commissioners, the effect of taking the benefit of the deeds must also be treated globally; that each commissioner who took any benefit was liable for the whole of the burden; that as the replanting obligation in the A and C deeds imposed a legal burden the defendant commissioners were liable on it at law; that the benefit of the obligation to replant ran with the land both at law and in equity, and jurisdiction was not excluded merely because the land was foreign land; and that the defendant commissioners were accordingly liable to the plaintiffs for damages for any breach of the replanting obligations in the A and C deeds (post, pp. 676C-677A, G-678C, G-679A, G, 681E-G, 682A-C, 683A, D-G, 684E).

F *Halsall v. Brizell* [1957] Ch. 169 applied.

G (7) That the prescribing by the Resident Commissioner of the trees and shrubs to be planted was a minor or subsidiary part of a minor or subsidiary part of the A and C deeds as a whole, and the court was reluctant to permit the non-performance of such a provision by a third party to provide a defence to an action on a contract, especially where the contract had been partly performed; and that if specific performance were to be decreed the court would provide for the specifying of the trees and shrubs, while if damages were awarded instead probably no such specifying would be required (post, pp. 689B-C, G-H).

H (8) That in the A and C deeds the Resident Commissioner entered into no contractual obligation to prescribe trees and shrubs either on behalf of himself, his successors, the Crown or the Government of the United Kingdom; that the function of prescribing trees and shrubs was governmental or administrative, and not contractual; that no declaration should therefore be made that the Government of the United Kingdom, acting



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by the Governor of the Colony (who had replaced the Resident Commissioner), was bound to prescribe any trees or shrubs; and that the claim against the Attorney-General accordingly failed (post, pp. 691C-F, 693G-694A).

(9) That if what was to be done was sufficiently defined, a decree of specific performance would not be refused on the ground of difficulty of supervision; that the obligation to replant was not of such a nature as to make it necessarily unsuitable for specific performance; that specific performance would not be decreed unless all parties entitled to enforce the contract were before the court, and that such requirement could not be avoided by seeking an order conditional upon the concurrence of those who had not been made parties but ought to have been; and that in the circumstances the order for specific performance, sought in respect of 15 small and scattered plots of land, would be an order of futility and waste, and ought not to be made, especially as damages would be a far more suitable remedy (post, pp. 694G-H, 695H-696B, 697G, 699C-F).

*Wilson v. Northampton and Banbury Junction Railway Co.* (1874) 9 Ch.App. 279 applied.

(10) That damages for breach of a contract to do work on the land of another might be assessed either on the basis of the cost of doing the work or on the diminution in the value of the land by reason of the work not having been done; that in determining which basis to apply the fundamental rule was that the plaintiff was to be compensated for his loss or injury, and not that of requiring the defendant to disgorge what he had saved by not doing the work; that the plaintiff could establish that his loss consisted of or included the cost of doing the work if he could show that he had done the work, or intended to do it, even though there was no certainty that he would; that that applied whether the damages were awarded at common law or under the Chancery Amendment Act 1858 (Lord Cairns' Act); but that the plaintiffs had failed to establish that the cost of replanting represented their loss, and so they could not recover damages on that basis; and that the damages should be more than nominal or minimal, and in the absence of agreement they should be reserved for further argument (post, pp. 700H-701A, 704D-E, 705F-G, 707A, 708A-B, 709E).

*Wigsell v. School for Indigent Blind* (1882) 8 Q.B.D. 357, D.C. considered.

*Per curiam.* If in Ocean Island No. 2 the Crown had been in a fiduciary position towards the two plaintiffs and their predecessors their claims would not be barred by any period of limitation, for a breach of the fair-dealing and self-dealing rules is not a breach of trust. Although the doctrine of laches applies to such claims, it is no bar because it has not been pleaded (post, pp. 626E-F, 627G, 628A-B, 629F).

Even though the right of the Council of Leaders to sue depends in part on Fiji legislation taking effect in Ocean Island, and the right of the other plaintiff to sue depends on his showing title to land outside the jurisdiction, the objection that they lack any title to sue ought not to prevail (post, pp. 638H-639B).

Although the Crown Proceedings Act 1947 provides a bar to the claim based on the 1931 transaction, it is no bar to the claim based on the 1947 transaction (post, pp. 632G-633A); but even if there is jurisdiction, either under the old Exchequer equity jurisdiction or under the general law, to make the declarations sought, the court ought not to make them (post, p. 636E-G).

No claim in respect of the 1931 transaction can in any event be based on a conflict of interest and duty or the grant of a lease by a fiduciary to itself, for although the Crown had at least a substantial interest in the commissioners' undertaking and so could be said to be self-dealing, the Resident

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- A Commissioner had acted in obedience to the Ordinance of 1928; and in respect of the 1947 transaction the fair-dealing rule cannot in any event be said to have been infringed by any failure of the Crown to disclose to the Banabans what sums the commissioners were paying to the colony in lieu of taxation, or that they operated on a non-profit-making basis, or by any failure to see that they had proper advice, for the Banabans were disposing of land that they owned free from any trust, and they could not be said to have been disposing of beneficial interests under a trust to the trustee or his creatures (post, pp. 617E-H, 618E-619B, 620H-621C).
- The following cases are referred to in the judgment in *Ocean Island No. 2*:
- Ackbar v. C. F. Green & Co. Ltd.* [1975] Q.B. 582; [1975] 2 W.L.R. 773; [1975] 2 All E.R. 65.
- C *Attorney-General v. Wilts United Dairies* (1922) 91 L.J.K.B. 897, H.L.(E.).  
*Ayerst v. C. & K. (Construction) Ltd.* [1976] A.C. 167; [1975] 3 W.L.R. 16; [1975] 2 All E.R. 537, H.L.(E.).  
*Banda and Kirwee Booty* (1866) L.R. 1 A. & E. 109.  
*Banda and Kirwee Booty, (No. 2) In re* (1875) L.R. 4 A. & E. 436.  
*Bank voor Handel en Scheepvaart N.V. v. Slatford* [1953] 1 Q.B. 248; [1952] 1 All E.R. 314.
- D *Barracough v. Brown* [1897] A.C. 615, H.L.(E.).  
*Bombay and Persia Steam Navigation Co. Ltd. v. Maclay* [1920] 3 K.B. 402.  
*British South Africa Co. v. Companhia de Moçambique* [1893] A.C. 602, H.L.(E.).  
*Bulmer, In re* [1937] Ch. 499; [1937] 1 All E.R. 323, C.A.  
*Burghes v. Attorney-General* [1912] 1 Ch. 173, C.A.  
*Calgary and Edmonton Land Co. Ltd., In re* [1975] 1 W.L.R. 355; [1975] 1 All E.R. 1046.
- E *Cannon Street (No. 20) Ltd. v. Singer & Friedlander Ltd.* [1974] Ch. 229; [1974] 2 W.L.R. 646; [1974] 2 All E.R. 577.  
*Chapman v. Michaelson* [1909] 1 Ch. 238, C.A.  
*Chippewa Indians of Minnesota v. United States* (1937) 301 U.S. 358.  
*Chippewa Indians of Minnesota v. United States (No. 2)* (1939) 307 U.S. 1.  
*Civilian War Claimants Association Ltd. v. The King* (1930) 46 T.L.R. 581; 47 T.L.R. 102, C.A.; [1932] A.C. 14, H.L.(E.).
- F *Commissioner of Stamp Duties (Queensland) v. Livingston* [1965] A.C. 694; [1964] 3 W.L.R. 963; [1964] 2 All E.R. 692, P.C.  
*Deschamps v. Miller* [1908] 1 Ch. 856.  
*Dyson v. Attorney-General* [1911] 1 K.B. 410, C.A.  
*Dyson v. Attorney-General (No. 2)* [1912] 1 Ch. 158, C.A.  
*Edgeter v. Kemper* (1955) 136 N.E. 2d 630.
- G *Edwards v. Bairstow* [1956] A.C. 14; [1955] 3 W.L.R. 410; [1955] 3 All E.R. 48, H.L.(E.).  
*Esquimalt and Nanaimo Railway Co. v. Wilson* [1920] A.C. 358, P.C.  
*Fort Berthold Reservation Tribes v. United States* (1968) 390 F. 2d 686.  
*Guaranty Trust Co. of New York v. Hannay & Co.* [1915] 2 K.B. 536, C.A.  
*Hardoon v. Belilios* [1901] A.C. 118, P.C.  
*Hodge v. Attorney-General* (1839) 3 Y. & C.Ex. 342.
- H *Holmes, In re* (1861) 2 J. & H. 527.  
*Ibralebbe v. The Queen* [1964] A.C. 900; [1964] 2 W.L.R. 76; [1964] 1 All E.R. 251, P.C.  
*Imperial Mercantile Credit Association (Liquidators) v. Coleman* (1873) L.R. 6 H.L. 189, H.L.(E.).  
*Johnson, In re* [1903] 1 Ch. 821.  
*Kayford Ltd., In re* [1975] 1 W.L.R. 279; [1975] 1 All E.R. 604.  
*King v. Victor Parsons & Co.* [1973] 1 W.L.R. 29; [1973] 1 All E.R. 206, C.A.

# Rabi leaders seek reply

7/11 TIMES 16/2/77

The Rabi Council of Leaders has ordered the managing director of Rabi Holdings Ltd, Mr Tekoti Rotan, to give a written reply to allegations that the company's affairs have been badly managed.

The reply must be submitted to the council within a week.

The newly formed Banaban Community Association in Suva has called for a full investigation into the company.

It claims that the company has failed to submit annual financial accounts for three years and that there were no annual general meetings.

The chairman of the council, Mr Uaieta Eri, said yesterday in Suva it had held preliminary discussions with the association.

Meanwhile the Registrar of Companies is preparing proceedings against Rabi Holdings for failing to submit its annual returns for 1975 and 1976.

# BANABANS HIT OUT

*Fiji Times 3/3/77*

## Fact-finding mission is ploy, says Rotan

The "so-called fact-finding visit" to the South Pacific of British Government representative, Mr Richard Posnett, was a ploy to further delay settlement of the Banaban question, Rabi Council of Leaders said yesterday.

The Banaban people recently lost a long court battle for legal compensation for phosphate mining damage done to Ocean Island, but the court said the British Government had a moral obligation to pay.

Mr Posnett was sent to look at the damage and estimate compensation, and

examine the request for independence for Ocean Island.

A Rabi Council statement signed by Rabi leader Tebuke Rotan asked what facts Mr Posnett could gather which had not already been placed on record during the long struggle of the Banabans to get justice.

"The facts are known to the world," the statement said.

"They add up to a record of ex-

ploitation, broken promises and evasion of responsibility that is without precedent in the history of colonialism.

"Mr Posnett is a former colonial governor. He has been, and still is, a servant of the British Government.

"How then can he be expected to look with an impartial, unbiased eye at the issues involved?

"If Britain wanted to give a semblance of legitimacy to this latest manoeuvre, it should have entrusted the "fact-

gathering" to the United Nations so that at least the precepts of impartiality could have prevailed.

"Does the British Government have no shame? How long will it keep delaying its promise to find a settlement?

"Where is that generosity of spirit that has marked so much of British history?

"Britain would do well to learn from our people in this respect. Despite their treatment at the hands of the British Government, the Banabans recently honoured Queen Elizabeth in music and dance when Her Majesty visited Fiji.

"That was a gesture typical of the Pacific spirit.

"The British Government could still salvage some of its self-respect if it allowed a measure of the same to premeate the corridors of Whitehall."

(1)

BANABANS

In the House of Commons on 13 January 1977, Mr Michael Shersby asked the Secretary of State for Foreign and Commonwealth Affairs if he would make a statement on the intentions of the Government towards the inhabitants of Ocean Island in the light of recent legal proceedings, and Mrs Lena Jeger asked the Secretary of State for Foreign and Commonwealth Affairs what arrangements were being made by Her Majesty's Government to compensate the Banaban people for losses resulting from the exploitation of phosphate on their island.

Mr Evan Luard, Parliamentary Under-Secretary of State replied:

"Her Majesty's Government will continue their consultations with the Governments of Australia, Fiji and New Zealand, as well as the Government of the Gilbert Islands and the Banaban leaders, in their efforts to reach a solution of the problems affecting the future of the Banaban community. The comments of the Vice-Chancellor in his recent judgement will be taken into account. My Right Hon and Noble Friend said in another place on 7th December that Her Majesty's Government will do everything that is possible and in equity to help the Banaban community, as they will to help the Gilbertese community.

A Phosphate revenues paid to the Banaban community up to the middle of 1976 total some 12 million Australian dollars and on current phosphate prices they are likely to receive a further ten million Australian dollars before mining ceases."



# Press Release

Issued by the British High Commission  
G.P.O. Box 1355, Suva, Fiji

## BANABANS: STATEMENT BY LORD GORONWY-ROBERTS IN THE HOUSE OF LORDS

In the House of Lords on Monday, 24 January 1977 Lord Brockway asked Her Majesty's Government what decision they had reached in response to the advice of the Vice-Chancellor (Mr Justice Megarry) in the case of the Banabans against the Crown, that the Crown should do what it considers proper in view of the fact that the Vice-Chancellor was powerless to right what he considered to be a wrong.

Lord Goronwy-Roberts made the following statement:

My Lords, Her Majesty's Government have for some time been concerned about the future welfare of the islands in this part of the Pacific and specifically the future of the Banaban community. We have for long intended to help the Banabans, subject to the results of the legal actions. Her Majesty's Government's thinking has not therefore been essentially at variance with the Vice-Chancellor's remarks about obligations towards the Banabans. We have had a number of discussions with the partner Governments of Australia and New Zealand and we put certain proposals to them last year to help the Banabans secure their future after phosphate revenues end. Our partners responded sympathetically but indicated that it would be difficult in practice to reach firm conclusions in advance of the judgments.

A Our thinking and discussions have been, and will continue to be, conducted in close consultation with the Governments of Fiji, Australia and New Zealand, as well as the Gilbert Islands and the Banaban leaders. Our aim is to achieve as soon as possible a settlement which takes account of the legitimate interests of all the parties concerned in the area, including the Banabans.

B To assist in achieving such a solution, including its constitutional aspects, I am arranging for Mr Richard Posnett, the former Governor of Belize, to visit the area as soon as possible and to report directly to me.

/Supplementary Question

Supplementary Questions and Answers were as follows:

C Lord Brockway: My Lords, I greatly appreciate that reply which removes some of the doubts which were raised by an article published in The Guardian last week, although that paper is so often reliable. In view of the fact that these people have, admittedly, been exploited in the interests of Australia, New Zealand and this country, and the fact that their beautiful island has been devastated as though it were the surface of the moon, will Her Majesty's Government press upon the Governments of Australia, New Zealand, and Fiji, to do everything possible with themselves to remove the appalling suffering of these people?

Lord Goronwy-Roberts: Yes, my Lords, it is our firm intention and our not inconsiderable hope that we can lead an action which will settle these outstanding questions.

Lord Shinwell: My Lords, is my noble Friend aware that an impression is gaining currency that the Government seek to evade their responsibility by passing the buck to Australia, New Zealand, Fiji and other countries? Has there not been a gross active injustice to the Ocean Islanders, and should it not be corrected immediately by providing adequate finance?

D Lord Goronwy-Roberts: My Lords, there is no question of the Government evading responsibility. It is a question of identifying responsibility, and I shall not allow this country to be pilloried on its own for the mistakes of the past. I am anxious that it should play its full part - indeed, perhaps more than its full part - in rectifying as far as possible with others concerned the enormities of past colonial policy.

Lord Elton: My Lords, would the noble Lord go further and confirm that the responsibility rests outside the Government of the Gilbert Islands, as the Banabans are subject to the Gilbert Islands Government, and also that recourse will not be had to them for compensation? As this injustice has gone on for a long time, like Question Time, will he take steps to ensure that it is wound up as effectively as the noble Lord the Leader of this House has wound up Question Time?

Lord Goronwy-Roberts: The only possible answer to that Question, is, "Yes, my Lords".

Lord Lee of Newton: My Lords, is my noble Friend aware that those of us who have been concerned with this matter are very grateful indeed for the reply that we have received today from him? We hope that it will result in a very fair and proper settlement for the Banabans. Is he also aware that, no matter what that settlement may be, within a few years there will be no phosphates left on Ocean Island? Therefore, is he taking into account that for revenues the Gilbertese are very dependant on their phosphates? Will he ensure that their plight is also looked after

Lord Goronwy-Roberts: Yes, indeed, my Lords. I am very grateful to my noble Friend, who is a former Colonial Secretary, for pointing out that not only the Banabans, deserving as they may be, are concerned in this matter, but that we have a responsibility for the Gilbertese and others in the Pacific Islands, and that we also have a responsibility to be fair to all concerned, not least this country.

25 January 1977



NOTE TO EDITORS

Lord Brockway's Question relates to the Vice-Chancellor's expressed opinion that

"If I am right in my conclusion that any obligation of the Crown towards the Banabans was a trust or fiduciary obligation in the higher sense, and not justiciable in the courts, then I have no jurisdiction to make any order on the matter. At the same time I do not think it could be right for a judge before whom matters such as these are brought simply to refuse jurisdiction and say no more..... But in litigation against the Crown in which the Attorney-General is a party, I think a judge ought to direct attention to what he considers to be a wrong that he cannot right, and leave it to the Crown to do what is considered to be proper.

Accordingly I draw the attention of the Attorney-General to the matters of criticism that appear in this judgment, and in particular the two that I have just mentioned. How far these matters are proper for the attention of the Crown in right of the United Kingdom and how far they are for the Crown in some other right I shall not attempt to say: this is a governmental matter, and not legal. I shall accordingly leave the Attorney-General to make such communications to other persons concerned as he considers proper. The Crown is traditionally the Fountain of Justice, and justice is not confined to what is enforceable in the courts."

However, in the course of his judgment, Mr Justice Megarry made a number of very favourable remarks about the concern shown for the welfare of the Banabans by the Colonial Office and by officials, and he also made various reference to the settlement of the Banabans on Rabi.

The following is a selection of the Judge's remarks on these points:

"The Japanese transferred most of the Banabans to other islands, and when in 1945 Ocean Island was recovered from the Japanese, it had been devastated

/and was

and was uninhabitable. Though the Banabans' right to return to Ocean Island has been carefully preserved, it was plainly impossible for them to go back immediately after the war."  
(Vol 1 page 7 G/H)

E "Parties of Banabans have from time to time visited Ocean Island and remained there for some while; indeed a party was in residence when I visited it. But from any practical point of view there has long been no question of the Banaban community as a whole ever returning to live on Ocean Island."  
(Vol 1 page 8 C)

"These and many other provisions of the King's Regulations were plainly designed to protect the native inhabitants against exploitation."  
(Vol 1 page 16 F/G)

"The Colonial Office was emphatic that there could be no question of removing the Banabans from Ocean Island unless the transfer was most clearly for their benefit and also voluntary in the full sense of the word."  
(Vol 1 page 20 F/G)

! "The Colonial Office was showing great concern for the protection of the Banabans, and so was the Resident Commissioner and, to a somewhat lesser extent, the High Commissioner."  
(Vol 1 page 20 G/H)

"On the official side there was an evident concern that no terms should be put to the Banabans for acceptance unless they were considered to be proper and in the best interests of the Banabans. On all sides it was accepted that nothing could be done unless the Banabans agreed."  
(Vol 1 page 21 A/B)

F "It became reasonably plain that if mining continued, a time would come when it would be virtually impossible for the Banabans (who then numbered some 550) to continue to live upon Ocean Island, to which they were fiercely and understandably attached. At the same time, the Colonial Office, though making prolonged enquiries about other possible islands for the Banabans, were firmly refusing to contemplate any removal of the Banabans to another island without their full consent."  
(Vol 1 page 47 F/G/H)

/"But the

"But the most striking feature of this period was a petition by the Banabans to the Secretary of State dated 7 June 1940 seeking a new home for the Banaban people somewhere in the Fiji group, so as to be under the same High Commissioner."  
(Vol 1 page 100 B/C)

"All the Banabans' houses on the island [Ocean] had been destroyed, and many of the trees as well ... plainly the immediate return of the Banabans to live on the island was completely impracticable ... All agreed to go to Rabi for an initial period of two years on the footing that they would all retain their rights in Ocean Island and the Banaban funds ... if at the end of two years they wished to return to Ocean Island, the Government would bear the cost of their transport."  
(Vol 1 page 102 F/G and Vol 1 page 103 D, E/F)

"At this stage the Banabans sent another letter to the High Commissioner dated 7 March 1947 asking to be told that Rabi was their land, like Ocean Island. They stressed their desire to make Rabi their new headquarters and home ....."  
(Vol 2 page 3 G/H)

*Hoopay  
in  
moh!*

"Mr Maude and Mr Macdonald were on Rabi from 7 to 13 May 1947 and they spent the 8th, 9th and 10th in a series of meetings with the Banabans. On the 10th and 11th the Banabans voted by secret ballot on their future, with Banaban supervisors in charge; and then there were further discussions on the result of the ballot. Three hundred and eighteen out of a population of 336 adults over 18 had voted. By 270 to 48, a majority of nearly 85%, the Banabans decided to make Rabi their headquarters and home."  
(Vol 2 page 6 D/E/F)

"The Banabans are now well established in Rabi, over 1500 miles away; and there they have an island over ten times the size and unaffected by mining, as contrasted with the much smaller Ocean Island with some five-sixths of it mined."  
(Vol 4 page 79 B)



*With the Compliments  
of the  
Advisor on Professions  
Migration Branch*

AUSTRALIAN HIGH COMMISSION,  
CANBERRA HOUSE,  
10-16 MALTRAVERS STREET,  
STRAND, LONDON WC2R 3ER  
01-836 2435 Ext. 324

Fiji Times 11/1/77

# MORAL DUTY OF A TRUSTEE POWER

**THE 2500 odd Banabans of Ocean Island in the South-West Pacific have just lost a 21 million pounds sterling claim in the High Court in London for underpayment of royalties on phosphates extracted by the British Phosphate Commission. Although they did not win, their case demonstrated that a trustee power has a moral obligation to see that a subject people are fairly treated. The judge hinted that the Banabans should be compensated. — DAVID GWYNN MORGAN of Gemini News Service reports from London.**

THE British Government is considering a strong hint, made by an English judge, that Britain is under a moral obligation to compensate the Banabans for underpayment of royalties on phosphates extracted for several decades from their island in the South-West Pacific.

But in spite of having moral right on their side, the Banabans have just lost the longest English lawsuit ever. Argument in the case, which began in April 1975, lasted 206 days and included a visit by the judge to their homeland Ocean Island.

When the judgment was finally delivered it took five days to read. Legal costs are estimated at close on one million pounds sterling.

Before leaving London for home after the case the head of the Banabans council of leaders said he was "weary and defeated."

He returned to another issue which faces the islanders — that of their constitutional future.

The Banabans, who number only 2500, are closely related ethnically and linguistically to the Gilbert and Ellice Islanders and have always been governed as part of those islands.

On January 1, 1977, the Gilbert Islands — including the Banabans — are to obtain self-government, the last stage before Independence.

## Phosphate revenue

There have been protests against their inclusion by the Banabans, partly because they do not want to share their wealth with the larger group.

The phosphate revenue, which notwithstanding underpayment came to sterling 2.5 million in 1974/5, has been divided between the Gilbert Islands and the Banabans in the proportion of 85 per cent to 15 per cent. In spite of this, the Banabans received six times as much as the Gilbertese per head of population.

The Banabans have now left Ocean Island because it has been made uninhabitable by extraction of the phosphate, but they continue to retain their rights over the island.

Since 1974 they have lived on Rabi Island, over a thousand miles to the south, which is part of the Fiji group. The Banabans are therefore asking for Independence in association with Fiji.

The case in London was made up of two inter-related actions which were heard together.

The first was a claim that when mining ceases in a few years time, the island should be replanted with fruit-bearing trees to repair the devastation caused by phosphate-extraction. As it would now be impossible to do this, damages were awarded instead.

The second claim, which was the important one, was unsuccessful. This was for 21 million pound sterling to make up for the underpayment of royalties.

The claim involved two transactions by which the price of phosphate had been fixed.

In 1931, the price was agreed between the Resident Commissioner of the Gilbert and Ellice Islands and the purchaser, who was the British Phosphate Commission.

The Commission represented three Empire Governments — the UK, Australia and New Zealand.

The Banabans' representative said that though the two parties to this transaction may have worn different hats they were in reality the same person — the British Crown. A conflict of interest was bound to arise.

The other transaction occurred in 1947. It was made

## History behind Banaban claim against British

by the Banabans' landowners directly with the Commission.

Nevertheless, it was argued that Britain, as the governing power, had the duty to see that the unworried islanders had proper expert advice in making such a deal.

In regard to each transaction, the Banabans' argument rested on the idea that the British Crown was a trustee for them and that it had failed to do its duty.

In private affairs, affecting only private individuals, the trust is a common arrangement.

A person may wish to give a complicated and difficult property, for example a farm, to someone who is too young or inexperienced or, for some other reason, unable to run it properly.

Therefore he finds another person who can run the property and who takes on the job of trustee.

His duty is to manage the farm not in his own interest but in the interest of the recipient of the gift. To attempt to enforce the duty of a trustee against a Government in a court was a new idea.

On the factual question of how well the British had behaved as the colonial power, the judge decided that they had, on the whole, behaved well.

The Phosphate Commission had made voluntary increases since 1947. And, under the present arrangements from 1975 until the end of mining in 1979, the Banabans are likely to receive more than 7 pound million sterling.

## Lack of help

Nevertheless there were blemishes. The Banabans had probably not obtained as good terms as for instance, the people of the nearby island and independent state of Nauru, which is also rich in phosphate.

Commenting on the lack of help given by the British Government in 1947, the judge said: "This could not possibly be called good Government."

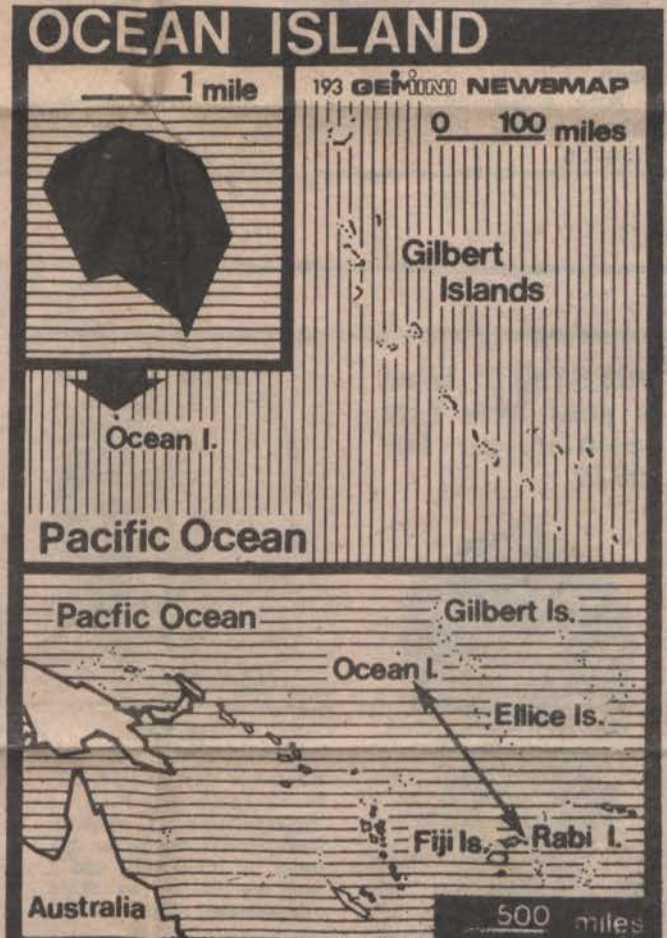
It is on this remark that hopes of an *ex gratia* payment by the British are pinned.

In spite of this, the point at which the Banabans lost was the legal question of whether a binding trust existed.

Although the word "trust" was used in various ordinance and Government minutes, the judge concluded finally that what was created was an obligation of government and not an enforceable trust.

Like the "pledges" which politicians make at election time, this "trust" could not be enforced by a court of law but only by political methods. In theory, those methods include the rejection of a government at the polls.

More relevant, in this case, they may also include the embarrassment of a government by a judge.



It is surprising that a case like the Banabans' claim has not happened before. Since the 18th century, when British Statesman Edmund Burke described Britain's role in India as that of trusteeship, the word has been part of the rhetoric of empire.

The League of Nations Charter too referred to its duties in regard to the colonies under its care as a "sacred trust for civilisation."

The United Nations called the colonies in its charge Trust Territories. And in certain African colonies the land reserved for the local peoples' use was called Tribal Trust Land.

On the other side of the coin from this grand language, the history of the British Empire shows that trade followed the flag and sometimes ran ahead of it.

It was the Dutch who purchased Manhattan Island now the richest part of New York City, from the Red Indians for a chestful of trash and trinkets.

But there were some acts of this type in the British Empire and it is surprising that not one has tried to obtain redress for them by invoking the idea of trusteeship before a court. — Gemini News Service.

FISI TIMES 3/11/76.

unashamedly stated in the records, was that the Banabans should be absorbed into the Gilberts, thus leaving Banaba clear for the unrestricted exploitation of its phosphate.

Our presence was a hindrance to the phosphate profiteers and an embarrassment to the British. And please note, Mr Arieta, that they talked about marriages between Banabans and Gilbertese, tacitly acknowledging that we were separate peoples.

They also referred to such marriages as "mixed marriages." If a Gilbertese marries another Gilbertese that is not a mixed marriage, but if he marries a person of another race it is.

The British even planned to acquire a ship for their Gilberts administration so that Banabans could travel to the atolls. The official hope was that they would find marriage partners there and settle.

If such a sly solution to "the Banaban problem" had worked

# 'No difficulty' in island decision

By ARTHUR GRAY

An early decision in the Banaban-Ocean Island phosphate settlement would "not be too difficult to reach", a British Government envoy, Mr Richard Posnett, said in Canberra yesterday.

Mr Posnett met officials from several departments yesterday, after an hour-long discussion the previous day in Sydney with the Minister for Foreign Affairs, Mr Peacock.

It seemed most unlikely that the Federal Government would be directly involved in any financial settlement, but Australia's part in the proposed settlement with the Banabans would be basically drawn from the surplus funds of the British Phosphate Commission, in which Australia, New Zealand and Britain are partners.

## Development

In the original commission development of Ocean Island and other avenues of business, Britain and Australia had a 42 per cent interest and New Zealand 16 per cent. The estimated phosphate output from the island has been 60 per cent to Australia, 30 per cent to New Zealand, and 10 per cent to Britain.

It did appear from remarks implied, rather than stated yesterday, that Britain would be more than pleased to vacate the Ocean Island area.

The problems facing the area would be more than the \$10 million payment suggested by the Under-Secretary for Foreign Affairs in Britain, Mr Luard.

Banabans who have come under the jurisdiction of the Fiji Government in their move from Ocean to Rambi Island have a separate status from the Fijians, but they still want to retain ownership of Ocean Island and all its resources.

Ocean Island could sustain a number of islanders. There is no room for an airstrip, but its shipping facilities are sufficient to sustain a fishing fleet.

Fresh water, which is transported to the island, could be a problem, but the expected findings of the Law of the Sea Conference in New York within a few weeks and the possibility of a 200 nautical-mile zone, economic-resources zones and continental shelf produce tremendous potential problems for the several national fishing fleets which could use the island and the area in the event of a British withdrawal.

Mr Posnett also met a former resident commissioner of Ocean Island, Professor Maude, of Forrest, regarded as a leading expert on the history and technology of the area.

The three partner Governments appreciate that the Banabans have suffered some loss of their homeland and the proposed settlement is aimed at ensuring that they are not left without support after mining.

While Mr Posnett believed that some Banabans could live on the island after mining ceased, he said those who had moved to Rambi Island came under the jurisdiction of the Fijian Government, not the British. It was inferred that Britain would be pleased if Australia was to take over the Ocean Island as a protectorate.

Mr Posnett was unaware that the British Government had mentioned a \$10 million settlement figure.

He told The Canberra Times before yesterday's meetings that he had "no brief or any proposal to offer" from the British Government, but had been sent on a "mission of inquiry".

The main points to the mission were: to check the facts of the situation; to sound out the Governments concerned on their views; and to ascertain the views of the people on Ocean Island, Fiji, Rambi Island and the Gilbert Islands (all part of the area where the British Phosphate Commission has mined phosphate for the past 50 years).

Mr Posnett's mission was implemented after the Banabans had engaged in a losing legal battle for \$A35 million damages from the commission in the British High Court.

He preferred yesterday to refer to his present inquiry as one of settlement rather than compensation, "to find out what kind of settlement was generally acceptable and then calculate it to resolve the problem".

The settlement could be resolved by an agreement procedure, most likely "within a few short months", between the three Governments who all looked at the present problem differently.

He had sought comparative views on the situation in Nauru and had visited Gilbert, Rambi, Ocean and Fiji islands before coming to Australia. He will meet commission executives in Melbourne today and go to New Zealand next week.

The British Government had no figure in mind for the settlement or what proportion each partner in the commission might be called upon to meet.

Mr Posnett expected to be back in Britain later this month when he would compile a report which would include a consensus of views of government representatives, draw some conclusions and suggest options available.

It was quite possible that he could have to return to the area for further talks before a final decision was reached.

3.3.77

# UK envoy seeks views on Banaban dispute

By ARTHUR GRAY

A British envoy has arrived in Australia to seek Australian assistance in compensating Ocean Island natives for the loss of their homeland.

Mr Richard Posnett, who has been appointed by the British Government to investigate the Ocean Island-Banaban phosphate-compensation dispute, held talks in Sydney yesterday with the Minister for Foreign Affairs, Mr Peacock.

An official of the British High Commission said Mr Posnett had arrived in Canberra last night.

A former Governor of Belize (British Honduras), Mr Posnett is seeking the views of the Australian Government on payment and settlement of claims by the Banabans.

Britain, Australia and New Zealand, as partners in the British Phosphate Commission, have been accused of depriving "a small defenceless people" of their single wasting asset, the heavily mined

phosphate on Ocean Island.

Ocean Island, of about 600 hectares, was annexed by Britain for its phosphate in 1900 and the Banabans, Ocean Island natives, have been moved to Rambi Island, 2,400 kilometres away in the Fiji group.

A \$A35 million claim by the 3,000 Banabans for damages from the three-nation commission led to one of the longest and most expensive court cases in British legal history.

The Under-Secretary for Foreign Affairs in the British Government, Mr Luard, told Parliament recently that the Banabans were likely to get \$A10 million in phosphate revenue from the British Government.

The visit by Mr Posnett is to assess the climate in Australia and New Zealand towards meeting some of this.

A senior government official has confirmed that

Australia would consider contributing to the compensation fund. The figure has yet to be stated.

A submission by the then Australian Minister for Foreign Affairs, Senator Willesee, to Cabinet in 1975 showed that Australia was anxious to settle the dispute out of court because of "the adverse publicity" which could arise from a court hearing.

## Commercial prices

The Banabans had submitted at the lengthy British court hearing that Australian and New Zealand farmers had benefited by about \$A47 million from the commission's pricing policies on the phosphate mined on their island between 1924-25 and 1964-65.

Mr Posnett will have talks in Canberra today with departmental

officials from Foreign Affairs, Prime Minister and Cabinet, Administrative Services, and Finance to gain further information on Australia's views.

Tomorrow he will meet British Phosphate Commission officials in Melbourne for further talks.

He met Banaban representatives in Fiji last week.





WITH THE COMPLIMENTS  
OF THE  
ADVISER ON PROFESSIONS  
MIGRATION BRANCH

Australian High Commission  
Canberra House  
10-16 Maltravers Street  
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01-836 2435 Ext. 324

## Future of the Banabans

*From the Reverend Tebuke Rotan*

Sir, As spokesman of the Banaban people here in London, it was a sad moment when I read the letter you published from the Gilbertese Chief Minister (February 6).

We do not blame the Gilbertese for our present plight. It is under the British Government that Ocean Island and the Banabans have seen their natural resources extensively exploited with little profit or benefit to themselves. Britain has sovereignty, and any decision in our case must come from Whitehall. We had hoped that the Chief Minister would not want the British Government to evade its responsibility for the past by turning the problem over to the Gilbertese.

I can hardly believe the Chief Minister really thinks we Banabans are Gilbertese. We have vast differences in our cultures. To quote H. E. Maude, Department of Pacific Studies, Australian National University, who lived amongst us and the Gilbertese for 40 years: "Forgotten in Gilbertese tradition, unrecorded in the Gilbertese genealogies, it may be doubted if a single Gilbert Islander was aware of the existence of the Banabans at the time of their first contact with Europeans." On Banaban culture, Maude writes: "Much of their (Banaban) social organization has, however, been recorded and this indicates that the structure was essentially different from that of the Gilbertese..."

The Gilbertese have agreed to the separation of the Ellice Islanders because they are a different people: seeing the evidence I have provided, will the Chief Minister now agree that the Banabans should also decide their own future?

The Chief Minister will agree that there is one custom shared generally in the Pacific Islands: it is contrary to our traditional beliefs for the people of one island to take something that belongs to the people of another.

When Gilbertese and Ellice Islanders agreed to British protection in 1892, Britain ignored Ocean Island and none of the leaders of the 16 Gilbert Islands asked that Ocean Island should be included in their group. Research done by Robert Langdon, a leading writer on Pacific affairs, has shown that after we were persuaded in 1900 to sell our birthright for £50 per year, the Law Officers of the Crown found that Ocean Island "became part of His Majesty's Dominions in consequence of the occupation by the Pacific Islands Company and their hoisting of the flag, together with the British sovereign's licence to occupy it". If we Banabans, unskilled in the ways of the Western world, agreed to licence a commercial company to excavate our lands, we never agreed that our homeland should be included with islands which were strange to us so that when Britain left, sovereignty over us would be handed to others. We were never asked if we wanted to

join the Gilberts, and if the British had asked us we would have refused. But we have had to watch the fruit of our land pay for the administration and running costs of a colony that was Britain's responsibility and of which we never considered ourselves part.

We were told we could not return to our homeland after the war, but we agreed to go to Rabi Islands in Fiji and reside there only after the Commonwealth Office had made clear in their 1947 statement of intent that our rights to own, return to and reside on Ocean Island would be maintained. We struggled for survival in our strange, new environment and, to establish projects for our children's future, we borrowed money from an American bank in Fiji, and we are still borrowing money from other banks. All this while Britain's Gilbert and Ellice Colony Government was enjoying the bulk of the dwindling resources of our homeland. This year if we receive Australian \$3 million, they will collect A\$17 million, and their accumulated reserves are already very substantial.

Sometimes, it seemed that the spirit of the Banabans on Rabi was almost broken. But always in our soul there has been a vision. It is a vision of home. It is a vision that has sustained us and encouraged us in our fight to right what we consider to be great wrongs, even if that home on Ocean Island consists, after the phosphate has been excavated, of nothing but sharp-ended rugged pinnacles of coral.

In 1967 we came to London to try and get help. We had discussions with the Commonwealth Office and felt we owed it to ourselves to get the best advice we could. Had it not been for the experts in Fiji and Australia referred to by Mr Ratieta, our efforts might have been in vain. And now in London a great legal battle launched by us over the sharing of the proceeds and other aspects of our case is nearing its climax. It would not be proper for me to comment on that except to say that we could not fight this battle against the British Government without foreign lawyers.

But it should be understood that the question of independence goes much deeper than material matters, it touches on the Banaban soul. What we are now asking for, after all these years of tribulation, is the fundamental human right to control our destiny. We want Ocean Island to become independent in associated status with Fiji amongst whose people we have lived for 30 years. Using Rabi Island as our platform, we want to return once more to our ancestral homeland. We were our own masters before the British came and we must be our own masters again.

Yours faithfully,  
TEBUKE ROTAN,  
Rabi Council of Leaders,  
Buckingham Court,  
78 Buckingham Gate, SW1.

*The Times 20/2/75.*

## LETTERS TO THE EDITOR

*Guardian 16/2*

## Balance and the Banaban cause

Sir,—It is always good to see the Guardian backing those who have had a raw deal, but this backing should be fair and balanced, and factual. In this case the Guardian seems to have fallen below its usual standard, tending to report only the Banabans' views, as put by Tebuke Rotan (February 12) and earlier, and failing to put the other side—or even to check on the "facts" given.

To say "the Banabans were in effect exiled" to Rabi Island by the British is an emotive travesty of the truth. The Banabans themselves requested Britain in 1940 to find them a new home in the Fiji Islands and after their deportation by the Japanese they agreed to go to Rabi Island for two years. If after that time they wished to return to Ocean Island the British Government would bear the cost but in fact by an overwhelming majority in a secret ballot (with Banaban supervisors) they decided to stay on in Rabi Island, where the Fiji Government have made special arrangements for them to continue their

normal mode of life and customs.

The statement "the Banabans homeland has always been regarded, by Britain, as part of the Gilbert Colony" is true. But it isn't only Britain that has so regarded it. Missionary and Church sources confirm that the Banabans of Ocean Island and the Gilbertians are one people, with one language and tradition, and much intermarriage, so that it was not just a commercial trick to include Ocean Island within the boundaries of the Gilbert Islands Colony. Missionaries, both serving in and retired from the Gilbert Islands, are very anxious that the Banaban issue should not be treated separately from the Gilbert Islands as they all say without any hesitation that the Banabans are Gilbertese, and all will suffer when phosphates on Ocean Island are exhausted.

Two major Gilbertese Churches, Roman Catholic and the Gilbert Islands Protestant Church, only last November wrote in a joint letter to the Pacific Conference of

Churches: "... We believe that an excess of zeal in the presentation of causes that may well be just, against others, is leading to a situation where injustice may be done to the Gilbertese. . . . We therefore appeal to the Banabans to strip off exaggeration, and indeed misleading and false propaganda. Let us talk together . . . with a view to helping our peoples to reach a peaceful settlement for co-operation."

The original BBC TV documentary "Go tell it to the judge" was imbalanced, concentrating on the grievances of the Banabans and giving little opportunity for other points of view to be exposed. No-one disputes that the Banabans have had a raw deal, and that proper compensation is due, and due promptly now that the judgement in the recent court case has been given. But the deal is not quite as raw as the film suggested and it would be wrong to put one injustice right by creating others.

Not only the U.K., but Australia, New Zealand and Fiji

are involved. Mr. Posnett, for the Foreign Office, is now on his way to discuss the matter with these parties but it is important that as soon as he returns there is no delay in making a prompt and generous settlement for all concerned.—Yours sincerely,

H. E. Hiley,

Wonersh  
Guildford, Surrey

Sir,—I have been following with interest your treatment of the injustices suffered by the Banaban people. I was particularly impressed by Christopher Sweeney's brilliant article on the Rev. Tebuke Rotan, the Banaban leader. What an enchanting and wonderful people they seem to be—always turning the other cheek.

May I express the wish that the Banabans, without losing their delightful characteristics, will stand up and fight the British Government for their rights.

Charles Pritchard.

Hawkins House,  
Dolphin Square,  
London SW 1.

The Ice show

Letter in London Times of 11th February, 1977.

**THE BANABANS.**

From Mr. Jeremy Thorpe, M.P. for North Devon (Liberal) and Mr. Emlyn Hooson Q.C., M.P. for Montgomeryshire (Liberal),

Sir, You are entirely right in saying that the British Government should make a generous payment to the Banabans.

To its credit, the British Government has accepted responsibility. Lord Geronwy-Roberts told the House of Lords on January 24 1977 "There is no question of the Government evading its responsibilities...I am anxious that it should pay its full part - indeed perhaps more than its full part - in rectifying as far as possible with others concerned the enormities of past colonial policy".

It is true that the mistakes of the past cannot be wiped out. Ocean Island can never be rehabilitated. In the recent litigation it became clear that it would cost at least 30 million Australian dollars partially to restore one-sixth of the island. But a prompt and fair money settlement can do much for the Banabans.

Clearly it is for the United Kingdom Government to act. The gross breaches of duty identified by the Judge were breaches of duty of the Colonial Government for which Britain is directly responsible. The fact that Australia and New Zealand have received considerable economic benefit is a reason why they as well should share in the discharge of this responsibility.

The British, Australian and New Zealand Governments retain 21 million dollars in the reserves of the British Phosphate Commissioners. In 1975 the Governments were prepared to use some of this money to settle the litigation. It still offers an honourable way out. The 21 million dollars should be paid to the Banabans at once without strings as some reparation for past wrongs.

Any prevarication by the British Government will not be acceptable to public or parliamentary opinion. It will compel the Banabans to turn to the Court of Appeal as the only hope of impressing on the British Government that their duties are enforceable in the courts. Such a judgment would come as no surprise. The only issue now is whether the Banabans will be compelled to ask the Court of Appeal to seek legal grounds on which unquestioned moral obligations of HMG might be legally enforceable, or whether the Government, who have indicated from the beginning that they intend to discharge those obligations, will make a sufficiently generous ex gratia settlement. In so doing they would spare the Banabans further worry and expense, and themselves the odium of appearing to act in a mean and defensive way.

We etc.

JEREMY THORPE.

EMLYN HOOSON.

House of Commons.

## LETTERS TO THE EDITOR

# Britain's duty to the Ocean Islanders

Sir, — Mr H. E. Hiley (February 16) complains of a lack of balance in the reporting by the Guardian and the BBC of the Banaban case, alleging that you tend to report only the Banaban views. This allegation flies in the face of the evidence.

Sir Robert Megarry, the Judge who spent 206 days trying the Banaban cases held that the Government had been guilty of grave breaches of duty towards the Banabans. Lord Goronwy-Roberts has told the House of Lords that the Government is anxious to play its full part in rectifying "the enormities of past Colonial policy." Neither the Judge nor the Minister were expressing a Banaban point of view.

Nor, as Mr Hiley suggests, has any injustice been done to the Gilbertese. Until 1900 Ocean Island never formed part of the Gilbert Group. In 1916 it was included in the Gilbert and Ellice Islands Colony for the administrative convenience of the British. All the land on Ocean Island belongs to the Banabans. It is

true that many Gilbertese have worked in the phosphate industry, usually on short term contracts. None of them has ever made his home on Ocean Island.

Despite the somewhat tenuous links between Ocean Island and the Gilberts, the Gilbertese Government has received more than Aus. \$60 millions from the phosphate industry. Since 1966 they have been getting 85 per cent of the net benefits from the phosphate. This has enabled them to build up a fund to secure the future of the Gilbertese people. It is the British, not the Gilbertese, who have given the Banabans a raw deal, and it is for Britain to put the matter right.

Mr Hiley refers in his letter to the Banabans move to Rabi in 1945 and the referendum which followed in 1947. This is one of the saddest aspects of the Banaban story. Before the war the Banabans suggested that Rabi should be purchased as a second home for them. It was bought in 1942 out of their own money. In 1943 they

were deported by the Japanese and lived in circumstances of great hardship. In 1945 the British did not allow the Banabans to return to Ocean Island, even to see what had happened to it. They were told that any who did not want to go to Rabi would have to fend for themselves, as they had done during the Japanese Occupation.

Rabi has a totally different climate. After only 15 months there the Banabans were asked to decide their future. A ballot was held. One ballot box was marked "I shall stay on Rabi," the other "I shall not stay on Rabi." 270 people voted to stay, 48 not to stay. This was interpreted by the British officials as a vote by the Banabans to make Rabi their permanent headquarters and home. A subtle difference from the question the people had, in fact, been asked. The vote was taken after the Government had undertaken that a decision to stay on Rabi would not affect the Banabans' rights to land on Ocean Island and had agreed that the Banabans

should be permitted to travel freely between Rabi and Ocean Island and to reside on Ocean Island.

It seems reasonably clear that the Banabans did not intend to give up Ocean Island and believed they were keeping both Islands. Jenny Barraclough, in her brilliant film "Go tell it to the Judge" does not deal with the 1947 referendum and does not consider why the Banabans were asked to make this decision in May 1947 and why they had no independent advice. This is a pity, but she only had 60 minutes.

It is all too easy to sweep the enormities of past colonial policy under the carpet. The BBC is to be congratulated on having had the courage to show us the full impact of the British influence on the Banaban people. The film was fully justified and very well done.

— Yours faithfully,  
Emlyn Hooson, QC, MP,  
(Liberal Montgomeryshire),  
Houses of Parliament,  
London SW 1

# JUSTICE FOR THE BANABANS

*J. J. Jones*  
*9.2*

The sad and dignified struggle of the Ocean Islanders, or Banabans, to try to correct injustices which they claim have been perpetrated on them over a period of many years, has brought them a wide measure of public and some parliamentary sympathy. Their shabby treatment at the hands of successive British colonial authorities has also been criticized by the High Court judge who spent the best part of three years trying the actions which the islanders brought against the British Government. He was unable, in law, to grant them anything more than a small part of the compensation which they sought, but made it clear that he thought their moral case was a strong one. Their original homeland, Ocean Island, has been laid waste by mining operations for phosphate, and they have lived elsewhere for more than thirty years on Rambi, near Fiji.

Some of the riches from those operations have been given to them in the form of royalties from sales, but much more has gone to Britain, Australia and New Zealand, although much of the profit accruing to Britain has in fact been ploughed back into the administration of the former Gilbert and Ellice Islands, of which Ocean Island is, constitutionally, a part. The Banabans have a strong case for

saying that they have systematically been paid less than their fair share from the benefits of the phosphate on their island, and they look jealously on the citizens of Nauru, who, similarly dispersed from their phosphate-rich home, have attained substantial wealth.

The financial claims of the Banabans are accompanied by a claim for political and constitutional independence from the Gilbert Islands. The British Government, while not shutting the door completely, has been less than enthusiastic. It has to consider, too, the rights of the Gilbert Islands, which are now self-governing and likely to obtain independence within two years, and those of Tuvalu, formerly the Ellice Islands, which broke away from the Gilberts in 1975. Both of these groups have only limited economic potential and they have in the past relied heavily on funds from phosphate royalties to keep them going. Those royalties will come to an end in about three years, when the phosphate on Ocean Island runs out.

Moreover, the British Government can point justifiably to the fact that while the Banabans have, in absolute terms, received a small proportion of total phosphate royalties, if looked at per capita, the islanders have not done all that badly, and have, on

their own admission, squandered or invested injudiciously much of their income. The British government must also have in mind the possibility of Ocean Island regaining economic potential through, for instance, fisheries under the forthcoming international 200 mile limits.

The Banabans cannot have it all ways. If they accept a settlement from the British Government, choose to go on living in Rambi (which is the only home which most of them have known) and achieve independence, or whatever association with Fiji is considered appropriate, they cannot at the same time retain their sovereign rights over Ocean Island. That does not mean that they ought not to be allowed to keep their rights as landowners, and to continue to have the right to enter and stay on the island. It would be unjust, however, in effect, for the flag of Fiji to fly from the scarred face of Ocean Island. Within those limits, there would be no reason for the British Government to oppose the Banaban wish for separation from the Gilberts. It should in any case make a generous payment to the islanders — in whatever form would be most advantageous to them — as compensation for the substantial moral, if not legal, wrongs it has done them in the past.

*SITI TIMES.*  
**Gilbertese**  
**reply** *20/10/76.*

Sir — Your readers must be bored with our family quarrel and I will not prolong it further. My last word is to point out that the Gilbert Islands Government took the initiative in inviting the Rabi Council to come to Tarawa to discuss their financial difficulties last March.

It was not our fault that the Council waited until June. The council prefers London to Tarawa since there is more to spend their \$80 per diem on.  
— OTIUEA TANENTOA,  
Minister of Commerce and Industry, Gilbert Islands Government, Tarawa.

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Sir,

May I be allowed to assure your readers that the Banabans were very definitely not "wantonly & wickedly deported into exile & poverty", (James Cameron 17/1/77). They are living on their own ~~beautiful & beautiful~~ <sup>beautiful, tropical, pastoral</sup> island: ~~in the Fiji Group~~ <sup>7-8 times as large as Guam 20.</sup> nine times as large as

^ Before World War II the Banabans were trying to buy an island in the Fiji Group & early in 1942 Rabi was bought for them <sup>by my husband,</sup> as an investment, with money which had accrued in a Sydney bank. Rabi was then a flourishing copra plantation.

After the war the Banabans were found in prison camps in the Caroline Is & they were brought with tenderness & care to Tarawa, the Colony Headquarters. (They were camped on the same islet that I was & I helped with a clinic



for the children) 2.

Ocean Is. was a shambles after the Japanese occupation so the Banabans agreed to go to Rabi as a temporary measure until they could decide whether they would like to live there permanently or have their villages rebuilt on Ocean Is. Two years later they voted to make Rabi their home. ~~There~~

Ocean Island might have been considered an "idyllic habitable land" if there had been any water there, in fact it was a pleasant place only so long as the annual rains fell.

In 1873 the ~~inhabitants~~ <sup>population</sup> was reduced to 75 as a result of drought, many died & some ~~had~~ escaped on whaling ships. By the time phosphate was discovered there were 300 Banabans described

It was in fact a drought stricken island

Albert Ellis, a young industrial chemist had ~~no idea of the extent~~ of the phosphate deposits, ~~how could~~ he in those ~~early days?~~ I knew him well, & he did a great deal for the Bonabaus, ~~and~~ <sup>and</sup> ~~lost~~ his own wife on Ocean Is. from lack of <sup>urgent</sup> medical care.

James Cameron's "temperate & measured terms" & "total objectivity" would appear to be distinctly one sided, to say the least, & the remainder of his article may be judged by the above inaccuracies -

270 (84.9%) <sup>in favor of Robt</sup> ~~to Robt~~ Robt than headquarters and here, and 48 (15.1%) against.  
as the own both Robt and Ocean Island this is, of course, voting to prevent a Boston  
for long in latter island, as in fact they do.

They are living in their own beautiful and bountiful tropical island: nine times as large as our own Island and incalculably more fertile.

Before World War II

Robt was purchased for them by my husband for £25,000, as a profitable investment, with Barclay Prindley Ford names which had accrued in a Sydney bank. It was then a flourishing plantation and so soon with some millions.

During the war the Barclays were relocated by the Japanese in a dismal camp on Kusaie, with others scattered in scattered villages. They were brought with kindness and care to Tanaka, the Clog headquarters, where they were housed in the same hotel as myself, so I was able to help with a choice for their children.

After Island was a shambles after the Japanese occupation the Barclays agreed that it would be best to go to Robt as a temporary measure until they could decide whether they would like to live there permanently or return to their former home. Two years later they voted by secret ballot on this issue: 318 (94.6%) of the 336 Barclays with 18 voted;

# Banabans fail except on replanting issue

**Tito and Others v Waddell and Others**

**Tito and Others v Attorney General**

Before Sir Robert Megarry, Vice-Chancellor

His Lordship, giving judgment in an action brought by Banabans, the inhabitants of Ocean Island, rejected their claims against the Attorney General for disputed royalties for phosphate extracted from the island and for a declaration that the Crown ought to pay one of them or was accountable to him for those payments.

But in another action, against the British Phosphate Commissioners, he held that although they were entitled to a decree of specific performance of an agreement to replant fruit-bearing trees on part of the island, an order for damages would be a proper order to make.

The hearing of the actions started on April 8, 1975, and went on for 206 days, until June 18, 1976. In addition, 15 days his Lordship spent viewing the island. His Lordship took four and a half days to deliver the judgments.

Mr J. R. Macdonald, QC, and Mr C. L. Purle for the Banabans in the first action; Mr R. A. MacCrimmon, QC, Mr N. C. H. Browne-Wilkinson, QC, and Mr D. K. Rattee for the British Phosphate Commissioners; Mr J. G. Le Quesne, QC, Mr J. E. Vinelott, QC, Mr P. L. Gibson and Mr D. C. Unwin for the Attorney General.

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His Lordship said that Ocean Island lay just south of the Equator, in the Western Pacific, and roughly half way between the Hawaiian Islands and Australia. Its nearest neighbour was Nauru, some 160 miles to the west. Both Ocean Island and Nauru were known as phosphate islands because of their high-grade phosphates. In its natural state, the surface of the island consisted of grass, trees and vegetation, growing more or less directly out of alluvial phosphate, with very little of what could be called "topsoil" in any real sense of the word; but there were outcroppings of coral pinnacles of a greyish colour.

When phosphate was discovered on Ocean Island in 1900, there were 500 indigenous inhabitants who called the island Banaba, and were themselves known as Banabans. For 20 years the phosphate was extracted by a British company, first by the Pacific Island Co Ltd and from 1902 by a subsidiary, the Pacific Island Phosphate Co Ltd. Then, in 1920, the British Phosphate Commissioners were constituted by the governments of the United Kingdom, Australia and New Zealand, who had jointly acquired the mining undertakings which the company had built up on Ocean Island and on Nauru. Since 1920 the mining was conducted by the British Phosphate Commission, with one commissioner appointed by each of the three countries. The commissioners, who were never incorporated, held the undertaking in trust for the three governments in the proportion of 42 per cent (United Kingdom) 42 per cent (Australia) and 16 per cent (New Zealand).

The mining of phosphate on Ocean Island was carried on with the Banabans remaining in residence, but the outbreak of the war in 1939, and the occupation of the island by the Japanese in 1942, had curtailed production and brought it to an end. The Japanese transferred most of the Banabans to another island, and when, in 1945, Ocean Island was recovered from the Japanese it had been devastated and was uninhabitable. Though the Banabans' right to return to the island had been carefully preserved, it was plainly impossible for them to go back immediately after the war. Another island, Rabi, had been bought for them in 1942 out of a fund built up out of phosphate royalties; and it was to Rabi that they went.

From any practical point of view there had long been no question of the Banaban community as a whole ever returning to live on Ocean Island. Phosphate had been extracted from about three-quarters of the island, and when the last of the workable phosphate would have gone in another two or three years, little would be left save a desolation of uninhabitable pinnacles surrounded by a run of sand and bearing such buildings and plant as the commissioners had abandoned on it.

There were two main aspects of the litigation, one physical and the other financial. The first action was principally concerned with the former, the second with the latter. In the first action claims were made by a selection of the Banaban landowners against the commissioners.

The main claim in the first action was for specific performance of contractual obligations to replant certain land with trees and shrubs, or alternatively, for damages. The Attorney General was concerned only in a minor degree. The contention was that the United Kingdom government, acting by the governor of the Gilbert and Ellice Islands colony, was bound to prescribe the trees

and shrubs that were to be planted.

The second action was very different. It was brought by Mr Rotan Tito, who claimed to be the owner of much land on Ocean Island, and by the council of leaders, an incorporated body which was in effect the governing body of the Banabans. The defendant was the Attorney General. There were three main heads of claim. The first two related to the Crown standing in a fiduciary position towards the Banabans in connexion with two transactions, one in 1931 and the other in 1947. The 1931 transaction was, in essence, the compulsory acquisition of 150 acres, whereas the 1947 transaction was a voluntary agreement. For the transaction, the core of the Banabans' claim was that the royalty payable to them under a mining lease granted to the commissioners by the resident commissioner of the Gilbert and Ellice Islands as part of a compulsory process, was fixed under the relevant clause by an officer of the Crown, the resident commissioner, in a transaction in which the mining rights were being conferred by the Crown upon the Crown itself, in the shape of the British Phosphate Commission, so that there was a conflict of duty and interest. The royalty was fixed at less than a proper figure, the Banabans claimed, and so the Crown must pay compensation to make up the amount in fact paid by way of royalties to the amount that ought to have been paid. An alternative basis for the claim was that the mining lease was a lease by a fiduciary to itself, which produced the same consequences.

The 1947 transaction consisted of an agreement made by the Banaban landowners with the commissioners for the mining of 291 and 380 acres in return for certain lump sums and a royalty. No direct element of compulsion entered into that, though the compulsory powers still existed and had not been forgotten; but the claim was that the Crown stood in a fiduciary position towards the Banabans, and so the agreement was an agreement between a fiduciary acting by its creatures, the commissioners and the beneficiaries of the fiduciary. The Crown as such fiduciary was therefore, it was claimed, under a duty to make full disclosure to the Banaban landowners, and to see either that they received a full commercial price or that they had competent independent advice.

The Crown failed to discharge that duty, it was said, by failing to reveal that the phosphate was being sold at less than its true value to Australian and New Zealand concerns for manufacture into super phosphates. Substantial benefits were thus being conferred on Australian and New Zealand farmers instead of higher royalties being paid to the Banabans. Furthermore there had been no disclosure of what sums were being paid by the commissioners to the Gilbert and Ellice Islands in respect of phosphate exports, in lieu of taxation or otherwise; and nothing was done to ensure that the Banabans had proper advice. The royalty payable under the 1947 agreement was far below the proper amount, and so the Banabans were entitled to compensation against the Crown.

The broad constitutional position was that under the Pacific Islands Protection Act, 1875, the British Settlements Act, 1887, the Foreign Jurisdiction Act, 1890, and the Pacific Order in Council, 1893, a high commissioner for the Western Pacific was established, together with a system of courts and other institutions, and provisions as to the law applicable. Article 108 of the Order in Council empowered the high commissioner to make, alter and revoke Queen's regulations for various purposes.

In 1892 the islands in the Gilbert and Ellice groups were proclaimed a British protectorate. On October 2, 1900, after some correspondence between the Pacific Island Co Ltd and the Colonial Office in London, a licence in the name of Queen Victoria and extended by the Secretary of State for the Colonies, was granted to the company, which had applied for a licence on January 4, 1900. The licence granted the company the exclusive rights to occupy Ocean Island for 21 years from January 1, 1901, for the purpose of removing fertilizing substances, and to display the British flag in token of the occupation. Thus jurisdiction over Ocean Island was obtained peacefully and without any overt act of conquest or coercion. It became part of the Crown's dominion by virtue of the occupation of the island by the company, and the hoisting of the flag on May 5, 1900, complied with the Crown's licence to the company, and it thereupon became a British settlement under the Foreign Settlements Act. On any footing Ocean Island was part of the Gilbert and Ellice Islands colony from 1916 onwards.

As a colony by settlement, Ocean Island received English law, subject to any relevant customary law; and that was not affected when, in 1916, Ocean Island became a part of the Gilbert and Ellice Islands, a colony by coercion. Article 20 of the Pacific Islands Order in Council, 1893, provided that, subject to the other provisions of the order, civil and

criminal jurisdiction exercisable under the order, "so far as circumstances admit", was to be exercised "upon the principle of and in conformity with the substance of the law for the time being in force in and for England . . ." That language, it was contended, was wide enough to let in any recognized Banaba law; and that was not seriously disputed.

Royalties conferred by various statutes were necessarily those imposed in respect of minerals which had been extracted under mining rights acquired under the compulsory process and these payable under the agreements whereunder the mining rights were acquired. The Banabans' claim to declarations in respect of "the disputed royalties" and the "disputed payments in the nature of royalties" failed and would be dismissed.

The use of a phrase such as "in trust for", even in a formal document such as a royal warrant, did not necessarily create a trust enforceable by the courts. The term "trust" was one which could properly be used to describe not only relationships which were enforceable by the courts in their equitable jurisdiction, but also other relationships such as the discharge, under the jurisdiction of the Crown, of the duties or functions belonging to the prerogative and the authority of the Crown. Trusts of the former kind, so familiar in Chancery, were described by Lord Selborne in *Kinloch v Secretary of State for India Council* (1882) 7 App Cas 619 as being "trusts in the lower sense"; trusts of the latter kind, so unfamiliar in the division, he called "trusts in the higher sense".

It was clear that the determination whether an instrument had created an enforceable trust or a trust in the higher sense was a matter of construing, looking at the whole instrument in question, its nature and effect, and its context. The language used pointed firmly towards an obligation of government—and not an enforceable trust, and the government was the government of the Gilbert and Ellice Islands colony.

If any fiduciary relationship existed, it must be founded on a trust. The 1931 transaction did not put the Crown, or any officer of the Crown, into any fiduciary position in relation to the Banabans or any of them.

Furthermore, in their context, the provisions of the relevant statute, despite the use of the words "in trust", were far more consonant with a governmental obligation than a trust or fiduciary duty enforceable in the courts. The imposition of a statutory duty to perform certain functions, or the assumption of such a duty, could not, as a general rule, in a fiduciary obligation or even be presumed to impose any. Accordingly, the 1931 transaction did not place the Crown in any fiduciary relationship towards the Banabans, and the indivisibility of the Crown did not mean that an obligation entered into by the government of a colony or other dependent territory could be said to be an obligation of the United Kingdom government, mainly because it was entered into in the name of the Crown. The 1947 transaction provided even less support for the existence of an enforceable trust.

In the result, therefore, the Banabans' claim in the second action failed and would be dismissed.

His Lordship then gave judgment in the first action. He considered first the only claim in respect of something other than mining phosphate, namely, the claim of damages for the alleged wrongful removal of sand and the destruction of the ground.

In their defence the commissioners relied on the sand agreement and on limitation. The sand agreement, made in 1948, stated that, in return for certain specified payments, the Banabans raised no objection "to the removal of sand and shingle from the beach of Ocean Island". No question had arisen on the location of the beach, and it had not been suggested that the sand agreement was not binding. But there was considerable debate on the meaning of "beach", a word which was not a term of art and on which no authorities were cited.

In his Lordship's judgment, all that lay to the landward of high-water mark and was in apparent continuity with the beach at high-water mark would normally form part of the beach. Discontinuity might be shown in a variety of ways: in the way of sand dunes, or a cliff, shrubbery, trees, promenade or roadway, or a dozen other natural or artificial structures or entities which would indicate where one left the beach for something else. But until one reached some such indication the beach continued. From the evidence put before the court and from the view of Ocean Island his Lordship concluded that what could properly be called the beach at one point ran inland until it reached the earth road running in a north-westerly direction, except in so far as any area was occupied by the cemetery. Thus the claim for the wrongful removal of sand and destruction of the cemetery failed in its entirety.

His Lordship next considered the replanting obligations, and the Banabans' claim for their speci-

fic performance or damages in lieu thereof.

His Lordship made it clear that there was not, and never had been, any claim whatever that there was any legal obligation to replant the whole of the island. At its highest, the claim was that at most one-sixth of the island should be replanted.

Clause 12 of an agreement made in 1913 provided that, in the events which happened, "the company shall comply with the following conditions . . . namely:—(a) That they shall return all worked out land to the original owners, and that they shall replant much land—wherever possible—with coconuts and other food-bearing trees, both in the land already worked out, and in those to be worked out."

Deeds were entered into between the company and the individual landowners over a period covering 1913 to 1927. The terms of the last clause of each of the deeds were identical and said that the end of the term, being December 31, 1989, or whenever the land ceased to be used by the company, it should replant the land as nearly as possible to the extent to which it was planted at the date of the commencement of the company's operations with such indigenous trees and shrubs as should be prescribed by the resident commissioner for the time being in Ocean Island and the lands should revert to the landowner or his heirs.

Under both the agreement and the deeds it was the company that entered into the transaction and the claim had been made against the three persons who were British Phosphate commissioners when the writ was issued. That raised the question whether the burden of the company's obligation passed to the commissioners.

When the first commissioners took over from the company the contemporary documents and circumstances made it plain that the commissioners were to take over not only the rights but also the liabilities. When thereafter a new commissioner was appointed, there were no documents to make that plain, but the circumstances were to the same effect. It was an absurd thought that a new commissioner was intended to take over the assets but not the liabilities which the outgoing commissioner, stripped of the assets, was to bear for the rest of his life, and his estate after his death. There was no question of any new commissioner having intended not to accept the benefits but to commit himself to responsibilities instead.

Where there was a terminal liability, such as the obligation of replanting as in the present case, it would be right that the burden should ultimately be borne by the latest in the chain of persons liable at the time when the burden accrued. On that footing, the two defendant commissioners, being now in office, were properly subject to the whole of the liability.

Were the Banabans entitled to enforce the obligations? There was no reason why the benefit of the replanting obligations should not run with the land both at law and in equity. The obligations could hardly more clearly touch and concern the land, and the benefit of them must have been intended to run with the land and be enforceable by the owner for the time being. The present owners of the land were therefore the persons entitled to enforce the obligations.

One difficulty mentioned was that there had been no prescription of trees and shrubs by the resident commissioner. The absence of prescription was no bar to the Banabans' success. If specific performance was decreed, the court would, in the continued absence of any proper prescribing, make suitable provision for the trees and shrubs to be specified.

If damages were awarded instead, probably no such specifying would be needed.

The complexities of specific performance were weighty and discouraging, but by themselves they did not suffice to induce the court to refuse specific performance. At the same time there were considerable advantages in making an award of damages.

In view of the decision in *Wilson v Northampton & Banbury Junction Railway Co* (1874) 9 Ch App 279 damages would be not only a perfectly adequate remedy but also far more suitable. If the owners of the plots wanted to spend the money in having them replanted, then of course they could do so, but that expenditure would be of their own volition and not by order of the court. Thus, leaving aside the cases of part ownership, although the court could decree specific performance in the exercise of a proper judicial discretion, it ought not to do so.

In the absence of any clear authority on the matter, it should be considered as a matter of principle, and the same rules should be applied for the basis of damages as were applied to the breach of a contract to do work on the land of another, whether to build, repair, replant or anything else.

On the question of quantum of damages, his Lordship thought a further hearing would be necessary, unless the parties agree.

Solicitors: Davies, Brown & Co; Freshfields; Treasury Solicitor.

# Britain to talk with Banabans

LONDON. — The British Foreign Office said yesterday it envisaged early talks with leaders of the Gilbert Islands and the Banaban people of Ocean Island following judgment last week in Britain's longest and costliest court case.

Sir Robert Megarry, in his High Court judgment, awarded unspecified damages to the 3000 Banabans against the mining consortium whose operations devastated their Pacific homeland 30 years ago.

## CONSULT

In a statement yesterday, the Foreign Office promised to try to encourage a solution for both the Gilbertese and the Banabans.

It said it would also consult with Australia and New Zealand, its partners in the British Phosphate Commissioners (BPC) involved in phosphate mining in the area.

Several questions about the Banaban people and Ocean Island have been asked in the House of Lords since the High

Court judgment.

Lord Shinwell asked what compensation had been paid to the Banabans, and was it not some derisory sum.

The Minister of State in the Commonwealth Office, Lord Goronwy-Roberts, said future arrangements with the Banabans might well involve certain financial arrangements which he could not state yet.

All considerations would be borne in mind when Britain discussed them, not only with the Banabans and the Gilbertese but with the Australians and New Zealanders, who had an interest in the matter.

Lord Brockway asked whether the Government would consider making an ex gratia payment to the Banabans in view of the fact that Mr Justice Megarry had made "a devastating criticism" of the actions of the British Government.

The minister replied that the Government would consider making an ex gratia payment but he first wanted to study the judgment and have early talks with those concerned.

*Fiji Times 10/12/76*

# Coral island marathon law suit over

The hearing of the longest and most costly action in English legal history ended in the High Court yesterday. It lasted 221 working days and is estimated to have cost more than £750,000.

The record-breaking case — in which judgment is expected in the autumn—concerned the tiny island home of the Banabans in the South Seas.

From the turn of the century Ocean Island colony was ravaged by the mining of its rich phosphate deposits, first by a private company and then by the British Phosphate Commissioners, a company formed by the British, Australian and New Zealand governments in 1920.

A few years ago the Banabans began their fight for a larger share of the profits of the exploitation of their 1,500-acre former home, and for the rehabilitation of parts of it to enable them to return and live there.

From Rabi, another island 1,500 miles away to which they were taken after the last war during which Ocean Island was occupied by the Japanese, they prepared their plea for justice to the English High Court.

They sued the BPC and the UK Government, claiming the right to have Ocean Island replanted with the food-bearing trees and shrubs which, they said, would enable them to return and build up a viable fishing economy. They also claimed £21 millions in additional royalties from the BPC.

Led by 70-year-old Rotan Tito, chairman of the Rabi Council of Leaders, a group of them came to England to give evidence through interpreters about the ownership of their land, the cataclysmic changes wrought by the demand for its mineral wealth, and their hopes for its future.

Mr Justice Megarry and the court spent 15 days last summer on Rabi and Ocean Island so that the judge could get a better idea of the situation.

Mr John Vinelot, QC, for the Crown, told the judge yesterday that there had been times when counsel felt that they would be "overwhelmed by the mounting tide of paperwork," and he paid tribute to the judge's infallible patience and courtesy.

Miss Josselyn  
for  
mess or Mrs  
folded

1/1  
3/

Today's  
Sport

# Marathon lawsuit over phosphate ISLAND WINS DAMAGES CASE

## Barlow heads for century

From John Thicknesse

JAIPUR, India, Friday  
GRAHAM BARLOW was just ten short of a century at tea, out of an MCC score of 185 for two in the second match of their cricket tour of India, against Central Zone.

The Middlesex left-hander, playing his first innings of the tour, shared in a partnership of 109 with Dennis Amiss for the second wicket, before Amiss was run out shortly before 10.

Mike Brearley had won the toss on a perfect day for batting, on which a constant light breeze took the sting out of a temperature of 80.

The pitch was not as true as it looked and the early batsmen had differing bounce to cope with as well as swing. Kailish Ghattani, who played a little for Kent 2nd XI in 1970, beat Amiss and Woolmer four times in his first three over with late outswinging.

### Deserved

Then in his fifth, he deservedly had Woolmer caught at forward short leg as he pushed forward.

With Ken Barrington's advice "not to hurry" ringing in his ears, Barlow watched every ball intently. He was in no danger of being run out.



## Islanders' leader found guilty

THE Rev Tebuke Rotan, a 46-year-old Methodist minister, was found guilty of being drunk and disorderly in Whitehall when he appeared at Bow Street Court today.

The Rev Rotan, leader of the Banaban people of Ocean Island in their long legal battle against the Crown, was given a conditional discharge for three months. He had

THE South Sea islanders who brought a marathon lawsuit over the devastation of parts of their home by phosphate mining are entitled to damages for the failure of the British Phosphate Commissioners to replant the mined-outland with trees, a High Court ruled in London today.

At the end of his four-and-a-half day judgment on the case, Sir Robert Megarry, the Vice-Chancellor, said that replanting of tiny Ocean Island with fruit-bearing trees would now prove impossible, so he awarded damages instead.

He left the figure of damages to be worked out between the Phosphate Commissioners and the islanders—known as Banabans. But Sir Robert added: "In litigation in which the Attor-

ney General is a party, a judge ought to direct attention to what he considers to be a wrong he cannot right and leave it to the Crown to do what it considers to be proper.

### Substantial

"The Crown was, traditionally the fountain of justice and justice is not confined to what is enforceable in the courts."

The judge said the figure should be neither nominal nor very large, and should be considered against the lessened value of the mined-out phosphate land.

A lawyer for the Banabans said after the hearing that their claim had been for 10 million Australian dollars (about £8,000,000), but after negotiations it might be that a figure of only 2,000,000 dollars would be reached.

The Banabans, he said, were tenacious bargainers and, although they would not get as much as they had hoped

for, they would be trying for "something substantial."

The damages ruling was the only part of Sir Robert's long and complex judgment to go in the islanders' favour—although earlier they won something of a moral victory when the judge spoke of the injustice they had suffered over mining deals.

He dismissed their £21 million claim against the British Government for underpaid royalties because, he said, the Crown's obligation towards the Banabans was not financial but governmental—and that was not enforceable in the Courts.

Michael Kilbane writes: The key figure in the trial was Rotan Tito, Methodist Pastor and leader of his Banaban people.

Courteous, absolutely sure of himself, he sat impassively on a hard wooden bench in Court 16, week after week, listening intently to intricate legal arguments in a language he does not understand. He

bore witness to an old wrong he has devoted his life to fighting.

One of the few pure-blooded Banabans left, Rotan looks like a Red Indian chief, thick-set, muscular, high-cheek bones stiff black hair, piercing black eyes and an unnerving stillness. In London he dressed immaculately in formal English city clothes.

## WEATHER

### DRY

DRY, mainly sunny but some wintry showers; maximum temperature 37 F (3 C); wind light mainly westerly.

SHADE TEMPERATURE: 2 pm 41 F (5 C). Barometer 997.4 millibars (28.93 inches), falling.

LIGHTING-UP TIME: 4.22 pm to 7.13 am. Sun sets 3.57 pm, rises 7.47 am. Moon rises 2.18 pm, sets 5.18 am.

## The 'weird' walks

Continued from Page 1

was going on. He wanted to know what was happening around him.

Mr. Pinder said he knew Lord Wills had been going

going there to buy a Daily Express. The police did not know until the night of September 17 that Lord Wills was in the habit of going to that place to buy a paper daily.

CERAMIC TILES  
AT HALF NORMAL  
MARKET PRICES



# Banabans fail except on replanting issue

**Tito and Others v Waddell and Others**

**Tito and Others v Attorney General**  
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Mr W. J. Mowbray, QC, Mr J. R. Macdonald, QC, and Mr Purie for the Banabans in the second action; Mr Vinelott, QC, Mr Gibson and Mr Unwin for the Attorney General.

His Lordship said that Ocean Island lay just south of the Equator, in the Western Pacific, and roughly half way between the Hawaiian Islands and Australia. Its nearest neighbour was Nauru, some 160 miles to the west. Both Ocean Island and Nauru were known as phosphate islands because of their high-grade phosphates. In its natural state, the surface of the island consisted of grass, trees and vegetation, growing more or less directly out of alluvial phosphate, with very little of what could be called "topsoil" in any real sense of the word; but there were outcroppings of coral pinnacles of a greyish colour.

When phosphate was discovered on Ocean Island in 1900, there were 500 indigenous inhabitants who called the island Banaba, and were themselves known as Banabans. For 20 years the phosphate was extracted by a British company, first by the Pacific Island Co Ltd and from 1902 by a subsidiary, the Pacific Island Phosphate Co Ltd. Then, in 1920, the British Phosphate Commissioners were constituted by the governments of the United Kingdom, Australia and New Zealand, who had jointly acquired the mining undertakings which the company had built up on Ocean Island and on Nauru. Since 1920 the mining was conducted by the British Phosphate Commission, with one commissioner appointed by each of the three countries. The commissioners, who were never incorporated, held the undertaking in trust for the three governments in the proportion of 42 per cent (United Kingdom) 42 per cent (Australia) and 16 per cent (New Zealand).

The mining of phosphate on Ocean Island was carried on with the Banabans remaining in residence; but the outbreak of the war in 1939, and the occupation of the island by the Japanese in 1942, had curtailed production and brought it to an end. The Japanese transferred most of the Banabans to another island, and when, in 1945, Ocean Island was recovered from the Japanese it had been devastated and was uninhabitable. Though the Banabans' right to return to the island had been carefully preserved, it was plainly impossible for them to go back immediately after the war. Another island, Rabi, had been bought for them in 1942 out of a fund built up out of phosphate royalties; and it was to Rabi that they went.

From any practical point of view there had long been no question of the Banaban community as a whole ever returning to live on Ocean Island. Phosphate had been extracted from about three-quarters of the island, and when the last of the workable phosphate would have gone in another two or three years, little would be left save a desolation of uninhabitable pinnacles surrounded by a run of land bearing such buildings and plant as the commissioners had abandoned on it.

There were two main aspects of the litigation, one physical and the other financial. The first action was principally concerned with the former, the second with the latter. In the first action claims were made by a selection of the Banaban landowners against the commissioners.

The main claim in the first action was for specific performance of contractual obligations to replant certain land with trees and shrubs, or alternatively, for damages. The Attorney General was concerned only in a minor degree. The contention was that the United Kingdom government, acting by the governor of the Gilbert and Ellice Islands colony, was bound to prescribe the trees

and shrubs that were to be planted.

The second action was very different. It was brought by Mr Rotan Tito, who claimed to be the owner of much land on Ocean Island, and by the council of leaders, an incorporated body which was in effect the governing body of the Banabans. The defendant was the Attorney General. There were three main heads of claim. The first two related to the Crown standing in a fiduciary position towards the Banabans in connexion with two transactions, one in 1931 and the other in 1947. The 1931 transaction was, in essence, the compulsory acquisition of 150 acres, whereas the 1947 transaction was a voluntary agreement. For the transaction, the core of the Banabans' claim was that the royalty payable to them under a mining lease granted to the commissioners by the resident commissioner of the Gilbert and Ellice Islands as part of a compulsory process, was fixed under the relevant clause by an officer of the Crown, the resident commissioner, in a transaction in which the mining rights were being conferred by the Crown upon the Crown itself, in the shape of the British Phosphate Commission, so that there was a conflict of duty and interest. The royalty was fixed at less than a proper figure, the Banabans claimed, and so the Crown must pay compensation to make up the amount in fact paid by way of royalties to the amount that ought to have been paid. An alternative basis for the claim was that the mining lease was a lease by a fiduciary to itself, which produced the same consequences.

The 1947 transaction consisted of an agreement made by the Banaban landowners with the commissioners for the mining of 291 and 380 acres in return for certain lump sums and a royalty. No direct element of compulsion entered into that, though the compulsory powers still existed and had not been forgotten; but the claim was that the Crown stood in a fiduciary position towards the Banabans, and so the agreement was an agreement between a fiduciary acting by its creatures, the commissioners and the beneficiaries of the fiduciary. The Crown as such fiduciary was therefore, it was claimed, under a duty to make full disclosure to the Banaban landowners, and to see either that they received a full commercial price or that they had competent independent advice.

The Crown failed to discharge that duty, it was said, by failing to reveal that the phosphate was being sold at less than its true value to Australian and New Zealand concerns for manufacture into super phosphates. Substantial benefits were thus being conferred on Australian and New Zealand farmers instead of higher royalties being paid to the Banabans.

Furthermore there had been no disclosure of what sums were being paid by the commissioners to the Gilbert and Ellice Islands in respect of phosphate exports, in lieu of taxation or otherwise; and nothing was done to ensure that the Banabans had proper advice. The royalty payable under the 1947 agreement was far below the proper amount, and so the Banabans were entitled to compensation against the Crown.

The broad constitutional position was that under the Pacific Islands Protection Act, 1875, the British Settlements Act, 1887, the Foreign Jurisdiction Act, 1890, and the Pacific Order in Council, 1893, a high commissioner for the Western Pacific was established, together with a system of courts and other institutions, and provisions as to the law applicable. Article 108 of the Order in Council empowered the high commissioner to make, alter and revoke Queen's regulations for various purposes.

In 1892 the islands in the Gilbert and Ellice groups were proclaimed a British protectorate. On October 2, 1900, after some correspondence between the Pacific Island Co Ltd and the Colonial Office in London, a licence in the name of Queen Victoria and extended by the Secretary of State for the Colonies, was granted to the company, which had applied for a licence on January 4, 1900. The licence granted the company the exclusive rights to occupy Ocean Island for 21 years from January 1, 1901, for the purpose of removing fertilizing substances, and to display the British flag in token of the occupation. Thus jurisdiction over Ocean Island was obtained peacefully and without any overt act of conquest or coercion. It became part of the Crown's dominion by virtue of the occupation of the island by the company, and the hoisting of the flag on May 5, 1900, complied with the Crown's licence to the company, and it thereupon became a British settlement under the Foreign Settlements Act. On any footing Ocean Island was part of the Gilbert and Ellice Islands colony from 1916 onwards.

As a colony by settlement, Ocean Island received English law, subject to any relevant customary law; and that was not affected when, in 1916, Ocean Island became a part of the Gilbert and Ellice Islands, a colony by coercion. Article 20 of the Pacific Islands Order in Council, 1893, provided that, subject to the other provisions of the order, civil and

criminal jurisdiction exercisable under the order, "so far as circumstances admit", was to be exercised "upon the principle of and in conformity with the substance of the law for the time being in force in and for England...". That language, it was contended, was wide enough to let in any recognized Banaba law; and that was not seriously disputed.

Royalties conferred by various statutes were necessarily those imposed in respect of minerals which had been extracted under mining rights acquired under the compulsory process and those payable under the agreements whereunder the mining rights were acquired. The Banabans' claim to declarations in respect of "the disputed royalties" and the "disputed payments in the nature of royalties" failed and would be dismissed.

The use of a phrase such as "in trust for", even in a formal document such as a royal warrant, did not necessarily create a trust enforceable by the courts. The term "trust" was one which could properly be used to describe not only relationships which were enforceable by the courts in their equitable jurisdiction, but also other relationships such as the discharge, under the jurisdiction of the Crown, of the duties or functions belonging to the prerogative and the authority of the Crown. Trusts of the former kind, so familiar in Chancery, were described by Lord Selborne in *Kinloch v Secretary of State for India Council* ((1882) 7 App Cas 619) as being "trusts in the lower sense"; trusts of the latter kind, so unfamiliar in the division, he called "trusts in the higher sense".

It was clear that the determination whether an instrument had created an enforceable trust or a trust in the higher sense was a matter of construing, looking at the whole instrument in question, its nature and effect, and its context. The language used pointed fairly towards an obligation of government—and not an enforceable trust, and the government was the government of the Gilbert and Ellice Islands colony.

If any fiduciary relationship existed, it must be founded on a trust. The 1931 transaction did not put the Crown, or any officer of the Crown, into any fiduciary position in relation to the Banabans or any of them.

Furthermore, in their context, the provisions of the relevant statute, despite the use of the words "in trust", were far more consonant with a governmental obligation than a trust or fiduciary duty enforceable in the courts. The imposition of a statutory duty to perform certain functions, or the assumption of such a duty, could not, as a general rule, impose fiduciary obligation or even be presumed to impose any. Accordingly, the 1931 transaction did not place the Crown in any fiduciary relationship towards the Banabans, and the indivisibility of the Crown did not mean that an obligation entered into by the government of a colony or other dependent territory could be said to be an obligation of the United Kingdom government, mainly because it was entered into in the name of the Crown. The 1947 transaction provided even less support for the existence of an enforceable trust.

In the result, therefore, the Banabans' claim in the second action failed and would be dismissed.

His Lordship then gave judgment in the first action. He considered first the only claim in respect of something other than mining phosphate, namely, the claim of damages for the alleged wrongful removal of sand and the destruction of the ground.

In their defence the commissioners relied on the sand agreement and on limitation. The sand agreement, made in 1948, stated that, in return for certain specified payments, the Banabans raised no objection "to the removal of sand and shingle from the beach of Ocean Island". No question had arisen on the location of the beach, and it had not been suggested that the sand agreement was not binding. But there was considerable debate on the meaning of "beach", a word which was not a term of art and on which no authorities were cited.

In his Lordship's judgment, all that lay to the landward of high-water mark and was in apparent continuity with the beach at high-water mark would normally form part of the beach. Discontinuity might be shown in a variety of ways: in the way of sand dunes, or a cliff, shrubbery, trees, promenade or roadway, or a dozen other natural or artificial structures or entities which would indicate where one left the beach for something else. But until one reached some such indication the beach continued. From the evidence put before the court and from the view of Ocean Island his Lordship concluded that what could properly be called the beach at one point ran inland until it reached the earth road running in a north-westerly direction, except in so far as any area was occupied by the cemetery. Thus the claim for the wrongful removal of sand and destruction of the cemetery failed in its entirety.

His Lordship next considered the replanting obligations, and the Banabans' claim for their speci-

fic performance or damages in lieu thereof.

His Lordship made it clear that there was not, and never had been, any claim whatever that there was any legal obligation to replant the whole of the island. At its highest, the claim was that at most one-sixth of the island should be replanted.

Clause 12 of an agreement made in 1913 provided that, in the events which happened, "the company shall comply with the following conditions... namely:—(a) That they shall return all worked out land to the original owners, and that they shall replant much land—whenever possible—with coconuts and other food-bearing trees, both in the land already worked out and in those to be worked out".

Deeds were entered into between the company and the individual landowners over a period covering 1913 to 1927. The terms of the last clause of each of the deeds were identical and said that the end of the term, being December 31, 1999, or whenever the land ceased to be used by the company, it should replant the land as nearly as possible to the extent to which it was planted at the date of the commencement of the company's operations with such indigenous trees and shrubs as should be prescribed by the resident commissioner for the time being in Ocean Island and the lands should revert to the landowner or his heirs.

Under both the agreement and the deeds it was the company that entered into the transaction and the claim had been made against the three persons who were British Phosphate commissioners when the writ was issued. That raised the question whether the burden of the company's obligation passed to the commissioners.

When the first commissioners took over from the company the contemporary documents and circumstances made it plain that the commissioners were to take over not only the rights but also the liabilities. When thereafter a new commissioner was appointed, there were no documents to make that plain, but the circumstances were to the same effect. It was an absurd thought that a new commissioner was intended to take over the assets but not the liabilities which the outgoing commissioner, stripped of the assets, was to bear for the rest of his life, and his estate after his death. There was no question of any new commissioner having intended not to accept the benefits but to commit himself to responsibilities instead.

Where there was a terminal liability, such as the obligation of replanting as in the present case, it would be right that the burden should ultimately be borne by the latest in the chain of persons liable at the time when the burden accrued. On that footing, the two defendant commissioners, being now in office, were properly subject to the whole of the liability.

Were the Banabans entitled to enforce the obligations? There was no reason why the benefit of the replanting obligations should not run with the land both at law and in equity. The obligations could hardly more clearly touch and concern the land, and the benefit of them must have been intended to run with the land and be enforceable by the owner for the time being. The present owners of the land were therefore the persons entitled to enforce the obligations.

One difficulty mentioned was that there had been no prescription of trees and shrubs by the resident commissioner. The absence of prescription was no bar to the Banabans' success. If specific performance was decreed, the court would, in the continued absence of any proper prescribing, make suitable provision for the trees and shrubs to be specified. If damages were awarded instead, probably no such specifying would be needed.

The complexities of specific performance were weighty and discouraging, but by themselves they did not suffice to induce the court to refuse specific performance. At the same time there were considerable advantages in making an award of damages.

In view of the decision in *Wilson v Northampton & Banbury Junction Railway Co* ((1874) 9 Ch App 279) damages would be not only a perfectly adequate remedy but also far more suitable. If the owners of the plots wanted to spend the money in having them replanted, then of course they could do so, but that expenditure would be of their own volition and not by order of the court. Thus, leaving aside the cases of part ownership, although the court could decree specific performance in the exercise of a proper judicial discretion, it ought not to do so.

In the absence of any clear authority on the matter, it should be considered as a matter of principle, and the same rules should be applied for the basis of damages as were applied to the breach of a contract to do work on the land of another, whether to build, repair, replant or anything else.

On the question of quantum of damages, his Lordship thought a further hearing would be necessary, unless the parties agree.

Solicitors: Davies, Brown & Co.; Freshfields; Treasury Solicitor.

## Island exiles seek justice

EVER HEARD of the Banabans? They are probably the most obscure and most exploited colonial people in the world.

Until last June, this title might well have been disputed by the people of Nauru. But the Nauruans' lot has improved, and the man who improved it for them—a Sydney economist named Ken Walker—is now preparing to do the same for the Banabans.

There are only 1,908 Banabans, and they used to live on Banaba, or Ocean Island—one of the two phosphate islands (the other is Nauru), about 1,300 miles north-east of Australia.

### Seized

They have had a hard time of it this century. First they were taken over by a phosphate company. In 1900 the British Government incredibly conferred upon this company "the exclusive right to occupy" Ocean Island, even though the island was not, and never had been, a British possession.

During World War II the Banabans were resettled by the Japanese on the island of Truk, and after the war they were moved again to their present home on the Fijian island of Rabi (pronounced Ramby). The British Government made them buy the island with their own money—£25,000 out of the Ocean Island Royalty Trust Fund.

The British Phosphate Commission, which extracts 350,000 tons of phosphate rock a year from Banaba, pays the Banabans of Rabi a royalty of only 2/8 a ton. Until last year, it was 1/9. The Gilbert and Ellice Islands colony—to which Banaba, minus the Banabans, is now attached—receives a royalty of 23/



MR KEN WALKER: Talks in Suva

per ton, but this is no help at all to the Banabans over in Fiji.

"In the eyes of Gilbert and Ellice, the Banabans don't exist any longer," said Mr Walker yesterday. "In the eyes of the Fijian Government they're a pretty small group of people trying to stir up trouble, and the Government has enough trouble of its own, thank you very much. You could say the Banabans are the odd men out in the Pacific."

Mr Walker, who spent three years in the United Nations Department of Economic and Social Affairs, now works for a market research organisation, Philip Shrapnel and Co. Pty. Ltd.

It was to this organisation that the Nauruans came last year when, for the first time, the Australian Department of Territories permitted them to seek advice on pressing their claim for higher phosphate royalties.

At that time the Nau-



Pacific Islands Monthly photo.

ROTAN TITO  
Cable to London

ruan royalty was only 3/8 a ton. The Department of Territories, acting on behalf of the British Phosphate Commission which mines Nauruan phosphate for the British, Australian and New Zealand Governments, had made a final offer to the Nauruans of 7/ a ton. They had turned it down.

Working from the prices

and quality of phosphates from Morocco, the United States and Tunisia, Mr Walker estimated that the true value per ton of Nauruan phosphate was not the £2/10/ charged by the B.P.C., but £6/4/.

### Doubled

To reach what he regarded as a proper royalty rate, he then subtracted cost of extraction, cost of administering Nauru, and 20 per cent on costs to cover profit. The result: a royalty of 68/ a ton.

Naturally the department did not accept this figure. Aware as it was, however, that Mr Walker's figures could very easily pop up in the U.N. Trusteeship Council, it more than doubled its "final offer" of 7/. Since July, the royalty has been 17/6 a ton.

The Nauruans were delighted, and the Banabans (royalty, 2/8) were most impressed.

Mr Walker conferred



this month in Suva with the chairman of Rabi Island Council, Rotan Tito, and at his suggestion the Banabans have cabled the Colonial Office asking for a conference. So far they have had no reply.

DATA is edited by

**GAVIN SOUTER**

Today's contributors: Helen Frizell, Tess van Sommers.

# Fertile ground

PLANT a pumpkin seed in the Ocean Island and a fortnight later the plant will be racing across the ground in the tropical sun, sprouting enormous full grown pumpkins by the day. But the prodigious fertility of the tiny pimple of an island, just six miles in circumference, has also been its curse. In the heady days of British colonialism in the Pacific Ocean traders discovered that the island was virtually rock solid phosphate, the product of endless centuries of bird droppings.

By 1900, when it became a British protectorate, the original Polynesian inhabitants, the Banabans, had been tricked into a series of trading agreements which gave them the latter day equivalents of trinkets in return for the destruction of their island. Five years after the 1919 agreement concluded with the British Phosphate Company, the Banabans were receiving just six old pence a ton in royalties.

The record of those deals was recounted earlier this year in the oak-panelled High Court in London in what has become the longest and perhaps most costly civil action ever fought. For 221 days, the lawyers for the Banabans, the British Government and the phosphate company argued over the virtual destruction of the island, and dredged up laws and judgments from the relics of Britain's colonial past.

After a protracted judgment, taking nearly five sitting days just to read, Mr Justice Megarry clearly agreed that the Ocean Islanders had been treated harshly. He said that the island itself had been badly damaged: "Admirers of modern sculpture would find much to admire there."

There had also been gross abuses by the colonial administrators: one of the worst had in fact been Sir Arthur Grimble, the celebrated novelist and broadcaster who had effectively run the island in the twenties. There had been "grave breaches" of the obligation to the islanders, Mr Justice Megarry said, and reading through the record would produce a sense of moral outrage. But because of the limitation on the court's powers, the judge rejected the Banabans' first action, a claim for lost royalties and compensation.

Yesterday at the conclusion of his 100,000 word judgment—one of the longest ever delivered in a British court—Sir Robert ruled in favour of the islanders in their second claim, granting them compensation for the replanting of trees on the island and regeneration of part of the destroyed areas.

The marathon dispute however is unlikely to end there. Appeals are being considered by both parties and there is still the question of an ex gratia payment from the Government to settle the matter once and for all. The judge during his ruling asked the Attorney General to consider the question of such a payment in the most direct terms but no decision is likely for some time.

In the meantime the Banabans will continue to live 1,000 miles from Ocean

Island, on the Fijian island of Rabi. After the Japanese invasion during the Pacific war the 3,000 Banabans were rounded up by the British and exiled to Rabi. There they have maintained a tight community, living in four villages and surviving through fishing, their royalties, and the goodwill of the Fijians. According to their emissary the Rev Tebuke Rotan, a 46-year-old Methodist minister, the Banabans will eventually return to Ocean Island, once the phosphate has run out (by 1980) and the reconstruction has finished. About 100 people still live there, along with the phosphate workers and a few Chinese traders.

Their desperate longing for a return to the island has always seemed odd to outsiders. There are, after all, hundreds of other tiny islands in the Pacific, many uninhabited and certainly now more pleasant than their ravaged homeland. "In Britain people do not appreciate that our culture, our way of life depends so much on having a homeland. We are ashamed to say we have no place. Our history, our life would be lost if we were to remain as exiles," Mr Rotan said in London during his daily vigil at the High Court.

The Banabans (who take their name from the old name for the island) are, like most Pacific communities, culturally and socially extremely cohesive—a product of generations of isolation. In the past they lived a totally cooperative life with possessions shared among the people.

The dispute itself has caused some friction with both Australia and New Zealand, the real beneficiaries of the cheap phosphate extracted from the island over the years. Australia and Britain established the British Phosphate Company with equal 42 per cent shares—New Zealand owns 16 per cent. But they both wanted to settle the matter long ago and for years have been perplexed at the British attitude.

At the same time, the original dispute has been complicated by the question of independence for Ocean Island and the Gilbert and Ellice Island group. The British Government has insisted that Ocean be part of the Gilbert Independent State when it is declared in 1978, to the chagrin of the Banabans. As part of this policy, the bulk of the royalties due to the Ocean Islanders have for years in fact been given to the Gilbert and Ellice Island administration — another source of bitterness.

In fact, the whole bizarre dispute would probably not have got to the stage it did had not neighbouring Nauru (165 miles from Ocean Island) gained independence a few years ago. By renegotiating phosphate contracts, the 5,000 Nauruans rapidly became one of the richest (if not the smallest) countries in the world. Indeed, they are now so prosperous, racing around their little island on Harley-Davidson motor bikes and Datsun sports cars, that they have begun buying up office blocks in Melbourne and lending money to other Pacific islanders. The example was not lost on the Banabans.

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4/12/76

# Banabans win a clear moral victory in court but little money

By Marcel Berlins  
Legal Correspondent

The Banabans have emerged from their mammoth legal action in the High Court with a clear moral victory but with only a small part of their financial claims satisfied.

Mr Justice Megarry, on the fifth and final day of his judgment in the two linked cases brought by the Banabans, or Ocean Islanders, awarded them damages to be assessed against the British Phosphate Commissioners (BPC) and the British Government.

The commissioners had failed to replant Ocean Island with food-bearing trees after finishing phosphate mining there. Since it would now be impossible to do this, however, damages were awarded instead.

The judge said that the damages should be neither nominal nor very large. Agreement between the islanders and the commissioners is likely to be reached at a figure of not less than Australian \$2m (about £1,200,000), but well short of the A\$10m which the Banabans are seeking.

The Banabans' big disappointment had come earlier in the judgment, when Mr Justice Megarry rejected their claim against the British Government for allegedly underpaid royalties of more than £21m.

The islanders had alleged that the BPC had been selling off the phosphate on Ocean Island at less than market value, and that, in effect, they had been taken advantage of and been the victims of an injustice.

Mr Justice Megarry appeared to agree with that and made some strongly critical comments about the behaviour of Crown representatives in their dealings with the islanders. For instance the Government had allowed a deal to be made between the BPC and the simple, commercially inexperienced islanders without offering them any advice or assistance. As a result, the Banabans obtained a disadvantageous royalties deal. That "could not possibly be called good government", the judge commented.

Nevertheless, and with some reluctance, the judge concluded that the Crown's obligation to the Banabans was not financial, but governmental, and was therefore not enforceable in the courts.

Points from the judgment will be published in the Law Report in *The Times* on Monday.

The Rev Tebuke Rotan, head of the islanders' council of leaders, said after the case that he was returning to his people weary and defeated, having

realized that it was an expensive misunderstanding to have taken the grievance to English law.

"We have failed in law because there is no English law to protect us from the exploitation we had suffered for a long time from the British Government", he said in a statement issued through his solicitors.

"Our defeat has caused a lot of confusion and sorrow both in our minds and hearts, but at the same time has enabled us to see and understand a true and correct conception of the British Government, British laws, British justice, and the British High Court of Justice".

He said his conception was that the British Government was in fact the law maker. "They do not make laws that could make their position weak in the English High Court of Justice. They have the power to change laws in order to strengthen their position in the English High Court."

Referring to Mr Justice Megarry as "distinguished, honest and straightforward" he added: "The judge has strongly condemned the British Government's failure to meet its obligations to protect its own subjects who are weak, helpless and too small to protect themselves from such exploitation."

The court action does not end the long-standing differences between the Banabans and the British Government. There is also a dispute concerning Banaba's constitutional future.

Since the last war, with Ocean Island uninhabitable because of the mining, the 2,500 Banabans have been living on the island of Rabi, near Fiji. Constitutionally, however, Ocean Island has been part of the Gilbert and Ellice Islands.

The Banabans have been unhappy with that relationship for a long time, partly because they claim that much of the colony's wealth comes from Ocean Island phosphate.

The dispute has come to a head this year with the break up of Gilbert and Ellice, and the imminent self-governing status of the Gilbert Islands on their own, with which, constitutionally, Ocean Island continues to be tied.

After protests by the Islanders, and discussions with the Foreign Office, special safeguards were provided for the Banabans in the Order in Council granting self-government to Gilbert, which is to come into effect on January 1. The Banabans do not believe that the safeguards meet their case and continue to fight.

# £3M likely for islanders

By CHRISTOPHER SWEENEY

The tiny Ocean Island community hope to receive up to £3 millions after the High Court ruling yesterday awarding it damages for the failure of the British Phosphate Commissioners to reclaim land devastated by mining development.

The vice-chancellor, Sir Robert Megarry, at the end of a four and a half day judgment, said that damages would be awarded after a later hearing as it would now prove impossible to replant fruit bearing trees on the South Sea island.

But he said the damages should neither be nominal nor very large and should be considered against the lessening value of the mined-out phosphate. The amount is to be decided after new submissions to the court early next year.

The ruling means the 3,100 islanders—known as Banabans—won the second of their

two High Court actions. On Wednesday the judge ruled that the court had no jurisdiction over their claim for £21 millions compensation from the British Government.

After the ruling the Banabans' leader, the Rev Tebuke Rotan, said he was returning to his people weary and defeated. He complained that the courts of law had failed to protect his people from the British Government. "Our defeat has caused a lot of confusion and sorrow in our hearts but it has enabled us to see and understand the true conception of the British Government, British laws and British justice."

In a statement issued through his solicitors Mr Rotan accused the Government of using the courts to strengthen its position and make it immune from natural justice.

Despite the disappointment the Banabans should get between £1.6 millions and £3 mil-

lions, say legal advisers. Mr John Macdonald, QC, outside the court described the rulings as a low award but a moral victory. They had originally claimed £7 millions for the reclamation of the island.

Both sides are considering an appeal. The rulings ended the longest and perhaps most expensive civil action in the High Court's history, with 226 sitting days. The costs are estimated at over £750,000, with the Banabans having to account for about £150,000 they collected in a special community fund to fight the Government.

The Banabans won their moral victory when the judge spoke in harsh terms of the injustices they had suffered over the years. Sir Robert said that the British colonial administrators had broken obligations to the islanders and in effect had cheated them of royalties and benefits

However, he has directed that the Attorney-General consider an ex gratia payment although no decision is likely for some time. In legal circles Sir Robert's direction is regarded as unprecedented although powers do exist for such a reference when a matter of this nature is outside the court's jurisdiction.

The colonial administrator who came in for the harshest criticism by the judge was the celebrated novelist and broadcaster, Sir Arthur Grimble, resident commissioner on Ocean Island in the 1920's. In 1928 Sir Arthur threatened the islanders in a letter that they would have their land taken away and their children left destitute unless they signed a phosphate contract giving minimal royalties. "It was impossible to read that letter without a sense of outrage," Sir Robert said.

THE ECONOMIST,  
December 4, 1976.

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BANABA - WRONG UNRIGHTED.

One of the nastier skeletons in Britain's colonial cupboards has come to light in the high court in London. Two actions were brought by the people of Banaba (Ocean Island), which since 1916 has been administered as part of the Gilbert Islands, and whose 1,500 acres have been devastated by the mining of its phosphate deposits, now within a few years of exhaustion. The Banabans have been living since 1945 on another Pacific Island 1,000 miles to the south in the Fiji group. In one of their two suits they asked for £21 million as extra royalties, claiming that their phosphate had long been sold at unduly low prices by the joint commission set up by the British, Australian and New Zealand Governments.

Mr. Justice Megarry ruled on Tuesday that the obligations of the crown in this matter were governmental ones, not fiduciary obligations enforceable in the courts. But he found that there had been "grave breaches of those obligations". He dwelt on two in particular. In the 1931 deal the phosphate royalty was, under an ordinance of 1928, left to be fixed by the British resident Commissioner, Mr. (Later Sir Arthur) Grimble, who in 1928 had threatened the islanders with punishment and destitution if they would not accept a royalty of 10½ old pence (4½p) per ton. In the 1947 negotiations the government failed to urge the Banabans to obtain expert advice and, in effect, prevented the official appointed to help them from doing so.

In such a case, Sir Robert Megarry added (in an unusual and perhaps unique passage in his judgment), "a judge ought to direct attention to what he considers to be a wrong that he cannot right, and leave it to the crown to do what is considered to be proper". It was virtually an invitation to the British government to make a substantial ex gratia payment to the Banabans to recompense them for some of the money they were bullied out of in the past.

OVERSEAS

# Ocean Islanders win moral victory in court but little money

By Marcel Berlins  
Legal Correspondent

The Banabans have emerged from their mammoth legal action in the High Court with a clear moral victory but with only a small part of their financial claims satisfied.

Mr Justice Megarry, on the fifth and final day of his judgment in the two linked cases brought by the Banabans, or Ocean Islanders, awarded them damages to be assessed against the British Phosphate Commissioners (BPC) and the British Government.

The commissioners had failed to replant Ocean Island with food-bearing trees after finishing phosphate mining there. Since it would now be impossible to do this, however, damages were awarded instead.

The judge said that the damages should be neither nominal nor very large. Agreement between the islanders and the commissioners is likely to be reached at a figure of not less than Australian \$2m (about £1,200,000), but well short of the A\$10m which the Banabans are seeking.

The Banabans' big disappointment had come earlier in the judgment, when Mr Justice Megarry rejected their claim against the British Government for allegedly underpaid royalties of more than £21m.

The islanders had alleged that the BPC had been selling off the phosphate on Ocean Island at less than market value, and that, in effect, they had been taken advantage of and been the victims of an injustice.

Mr Justice Megarry appeared to agree with that and made some strongly critical comments about the behaviour of Crown representatives in their dealings with the islanders. For instance the Government had allowed a deal to be made between the BPC and the simple, commercially inexperienced islanders without offering them any advice or assistance. As a result, the Banabans obtained a disadvantageous royalties deal. That "could not possibly be called good government", the judge commented.

Nevertheless, and with some reluctance, the judge concluded that the Crown's obligation to the Banabans was not financial, but governmental, and was therefore not enforceable in the courts.

Points from the judgment will be published in the Law Report in *The Times* on Monday.

The Rev Tebuke Rotan, head of the islanders' council of leaders, said after the case that he was returning to his people weary and defeated, having

realized that it was an expensive misunderstanding to have taken the grievance to English law.

"We have failed in law because there is no English law to protect us from the exploitation we had suffered for a long time from the British Government", he said in a statement issued through his solicitors.

"Our defeat has caused a lot of confusion and sorrow both in our minds and hearts, but at the same time has enabled us to see and understand a true and correct conception of the British Government, British laws, British justice, and the British High Court of Justice".

He said his conception was that the British Government was in fact the law maker. "They do not make laws that could make their position weak in the English High Court of Justice. They have the power to change laws in order to strengthen their position in the English High Court."

Referring to Mr Justice Megarry as "distinguished, honest and straightforward" he added: "The judge has strongly condemned the British Government's failure to meet its obligations to protect its own subjects who are weak, helpless and too small to protect themselves from such exploitation."

The court action does not end the long-standing differences between the Banabans and the British Government. There is also a dispute concerning Banaba's constitutional future.

Since the last war, with Ocean Island uninhabitable because of the mining, the 2,500 Banabans have been living on the island of Rabi, near Fiji. Constitutionally, however, Ocean Island has been part of the Gilbert and Ellice Islands.

The Banabans have been unhappy with that relationship for a long time, partly because they claim that much of the colony's wealth comes from Ocean Island phosphate.

The dispute has come to a head this year with the break up of Gilbert and Ellice, and the imminent self-governing status of the Gilbert Islands on their own, with which, constitutionally, Ocean Island continues to be tied.

After protests by the Islanders, and discussions with the Foreign Office, special safeguards were provided for the Banabans in the Order in Council granting self-government to Gilbert, which is to come into effect on January 1. The Banabans do not believe that the safeguards meet their case and continue to fight.

# RABI LOSES FIRST ROUND

*Fiji Times  
December 2nd*

LONDON. — The Banabans yesterday lost the first part of their suit against the British Government and British Phosphate Commissioners (BPC) over devastation of their homeland by mining.

The Banabans, former inhabitants of Ocean Island in the Pacific, had asked for 21 million sterling (about \$30 million) extra mining royalties.

They accused the British Crown of failing to see they received proper payment for the exploitation from phosphate mining of the island between 1900 and 1973, and demanded a fairer share of the profits.

But Judge Robert Megarry, giving judgment during Britain's longest and costliest court case, ruled that the Crown had no financial duty towards the Banabans.

The Crown's obligation was govern-

## Court has no powers

mental and although there had been grave breaches of that obligation, the court was powerless to do anything about it. Such obligations were not enforceable in the courts, he said.

But the judge added: "Justice is not confined to what is enforceable in the courts.

"I shall accordingly leave the Attorney-General to make such communications to other persons concerned as he considers proper."

Judge Megarry has 2½ more days to rule on the second part of the case.

Earlier yesterday, a Banaban leader, the Rev. Tebuke Rotan, listened in court as the judge told how in

1965 he led a potential murder squad of islanders bent on ridding themselves of their British adviser, a Mr Laxton, and his Banaban followers.

The judge said they had planned to burn Mr Laxton's house and put him on the seashore to wait for the British Government to pick him up.

The plan, said the judge, was for the wholesale murder of fellow countrymen with different political, economic or social views in order to prevent the minority becoming the majority.

Only the prompt action of a Fiji district officer prevented any actual uprising.

Judge Megarry added: "A feeling of desperation, however exaggerated, may explain though not justify some of the excesses in their actions."

— AAP-Reuters.



# Banabans give to library

*Fiji Times*

*22/10/76.*

The Banaban community has given \$500 to the Fiji High Commission in London to set up a library there for South Pacific publications.

The Banaban representative in London, the Rev Tebuke Rotan, gave the money to the Prime Minister, Ratu Sir Kamisese Mara, on Saturday during his stopover in London on his way to Brussels.

Ratu Sir Kamisese and Adi Lady Lala left for Brussels on Sunday for four days of ACP European Economic Community talks.

*Fiji Times - September 13th*

# The Fiji Times

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## EDITORIAL COMMENT

### Independence for Banaba?

NOW, many people must be getting bored with news of the Banabans and their claims for the independence of Ocean Island and all the revenue, which they now share with the Gilbert Islands, earned by their island's phosphate.

But the Banabans do genuinely have much to be indignant about and their case is being treated seriously by a London high court.

They have a good chance of winning an action which could bring them \$20 million or more in damages for what mining has done to their island.

They are less likely, judging by a Gilbert Islands Government statement last week, to get Ocean Island separated from the 16 other islands of the Gilbert group.

Good luck to them in their claim for damages. But in saying they should also get sovereignty over Ocean Island, plus some sort of dual Fiji Banaban nationality, they may be pressing their claim too far.

The Banabans accepted Fiji citizenship unconditionally in 1970, so why should they expect privileges of dual nationality which no other citizen of this country is allowed?

And really, how many Banabans care about what happens to the minute, remote and desolate bit of rock that some call home once no more phosphate money is to be dug from it?

Many young Banabans have never seen the island, but from what they have heard they are probably secretly horrified at the thought of living there permanently.

The Ocean Island row is already causing bad feeling between Fiji and the Gilberts.

If the Banabans have a case, so do the Gilberts.

Good neighbour policy demands that Fiji should recognise and treat the peculiar social and economic problems faced by the Gilberts with great sympathy.

When all is said and done the Banabans are secure on Rabi and have phosphate millions in the bank, with the prospect of more to come.

Would it be too much to ask them to be thankful with what they have got and, acting as Fiji Islanders, help preserve friendship between two countries by forgetting the idea of a Banaban state?

# Islanders' £21M claim for royalties rejected

By CHRISTOPHER SWEENEY

The tiny Ocean Island community which sued the British Government over the destruction of their homeland by phosphate mining yesterday lost their £21 million claim for extra royalties.

In the High Court, the Vice-Chancellor, Sir Robert Megarry, ruled that the crown had no financial obligations to the 3,100 Banabans who formerly occupied the 1,500 acre island in the Pacific. But he made a thinly veiled appeal to the British Government for some recompense for the islanders who brought the case, the longest civil action in High Court history.

In his judgment Sir Robert said that because of the legal position of the courts in relation to the Crown he was pow-

erless to do anything over the claim. But he said that in litigation in which the Attorney-General was a party a judge ought to direct attention to what he considered to be a wrong that he could not right. "I shall accordingly leave the Attorney-General to make such communications to other persons concerned as he considers proper."

Sir Robert said that the islanders had reached a high level of excitement over the claim, as shown by evidence about a plot to murder a Banaban in Fiji who was in dispute over the lawsuit with the rest of the community.

In his judgment Sir Robert ruled that the Crown's obligation over the phosphate dispute was governmental and such an obligation was not enforceable

by the court. He strongly criticised the former administrators of the colony, observing that there had been "grave breaches" of the crown's obligation to the islanders.

The 100,000 word judgment is expected to conclude on Friday, when a ruling will be given on the second of the Banabans' claims which would require the British Government and the British phosphate commissioners to provide compensation to make the island habitable again, with reforestation and soil regeneration.

The ruling yesterday will be a bitter blow to the islanders, who raised £700,000 to pay the costs of the case. They have been in dispute with the British Government since the 1920s and regarded the High Court case as their "last hope."

## BANABANS

# Objections to Gilbert Is. self rule

SUVA, Sunday (AAP). — Banaban leaders in Fiji have objected to an agreement on self-government for the Gilbert Islands made with Britain in London last week.

The Banabans vowed to continue fighting for the independence of their homeland, Ocean Island, which is part of the Gilberts.

The Banabans moved to Rambi Island in Fiji when much of Ocean Island became uninhabitable because of phosphate mining.

A spokesman for the Banabans, Mr Thomas Teai, said the haste with which the London agreement was pushed through suggested that the parties wanted to get the talks over before there could be any public reaction to the petition the Banabans presented on Wednesday to the British High Commissioner to Fiji in Suva.

The petition, delivered

at the end of a protest march of more than 100 Banabans and 1,500 supporters, protested against the exclusion of the Banabans from the talks in London and repeated the demand for Ocean Island's separation from the Gilbert Islands so it can become an independent State in association with Fiji.

Mr Teai said it appeared the petition had been disregarded.

LONDON, Sunday (AAP-Reuters). — Representatives of Britain, the Gilbert Islands and the Banabans signed an agreement on Friday for phosphate mining of a further 40.5 hectares of Ocean Island, the Foreign Office announced.

Under the agreement, which will reflect higher prices for phosphate, 50 per cent of the royalties will go the Gilbert Islands group and the other 50 per cent to the Banabans.

*Cont. Times  
19.7.76*

## Diplomats' 55,152 parking offences

LONDON, Sunday (AAP). — Labour MP Mr Greville Janner has asked the Foreign Secretary, Mr Crosland, to protest to the six embassies whose diplomats between them had 55,152 parking offences in the past five years.

Top in each year was the staff of the Nigerian High Commission, who claimed diplomatic immunity for 15,052 parking offences representing the equivalent of \$A59,247 in unpaid fines.

Next on the list was the Cuban Embassy with 10,627 offences (\$A41,348); Saudi Arabia, 9,003 offences (\$A32,369); Iran, 8,810 offences (\$A33,719); Egypt 8,449 offences (\$A32,921); and sixth was Cyprus with 3,211 offences (\$A32,754).

Mr Janner said, "The batting list of diplomatic dishonour is headed by the same discourteous guests to this country year after disgraceful year".

# Judge set for record

A HIGH Court judge will become a record-breaker next week by delivering the longest-ever judgment in the history of English civil law.

From Monday, the Vice-Chancellor Mr Justice Megarry, is expected to take four-and-a-half days to give his quarter-of-a-million-word decision in an action that took 221 workings days to hear—also a record—and cost more than £750,000.

The case concerns Ocean Island, a tiny island in the South Seas, which, at the turn of the century, was found to be one huge deposit of phosphate.



**MR JUSTICE MEGARRY**  
quarter of a million words.

The island, then the home of the Banaban people, became ravaged by mining.

THE TIMES 30/7/76

No reply made  
in

# Banabans put independence demand to UK

The Banabans now want independence for Ocean Island before the end of October, or the island's exclusion from an order-in-council which will make the Gilbert Islands internally self-governing from November 1.

These demands were made known yesterday by the secretary of the Rabi Council of Leaders, Mr Thomas Teai.

He said that since demonstrations in Fiji of support of the Banaban case, the British Government had repeatedly stated their interests would be fully taken into account.

A statement from the British High Commission in Suva had claimed that a constitution giving the Gilberts self-government would safeguard British undertakings to the Banabans or the future of their island.

Mr Teai said this British statement had added that the safeguards in questions would be in accordance with an offer by the Chief Minister of the Gilberts last year.

This offer had been rejected by the Banabans, since it was prefaced by the totally unacceptable conditions that they should abandon their claims for Ocean Island's independence.

All it offered was total Gilbertese domination of the island.

## KEEP QUIET

Mr Teai accused Britain and the Gilberts of trying to fob off the Banabans with "assurances" hoping to keep them quiet until the introduction of internal self-government had vested the Gilberts with full control over the island.

The Gilberts would remain under full British control until November 1, so that until then the political future of the

Gilberts and Ocean Island was an internal matter for Britain.

After November 1 this position would change radically.

## EXCLUDED

"We, therefore, insist that before the end of October this year the Banaban people's petition to the British Government for their independence on Ocean Island should be granted unequivocally," Mr Teai said.

"Alternatively the so-called 'district' of Ocean Island as a juridical part of the Gilberts Colony must be specifically excluded from the Order in Council providing for the internal self-government of the Gilberts — pending a final answer from London to our independence petition."

*Fiji Times 25/8/76*

# Banaban talks are 'useful'

Talks on the Banaban question, between the Prime Minister of Fiji, Ratu Sir Kamisese Mara, and the Minister of State in the British Foreign and Commonwealth Office, Lord Goronwy-Roberts, ended in Wellington yesterday.

But a spokesman for the British High Commission in Wellington said: "Further talks will be held at a later date at a place yet to be determined."

He said the talks were "useful" and the atmosphere had been "friendly."

A Fiji Government spokesman said a definitive statement on the talks could not be made at this stage.

The 3000 Banabans are seeking independence for the homeland, Ocean Island, and compensation for the phosphate rock removed from it.

Fiji Times  
(19) 7/76.

# Agreement signed on phosphate mining at Ocean Is.

LONDON. — Representatives of Britain, the Gilbert Islands and the Banabans signed an agreement here yesterday for phosphate mining of another 100 acres of the tiny British Ocean Island in the South Pacific, the Foreign Office announced.

British officials said that under the new agreement, which will reflect higher prices for phosphate, 50 per cent of the royalties will go to the Gilbert Islands group and the other 50 per cent to the Banabans.

But they declined to give details of the additional amount of phosphate to be extracted or its value.

## 16 ISLANDS

Britain last week announced it planned to give internal self-government to its Gilbert Islands colony on November 1 of this year.

The Gilbert group consists of 16 islands with a population of about 54,000. The colony has been under British control for about 100 years.

The Banabans, who total about 2000, used to live on Ocean Island. They now live on Rabi Island in Fiji and want their former homeland to be separated from the Gilbert group so that it can become a separate state associated with Fiji.

— AAP-Reuter.



*Fiji Times - September 25<sup>th</sup>*

# UK rejects Rabi claim

A claim that Britain had "broken off relations" with the Banabans was denied by the British High Commission in Suva yesterday.

## CONTACTS WITH BANABANS 'NOT BROKEN OFF'

Banaban representatives in Fiji and London were still in touch with the Foreign and Commonwealth Office so that the Rabi Council could be assured internal self-government for the Gilberts would not adversely affect Banaban interests, a High Commission spokesman said.

### DURESS

Yesterday the Banabans said Britain was refusing to discuss the future of Ocean Island with them until they got Fiji trades unions to promise they would not reimpose a ban on air travel to the Gilberts.

A Banaban statement said the British "ultimatum" was rejected because it

infringed the right of unions to "exercise their own judgment on political developments of concern to the Pacific."

The High Commission spokesman said the Rabi council had merely been asked to indicate that it would not ask trades unions to reimpose the ban and would not support a reimposition.

"Otherwise the minister could be regarded as negotiating under duress," the spokesman said.

According to the Banaban statement, when he arrived in London to see the Secretary of State at the Foreign and Commonwealth

Office, Lord Goronwy-Roberts, the Banaban delegate Rev Tebuke Rotan, was told the minister would not see him until the air ban condition was met.

### INTERRUPTED

Unions affiliated to the Fiji Council of Trade Unions recently interrupted air services to the Gilberts by getting airport members to refuse to handle planes bound for the territory.

Later the ban was lifted, but the unions said they might reimpose it as another sign of sympathy for the Banaban claim for the separation of Ocean Island from Gilbertese administration.

# Britain to talk to Banabans

FISI TIMES  
6/10/76.

LONDON. — Britain has withdrawn an earlier refusal to meet a representative of the Banabans in London soon, a Foreign Office spokesman said here yesterday.

The 3000 Banabans, who used to live on Ocean Island in the Pacific want their former homeland, rich in phosphate, to be separated from the Gilbert Islands so that it can become a separate state associated with Fiji.

The Banabans' representative here, the Reverend Tebuke

Rotan, said last month that Lord Goronwy-Roberts, a Foreign Office Minister of State, had told him he would not meet him until the Banaban Council had formerly asked the Fiji trade unions not to impose another go-slow on planes bound for the Gilbert Islands — in sympathy with the Banaban cause.

The ban was imposed in mid-July and lifted about a month later.

The British spokesman said that during the past fortnight

the Banaban Council of Leaders had told the Foreign Office here that it did not ask for the ban on communications and would be unlikely to think it right to do so in the future.

Consequently, Lord Goronwy-Roberts was informing Mr Rotan here that he would be prepared to see him on the basis of this assurance, the spokesman added.

No date for a meeting has yet been fixed.

— AAP-Reuters.

Fiji Times 4/10/76.

# Britain still refusing to talk, say Banabans

**British Minister for State Lord Goronwy-Roberts is still refusing to negotiate with Banaban representatives in London on the future of Ocean Island, according to Banaban leaders.**

The deadlock was first reported a week ago and Banaban leaders in Suva received confirmation of the situation at the end of last week.

The Banabans said Lord Goronwy-Roberts, Minister of State at the Foreign and Commonwealth Office, was refusing to see their representative, the Rev. Tebuke Rotan, unless they obtained an assurance from Fiji trade unionists that they would not reimpose a ban on air traffic to the Gilbert Islands.

The British High Commissioner in Fiji, Mr Stanley Arthur, disputed the statement.

He said that all the Banabans had been asked for was an

assurance that they would not ask the unions to reintroduce the ban and would not support its reimposition.

According to the latest message from the Rev. Tebuke Rotan to the Rabi Council of Leaders in Suva, a letter from Lord Goronwy-Roberts' office said Britain was anxious to continue discussions on Ocean Island but could not negotiate under duress, or the threat of duress.

## 2 MEETINGS

Mr Tebuke had replied that the Banabans were not responsible for anything the Fiji trades unions had done in the past or might do in future.

The Banaban people were not applying duress nor

threatening to do so.

There had been two meetings during the Fiji Council of Trade Unions ban, but at neither time did Lord Goronwy-Roberts suggest he considered he was under duress.

The FCTU lifted the ban in August, but when Mr Tebuke arrived in London later his request to see Lord Goronwy-Roberts was refused.

"I cannot accept that if he did not consider himself under duress from the Banaban people in July when the FCTU ban was in force it can be claimed with any credibility that he is under duress today with the ban lifted," Mr Tebuke said.

# No family matter

2111 TIMES  
22/10/76

Sir, — I do not wish Mr Otiuea Tanentoa would stop referring to the Banabans' dispute with the Gilberts as a family matter.

The relationship, in the sense that he is so persistently trying to establish, does not exist.

And the truth concerning the \$A1,300,000 of Banaban money that his Government used for its own purposes is as I stated in my previous letter. The initiative that led to the Gilberts Government grudgingly agreeing to repay it (in instalments) came from an approach to the Foreign and Commonwealth Office after we had realised how much we had overpaid.

Britain referred the matter to the Gilberts, resulting in an invitation to us to go to Tarawa for talks that included not only the money but several other matters relating to the Ocean Island phosphate industry. —  
THOMAS TEAI, Rabi Council  
of Leaders.

# Correct figure

SIX TIMES  
4/10/76

Sir, — Thank you very much for the space you gave my letter in your issue of Thursday.

Because of a typing error in this office the figure \$A1300 appeared in print, whereas the correct figure is \$A1,300,000.

We would very much like your readers to know that it was not that comparatively small sum of \$A1300 that the Gilberts had omitted to tell us that we had overpaid but the very considerable one of \$A1,300,000. — T. TEAI, Secretary, Rabi Council of Leaders.

# Banaban claims

Sir, — If, by "a family matter," Mr Bwebwetake Arieta (Letters, November 1) simply means that there has been intermarriage between Gilbertese and Banabans I have no wish to challenge him. But if he means that we are all Gilbertese then challenge him I do.

In that sense, our claim for independence for Banaba is not a family matter.

Intermarriage is not disputed. Gilbertese men, brought to Banaba as phosphate labourers, married Banaban women.

The British, to solve what they referred to officially as "the Banaban problem," devised a deliberate policy of encouraging marriages between Gilbertese and Banabans.

Their intention, as

nobody would have to bother about finding another island for us. So Mr Arieta should not try to make political capital out of such mixed marriages.

Certainly we can give Mr Arieta a list of Banaban families in Rabi who have no family connection with the Gilberts. The most notable person to come to mind in that respect is our council chairman.

So far as our over-payment of \$1,300,000 Australian is concerned I can say that if the Gilberts Government did write to us about it, as Mr Arieta claims, they must have forgotten to post the letter.

Our first knowledge of the over-payment came through our own economic advisers. There was an awkward silence by the Gilbertese when we brought the matter up at a meeting in Tarawa, a meeting called primarily to discuss other phosphate matters, not the over-payment. — T. TEAL, Secretary, Rabi Council of Leaders.

Fiji Times 1/11/76

As to the payment by the Gilbert Islands of \$1,300,000 to the Rabi Council, Mr Teai's idea of the truth bears little resemblance to the facts.

In terms of an agreement freely entered into by the Rabi Council this money was neither due nor payable until phosphate mining on Ocean Island was completed.

However, it came to my Government's notice that the Rabi Council was in financial difficulties and on our own initiative we wrote to the Rabi Council asking if we could help by bringing forward these payments.

While we did not receive the courtesy of a reply we subsequently heard through the British Government that the Rabi Council would like a meeting on the matter and we readily agreed.

In our present economic circumstances it has not been easy for us to bring forward the payment of \$1,300,000 and for all the thanks we get from Mr Teai one cannot help but wonder whether our sympathy was not misplaced. — BWEBWETAKE AREIETA, Minister for Communications, Works and Utilities, Gilbert Islands Government.

## Ocean Is royalties

Sir — Mr Teai's letter (Fiji Times, October 22) has been brought to my attention while attending the South Pacific Conference in Noumea and I should be grateful for the opportunity to reply.

It is correct that we regard the dispute with the Banabans as a family matter and one which should be resolved between ourselves. If Mr Teai denies the family relationship perhaps he could list those Banaban families who are without relatives in the other Gilbert Islands.

(file) 5/15 ✓

# Islanders sue Govt for \$12m

From a Staff  
Correspondent

LONDON, Friday. — A group of former residents of Ocean Island, in the Pacific, began legal action in London this week against the British Government and a consortium of the British, Australian and New Zealand Governments, claiming more than £7-million (\$A12,390,000) in phosphate royalties.

They also wanted unspecified damages for damage to their island. The case began in the High Court with the islanders demanding production of Crown documents, and the Crown claiming Crown privilege on them.

Mr John MacDonald, for the islanders, told Mr Justice Walton in the High Court on Tuesday that in 1902, King Edward VII granted a 98-year concession to a company to remove phosphate on payment of a royalty, then sixpence a ton.

From 1920, the phosphate had been removed by the British Phosphate Commission, a consortium of the British, Australian and New Zealand Governments which took over the mining rights from the company.

Mr MacDonald said the islanders allege that, between 1920 and 1966,

the commission sold phosphate in Australia and New Zealand at well below the world price, to the detriment of the royalties fund which was for the benefit of the islanders.

The islanders, known as Banabans, were removed from the island by the Japanese in 1942.

After the war they were resettled on Rabi, near Fiji, which the British Colonial Office bought from Lever Brothers for £25,000, paid out of the Banaban Provident Fund.

In 1947, the islanders voted to stay on Rabi, about 1,600 miles from their home, on condition they retained the rights to Ocean Island and phosphate royalties.

The islanders are being led in their action by Mr Rotan Tito, 74, a big landowner on Ocean Island and chairman of the Council of Leaders of the Banabans on Rabi Island.

The action, in which the islanders want the Crown to restore the island or to compensate them, is expected to start in the High Court in April.

The islanders' barrister's office says there are separate suits against the British Government, representing the Crown, and the British Phosphates Commission, but they are all interwoven.





X-X This is rubbish: the Forum declined to discuss it, tho' I mean raised it, saying it was an internal Paco matter.  
A-A is simply inaccurate + rubbish. Bm

NAURU. — The seventh South Pacific Forum ended here apparently unanimous about the need for nations in the region to remain closely linked.

The Nauru forum was described by Fiji's Prime Minister, Ratu Sir Kamiseve Mara, as "quietly and efficiently organised."

It was, he said, significant that this was the first Forum in which Spec (The South Pacific Bureau for Economic Co-operation) had acted as the Forum secretariat.

#### TRAINING

Ratu Sir Kamiseve said Fiji's of a regional fisheries agency had been taken up by the forum and Fiji had also been able to confirm the establishment of a telecommunications training centre in Suva which would be administered by his Government for the benefit of the whole region.

The Prime Minister said he

# Pacific nations agree on need for close ties

was particularly pleased that he had been able to raise the Banaban question in the Forum during discussion on general business.

The delegate from the Gilbert Islands which administer Ocean Island, had been against the subject being raised.

The Banaban question had only been barely discussed by the Forum but the fact that it had been raised at all had prompted a cable from the British Government confirming that the Banaban people would not "be left on the lurch" regarding their moves towards independence.

This was a "very significant step forward," Ratu Sir Kamiseve said.

The Prime Minister said he was pleased the Pacific Forum line had at last been given the go ahead.

The decision would provoke new interest and enthusiasm for the project.

But the question of regional rationalisation of civil aviation again failed to make any progress.

The matter had now been turned over the Council of Ministers to examine further.

This was unlikely to advance the matter very far, he said.

"It looks to me that it's going to wither on the branch," he said.

"There are no new ideas."

#### SUVA NEXT

"Nothing has given me hope that regional civil aviation will become a going concern."

While the next formal forum meeting will be held in Papua New Guinea next August, the Forum will meet again in Suva in October, specifically to discuss fishing and the establishment on a regional basis of 200 mile off shore economic zones.

This follows the United Nations Law of the Sea Conference in New York starting next week.

— AAF

# Exiled islanders fight for a barren home

**A**FTER the longest and costliest court case in British legal history, a High Court judge is pondering a decision that could end 30 years of exile for a remote race of Pacific Ocean islanders.

Senior Judge Sir Robert Megarry is sitting in his office wading through the millions of words of evidence taken over 221 days of this marathon hearing that has cost an estimated \$1 million in legal fees alone.

Meanwhile on the tropical Fijian island of Rabi — a day's trip by sailing canoe from Suva — 2000 islanders wait for the word that could make them \$30 million richer, and return them to their homeland.

Tito and others versus Waddell and others — as the case has been discreetly billed on the High Court notice-board — has been one of the most complex and colorful in the recent history of this stuffy and tradition-bound jurisdiction.

"Tito and others" are the 2000 former inhabitants of Ocean Island, a barren coral island 2000 miles off the north Queensland coast in the British-owned Gilbert and Ellice group.

"Waddell and others" are the British Phosphate Commissioners — representatives of the British, Australian and New Zealand Governments — who since 1920 have been exploiting the island's only asset: its gigantic deposits of bird-droppings, guano, phosphate.

Since 1900, when a young geologist analysed a rock used as a doorstep in a Melbourne office as near-pure phosphate and went looking for its source, BPC and the private company that preceded it have ripped millions of tons of the stuff from the island.

Leaving the place — according to islanders who bought their first suits and made their first overseas trips to London for the court case — looking like a rotten tooth from which the filling has dropped.

In 1967 the Banabans (that's the name of the Ocean Islanders) decided they had had enough,

and came to London to pursue their claim in court.

Said the Times: "Everyone is so excited on Rabi that work will practically stop until the return of Mr. Tito."

Hopefully that was an exaggeration. It's now nine years since the first legal steps were taken, and Sir Robert Megarry is not expected to give his decision for four or five months. Appeals against this could drag a final settlement into the 1980s.

The Banabans are basically claiming that the British Phosphate Commissioners cheated them out of about \$30 million in royalties and failed to honor an obligation in an agreement (signed by the Banabans with a series of crosses) to restore the island after mining.

The Banabans are led by 75-year-old Rotan Tito, and his son, Tebuke Rotan, a Methodist minister who learned English especially to prosecute the case. They now live in exile with most of the other Banabans on Rabi Island, 1600 miles away from Ocean Island.

Ocean Island, 1500 acres of scrub, coconut farm and native villages, was virtually taken away from the Banabans in one of the last swashbuckling acts of exploitation by the British Raj.

In 1900 the largely illiterate islanders were persuaded to sign away their phosphate for £50 a year. King Edward VII gave the British Pacific island his blessing (for a royalty of sixpence a ton) and claimed the island as a colony.

About 1920 the three Governments (Britain, Australia and New Zealand) set up the British Phosphate Commissioners and bought the mining rights for £3.5



Our roving correspondent **BEN HILLS** reports from London on a court case that could give back a home to a race of Pacific islanders.

million. There were ugly whispers of corruption at the time.

No precise figures have been produced on the millions of tons of phosphate which have been gouged out of the island, or the tens of millions of dollars it was worth.

Britain largely used its whack to finance the colonial government of the Gilbert and Ellice Islands. Australia and New Zealand handed it on as dirt-cheap phosphate for their farmers.

The excavations, which have become increasingly sophisticated, using bucket dredges, a crushing plant, and a conveyor-belt ship-loading system, have turned a third of the island into a lunar wasteland, with pinnacles of coral and 60-ft. deep craters.

The Banabans have not been there to see the devastation. The Japanese occupied the island during the war (no one really knows why . . . they never mined the phosphate) and immediately deported all the Banabans.

When Brigadier J. R. Stevenson arrived on the Australian frigate *Diamantina* in 1945 to accept the surrender of the Japanese he was surprised to find the Banabans gone, and the only inhabitants the 513 Japanese.

After the Banabans had been located on other islands, the British Government took £25,000 from the Banaban trust fund and bought them another island. They bought Rabi from the soap empire Lever Brothers.

The phosphate mining continued (the royalties eventually reached the staggering figure of 20 cents a ton) with a work-force brought over from the Gilbert islands. The Banabans voted to stay on Rabi . . . but retained the right to return home at some stage.

The point is — what have they got to go home to when the phosphate deposits are worked out, probably by 1978? Just a hole in the ground, and a few million in the bank (royalties under a vastly better deal negotiated in 1973 will be about \$3 million this year).

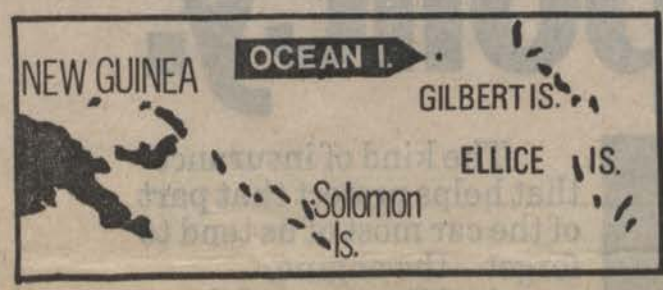
Ocean Island is not exactly your south seas jewel. There's no fresh water (there was, but mining operations have smashed the underground water caves), no port, and nothing much growing. Most of the coconut trees—the island's staple foodcrop—have been bulldozed.

The Banabans have great plans to restore the place, set up a desalination plant, import ship-loads of top-soil, establish a fishing industry. But to do this they need big money . . . and that's what the court case is all about.

A sidelight of all this is that Ocean Island has been incorporated in the Gilbert Islands colony, which is expected to become independent later this year. If the Banabans win their case, the Gilbertese will lose about half their national wealth at a stroke.

The Banabans say that's tough. If they win they intend to declare separate nationhood (and since only a few hundred Banabans would return it would have to be the smallest independent country in the world) and to seek an association with Fiji.

These are the issues the judge, who, along with assorted lawyers, experts and a BBC television team spent several days rambling over the island, is weighing up, while the Banabans continue their 30-year wait.



# 'SUCCESS' FOR BANABAN TRIP

**A trip to foster goodwill and create a deeper understanding between the Banabans in Fiji and the Gilbert and Ellice islanders on Ocean Island was a great success, according to the leader of the expedition, Mr Tekoti Rotan.**

The group of 83 which left for the island earlier this month, consisted mainly of the Banaban dancing group.

Mr Rotan told the Fiji Times: "I strongly feel that the whole purpose of our recent trip has been achieved.

"This was clearly shown by the support and help we had from the people we visited and the fact that people were demanding more at the end of each performance."

## BIRTHDAY

Mr Rotan said the group stayed on Ocean Island for four days, and visited Nauru and then Tarawa at the invitation of the Gilbert and Ellice Islands Colony.

On Ocean Island, island groups working with the British Phosphate Commission came to welcome them, he said.

Mr Rotan said that during their stay at Nauru, the group

gave three performances and was invited to a party, at Nauru's State House by President Hammer DeRoburt, to celebrate the 22nd birthday of the president's daughter, Miss Jeanette DeRoburt.

"President DeRoburt, in a short speech, assured us of his support for our cause and the case we are now fighting in Great Britain," Mr Rotan said.

Miss DeRoburt then gave the group \$1000 as a token of her gratitude, he said.

On their arrival at Tarawa on board a chartered aircraft from Nauru, the group was welcomed by elders from the chiefly village of Eita.

## PROBLEMS

Mr Rotan said that on their arrival on Ocean Island, he contacted the group which went on the first trip last month and discussed with them some of their problems on the island.

He said members of the group were happy on the island, except for some minor problems such as lack of water.

Police surveillance on the island was less strict and the administrator was very helpful, he said.

Mr Rotan said the manager of the BPC on Ocean Island, Mr Edgar Chapman, had promised the group building materials for permanent houses.

"This is a great help because, we do not have to buy building materials and tents from

Australia as a result of this generous offer," Mr Rotan said.

Mr Rotan said, because there was only one water tanker to serve the whole community, the Banaban group had to wait their turn for water.

He said that the Rabi Council of Leaders will buy a 200 gallon tank for the groups water storage.

Mr Rotan said that the two British Parliamentarians who inspected the island, Sir Bernard Braine (Conservative) and Mr John Lee (Labour), told him that they were satisfied with what they saw and said that they could not make any official comments before they reported their findings to their own Government.

Asked about the three men allegedly deported from Ocean Island, Mr Rotan denied a news report that the men were deported.

"As far as I know, the men were sent back to Fiji on the advice of the Banaban elders who were with the group on the island and their decision had nothing to do with the police or the administrators," he said.

These men who were members of the first group, were sent back because their behaviour on the island was not satisfactory to the elders, who were there to advise the men and to see that they did not get into mischief.

They got roaring drunk and entered BPC houses.

# Governor Gave an Ultimatum

NZPA-Reuter

London

The British governor of Ocean Island dangled the choice of life and death before villagers in 1928 to obtain favourable phosphate mining rights for a big consortium, the High Court was told.

Judge Robert Megarry gave details of the governor's choice on the first day of his expected four-day judgment in the case of the islanders, the Banabans, who have sued the British Gov-

ernment and the British Phosphate Commissioners for £22 million in compensation.

The Banabans were moved from their home 30 years ago to Rabi Island, 2400 kilometres away, to allow the British-Australian-New Zealand phosphate consortium to exploit the phosphate resources.

After the longest and costliest court case in Britain — it lasted 221 days and cost £750,000 — Judge Megarry

said a letter written to villagers by the resident commissioner, Sir Arthur Grimble, could not be read "without a sense of outrage."

The letter told the islanders their refusal to accept an offer of 10.5 pence per ton of phosphate had "shamed the important chief" (King George V). It then put to them "points of life and death."

Sir Arthur said if they signed the agreement they

would have life and their "shaming of the important chief will be forgiven and you will not be punished."

The "points of death" were that if they did not sign, the land would be compulsorily acquired and there would be no agreement about the area of land to be taken. Mining would be indiscriminate and their children and grandchildren would have "no land, no money."

The judgment continues today.

# Banabans hope to salvage \$2 mill

*From CHRIS MILNE in London*

The former inhabitants of Ocean Island hope to salvage about \$2 million from their massive and marathon compensation claim which ended in the High Court on Friday.

Mr Justice Megarry, who rejected the islanders' claim of about \$35 million against the British Government earlier this week, awarded them damages against the British Phosphate Commissioners (BPC).

He did not set a figure but said damages should be

neither nominal nor very large.

A short hearing on the amount of damages will be held next month.

The islanders had claimed \$10 million from the phosphate commissioners, their estimate of the cost of re-establishing about 250 acres of coconut trees on Ocean Island.

However, one of their lawyers, Mr John McDonald, said yesterday damages might amount to only \$2 million.

The islanders won a "moral victory" but no money in their main claim for about \$35 million from the British Government.

## APPEAL

Mr Justice Megarry said there had been "grave breaches" of the Crown's obligations in dealings with the Banabans over mining rights and royalties for phosphate on Ocean Island.

The court was powerless to act, he said.

But he made what amounted to an appeal to the Government to make compensation to the Banabans.

For the past 30 years the islanders have been living on Rabi Island in Fiji.

They had hoped the High Court claim would succeed and enable them to develop Rabi and to return to Ocean Island to re-establish a community.

Mr McDonald said they still hoped to return a small group to the island.

Phosphate mining was expected to end in 1980, and stockpiles would be cleared by the following year.

The Banabans hoped to have a small fishing community on the island and to do some replanting.



# OCEAN ISLAND

## - SOME FACTS THE BANABANS IGNORE

Issued on behalf of the Government of  
the Gilbert Islands

Before the July meeting of the South Pacific Forum, the Rabi Council of Leaders circulated a paper entitled 'Set Our People Free. The case against Britain and the Gilberts perpetuating colonialism in the Pacific'.

The Banabans, the people of Banaba (which is the Gilbertese name for Ocean Island) are our brothers and sisters and we have no wish to quarrel with them, but the paper which has been sent to all Pacific leaders contains distortions of facts which we cannot allow to go uncorrected.

### Before the British

The Banabans claim that until Ocean Island was annexed by Britain 'we lived in freedom, our own masters, owing allegiance to no one. We had no ties with any other island. We acknowledged none as sovereign. Nor, to be fair, did any other island or group of islands claim that Banaba and the Banabans were components of a wider community or that they had a right to impose their will upon us'. Politically this is correct, and the same could be said for other Gilbert Islands. But, as the Banabans themselves admit, they did have ethnic and cultural ties with other islands. In their own words 'immigrants arrived in our midst by canoe and were hospitably received into our community'. Exactly the same pattern of migration was being repeated elsewhere in the Gilbert Islands.

The original people were Melanesian in type and were overrun by tall, fair-skinned people from Indonesia. They inter-married. The majority did not stay long but passed down the chain of atolls into Samoa. Banaba was the most isolated of the islands concerned and intercourse with other islands was inevitably spasmodic. But it went on, and in particular with Beru. A member of the Chiefly family of Banaba, tracing

his descent from Auriaria, the ancestor of the Indonesian invaders, married a Beru woman who came to Banaba with many of her relations to help increase the population of the island. It was at this point that the five villages were founded, whose names are all Gilbertese, which still form the basic structure of Banaban society in Rabi today.

Banaba was never an easy island to live on. It was poor - except for the yet undiscovered phosphate. It was the only island in Micronesia never to have a resident European trader. According to Professor Maude, when foreign ships began to call the people 'flocked on board every labour-recruiting vessel.... to be scattered wide over the Eastern Pacific'. Maude also comments that at the turn of the century only 450 people remained on Banaba.

The truth is that in the nineteenth century there was little difference between Banaba and the other Gilbert Islands. The Banaban claim for independence on the basis of former separate identity is a valid claim for independence by each of the other sixteen Gilbert Islands. We know that although there had been inter island wars and occasional conquest, the autonomy of the various island governments was recognised and respected by the European powers whose traders were often in dispute with the islanders. (See Scarr: Fragments of Empire.)

It was the arrival of the British which gave the islands a uniform administration for the first time. If Ocean Island was at first left out of the Protectorate, it was no more a logical exclusion than the inclusion of both Tokelau and Ellice Islands. The island was small, had no traders whose disputes with islanders and one another had led to the involvement of the European powers in the first place, and lay to the west of the main chain of atolls. In the context of the time there was little difference between acquisition

in 1892 and acquisition in 1901.

### The Arrival of the British

The Banabans claim that while they were never consulted about British annexation, the other Gilbert Islands were. 'It is a matter of record that a British warship went around the Gilbert Islands, before Britain proclaimed a protectorate over them, and its commander addressed meetings of leaders and peoples asking whether they would accept Queen Victoria's protection'. The Banabans refer to the voyage of HMS Royalist under the commander of Capt. Davis. To anyone who knows how long it takes to secure consensus in a Gilbertese Maneaba it is obvious that it would have impossible for Capt. Davis, with only one ship averaging perhaps 5 knots, to have secured willing acquiescence to a British Protectorate from sixteen widely dispersed islands between the 27 May and 12 June, particularly when some of them were actually at war with one another. It was a matter of superior force. When you arrive with a gunboat and make a proclamation people are unlikely to object. Capt. Davis' own account is evidence: '27 May. (Having anchored at 9 a.m.) At noon that day I proceeded in boats with a party of seamen and marines for the King's village. Having ascertained from Mr Corrie and other traders on Islands with which I had communicated that they were unaware that any Foreign Power laid claim to the Gilbert Group, I, in compliance with your secret memo of April 22nd 1892, explained my mission to the King and his council in the Maneaba or meeting house in the presence of some 300 or 400 natives and having read the proclamation declaring a British Protectorate over the Gilbert Group from that date, I hoisted the Union Jack on the King's flagstaff with the customary honours.'

Capt. Davis consulted with European traders not with the Gilbertese, and the proclamation read on 27 May in Abemama included all the other islands which he was to visit subsequently. The Proclamation itself is a bald statement and in wording not unlike the Proclamation made at Ocean Island on 28 September 1901. No mention is made of the agreement of the people. It was not a treaty. There were no local signatories.

The fact is that we found ourselves being administered by the British, whether we liked it or not, the common lot of colonial peoples. On reflection

we might be fair enough to admit that it brought some improvement, particularly on Ocean Island where the original agreement signed by Temati, the Banaban Chief, and Albert Ellis, of the Pacific Islands Company, could so easily lead to exploitation. For years it was the administration of the Gilbert and Ellice Islands which endeavoured, not always with success, to secure a better deal for the landowners of Banaba than they would otherwise have had.

### The Present

For three quarters of a century, far longer than the lifetime of most of us, Ocean Island has been administered as an integral part of the one country and for much of that time was indeed the capital.

The unifying experience of British administration and the establishment of the phosphate industry gave much greater opportunity for movement between Banaba and the other islands. When the Banaban community was re-settled on Rabi in 1947, 152 of the 337 men in the party came from Gilbert Islands other than Banaba. Even to-day of the 2,000 people living in Rabi over 250 have both parents born in Gilbert Islands other than Banaba. It is indeed doubtful whether there is a single Banaban family which does not have relatives in the other Gilbert Islands.

We look alike and we speak the same language. The language the Banabans claim to have forgotten and of which there is no record must have been an amalgam of languages of the original Melanesians and Indonesian invaders. It would be a language lost not only to the Banabans but to other islands as well. To-day it is easier for a Gilbertese from the Central and Southern Gilberts to speak with a Banaban than it is for him to speak with a Northern Gilbertese and in particular with somebody from Makin. There is a geographical unity within the Gilbert Islands, including Banaba, which is greater than that found anywhere else in the Pacific.

That the original islanders of Banaba have been living elsewhere in recent years does not in itself alter this common experience. There are other Gilbertese communities in Fiji, in the New Hebrides, in the Solomon Islands and in the Trust Territory. They do not claim independence for their former home islands or villages in association with their present countries of residence.

### The Future

The Banabans ask what use could



Ocean Island be to the Gilbertese after phosphate is finished and how could Gilbertese families be induced to stay there. The same question could be asked of the Banabans. What use will Ocean Island be to them and how will they induce those accustomed to Rabi and Fiji to live there? When mining is finished the leases will revert to the Banaban landowners, in accordance with the law of the Gilbert Islands. With the leases will go fixed assets, some of which, such as housing, will have residual value. The Gilbert Islands Government has no intention of keeping Gilbertese from other islands on Ocean Island, unless they have legitimate employment - one of the objects of making Ocean Island a closed district. It would welcome the Banabans if they wanted to re-settle. The Government provided coconuts for planting to the token settlers in 1975 and is ready to give other assistance if the Banabans show themselves to be serious. The Banabans are, and will always remain, the landowners of Ocean Island. They do not need sovereignty in order to re-settle or rehabilitate their island.

### The Phosphate Industry

It is a fact that Ocean Island is part of the Gilbert Islands and it is a fact that the Gilbert Islands Government has a right to tax mineral resources. It is no secret that phosphate taxation provides the major source of revenue for the Gilbert Islands. Exact figures are published annually.

The Banabans understandably would prefer to keep all the income accruing from phosphate for themselves. Who wouldn't? But they might ask themselves how they would have fared elsewhere in the world, particularly in the socialist countries which they single out as being most sympathetic towards their aspirations, where they would find mineral resources have long since been publicly owned as, indeed, they have in many countries with mixed economics. They would also find that in all new nations, including our Pacific neighbours, minerals legislation specifically reserves depth rights, as opposed to surface rights, to the state.

The Banabans argue that money spent by BPC in services on Ocean Island is an additional form of taxation, BPC, as is usual in mining operations in remote places anywhere in the world, has to provide special services for its employees. These services constitute

the major cost of production because Ocean Island itself cannot provide housing, water or food for the population required to mine phosphate. BPC services are provided for all employees, not just the Gilbertese. There are Australians and Chinese, and although the Banabans keep quiet about it, Banabans as well.

The Banabans working in the phosphate industry and others on Ocean Island also enjoy the services provided by the Gilbert Islands Government. Their children attend school, they send and receive mail and telegrams, and the Banaban representative is a frequent traveller on Government ships.

### Ellice Separation

The Banabans argue that they should be allowed to go their own way as have the Ellice Islanders. They ignore a difference in kind. The separate identity of the Ellice Islanders has never been questioned. They are people of a different race. They speak a different language. Their islands are geographically remote from the Gilbert Islands. Although there has been some inter-marriage, the majority of Gilbertese do not have blood relations in Tuvalu.

If the Banabans seek a similar situation to their own, they should consider the neighbouring island to Rabi, Kioa. This island was purchased by the people of Vaitupu in Tuvalu and settled about the same time as Rabi. Are the people of Kioa demanding independence for Vaitupu in association with Fiji? The separation of the Ellice Islands in October 1975 has understandably been used by the Banabans as an opportunity to press their claim for independence. But the Banabans misrepresent the facts. They say that the Tuvalu people 'do not want any part of the revenue that comes from Ocean Island because they acknowledge that it does not belong to them.' The conditions of separation were laid down by the British Government. As the United Nations Mission, invited to observe the conduct of the separation referendum (and not, as stated by the Banabans, to conduct a general mission to the Gilbert and Ellice Islands), commented in its report 'there appeared to be a general expectation that these conditions would be subject to further renegotiation following the referendum' and the Ellice Islanders considered the conditions 'as unduly harsh'. At a meeting held in Vaitupu, the heart of Tuvalu, the Mission reported 'The President of the Island Council and other

speakers focused their questions on the conditions for separation. They wanted to know...why the administering power had decided to exclude the Ellice Islanders from the benefits of the Revenue Equalization Fund' (the fund built up from phosphate revenue). In Nui 'the people hoped to approach the United Nations to help review the conditions set down by the United Kingdom.'

### The Closed District Ordinance

The Banabans say 'in flagrant breach of the 1947 covenant they (the Gilbert Islands Government) declared Banaba a closed district'. The article of the 1947 Statement of Intentions to which the Banabans refer reads:

'The Banabans shall be permitted, subject to the provisions of the laws of Fiji and further subject to shipping being available, to travel freely between Rabi Island and Ocean Island and, subject to the rights of the British Phosphate Commissioners over any lands purchased or leased to them, to reside on Ocean Island.'

That provision of the 1947 Statement has been honoured and will continue to be honoured by the Government of the Gilbert Islands. There is no instance of a Banaban being refused permission to enter Ocean Island. But former strict BPC control of entry to Ocean Island has been relaxed in recent years, and in 1974 there were over 200 'squatters' on Banaban land who had no direct connection with the phosphate industry. Living conditions on Ocean Island are difficult and not only food but fresh water has to be imported. The Government wanted to control movement into the island and reduce the numbers of unauthorised persons in an orderly fashion to prevent a major problem of logistics at the end of mining in 1978. Ocean Island was, therefore, declared a closed district in 1975.

Section 4 of the Closed Districts Ordinance reads:

'No person shall enter a closed district except -

- (a) natives of the closed district;
- (b) government officers or persons acting under the orders of the Governor in the course of their duty;
- (c) licensees'.

Native Banabans are, therefore, specifically exempt from the provisions of the law which could not be used to

exclude them from Banaba. As the Banabans very well know, not a single Banaban has in any way been prevented from going to Ocean Island or, for that matter to any other part of the Gilbert Islands. The Closed Districts Ordinance protects the interests of the absentee Banaban landowners, by controlling access to Ocean Island by Gilbertese from other islands. There was neither high handed action nor affront.

Christmas Island, where the Government had development plans which it does not want hampered by uncontrolled immigration, is also a closed district. The Phoenix Islands are prohibited areas under the Prohibited Areas Ordinance. Ocean Island has not been singled out for special treatment.

### The Gilbert Islands Defence Force

In May 1976 the House of Assembly approved a Government proposal that a small (170 men) defence force be established. The concept of a small defence force is not unusual. Papua New Guinea, Fiji and Tonga have defence forces and had them well before independence. The objectives of the Gilbert Islands Defence Force will be to discipline our young men through a period of three years national service, to provide state ceremonial (the force will include a band), to carry out development on outer islands (the force will have an engineer troop) and to support the police, if needed, in internal security duties.

The Banabans say 'We have seen weapons being shipped in. We have seen men being drilled'. This is a figment of the imagination. The legislature has so far only voted a token sum of money which is being used to acquire land, and recurrent financial provision will not be made until the 1977 budget. No weapons have been purchased and the only arms in the Gilbert Islands are 96,303 rifles in the police armoury which have been held for years past. These will be transferred to the Defence Force when established because it is not intended to continue with an armed police force. No single appointment to the Defence Force has been made and it is not expected that recruitment will begin until mid 1977.

### The Internal Self Government Talks

The Banabans complain that they did not take part in the internal self-government talks held in London in July 1976. The talks did no more than provide an opportunity for the Chief

Minister to meet Lord Goronwy-Roberts, the new UK Minister responsible, and to present to him proposals passed by the House of Assembly for constitutional advance which in no way affect the position of Ocean Island or the status of the Banabans. The Banabans know perfectly well that they have been assured by the British Government that they will be invited to participate in the final independence conference as an interested party when the time comes. But they can hardly expect, as citizens of Fiji, to participate in the day to day administration of the Gilbert Islands, although there has never been anything to prevent the Banabans living on Ocean Island nominating a candidate in national elections to the House of Assembly.

The Banabans also know that the Gilbert Islands Government has offered to discuss with them their constitutional position. The Chief Minister made a fifteen point offer in 1973. Tebuke Rotan, spokesman of the Banabans, refused to discuss it. The offer remains on the table, and is indeed being implemented by the Gilbert Islands. For example, as offered by the Chief Minister, the relevant articles of the 1947 statement of intentions are to be included in the internal self government constitution when it is introduced.

The Banabans ask what trust can they have in a constitution. There is no instance of the Gilbert Islands Government failing to honour the provisions of the constitution. But in recognition of the sensitivity of the Banabans, the Chief Minister included in his offer, rejected without discussion, a proposal that the Governments of the United Kingdom and Fiji be asked to stand as guarantors of any agreement between the Gilbert Islands and the Banabans and that the United Nations Organisation be asked to examine the operation of the agreement, ensure its provisions were honoured and recommend any changes necessary.

**The Tarawa Phosphate Talks**

In June 1976 talks were held in Tarawa to review the existing arrangements for the operation of the phosphate industry. The Banabans participated fully at these talks which achieved a large measure of agreement in a friendly atmosphere. Full note of the Banaban reservations was taken and recorded. The Rabi Council representatives had no problem in initialling the record which they had helped to draft.

As a result of the discussions several requests of the Banabans were met

and revenue accruing to both the Banabans and the Gilbert Islands was increased by the elimination of certain payments to the Partner Governments. The Gilbertese listened sympathetically to the Banaban views on taxation and did not press their own view. The Gilbert Islands Government stated categorically that it had no intention whatsoever of depriving the Banabans of their phosphate earnings. The Banabans, as signatories to the record, know that it was agreed that Ocean Island phosphate would continue to be produced and disposed of by BPC. The Gilbert Islands Government has no intention of nationalising the phosphate industry. It does, however, want greater participation in management both for itself and for the Banaban landowners. This has long since been made clear and is well known not only to the Banabans but to the Governments of Australia, New Zealand and the United Kingdom. The Gilbert Islands Government has also consistently stated that it would want the Banabans represented on any management body.

When the Gilbert Islands Government commissioned an independent appraisal of the phosphate industry in 1975 to assist in decisions regarding its management, it sent a copy of the Consultants report to the Rabi Council of Leaders, thus helping the Banabans to present their case at the phosphate talks.

**The 1973 Tripartite Agreement**

In 1973 the United Kingdom Government, which determines the proportion of 'take' from the phosphate industry between the Gilbert Islands Government and the Banaban landowners, the Gilbert Islands Government and the Rabi Council of Leaders signed an agreement which released additional land for mining on the basis of a 50/50 division of proceeds. The Banabans were paid a lump sum in advance, part by UK and part by the Gilbert Islands, assessed as being equivalent to 35% of the proceeds of the phosphate likely to be extracted from the new lands. The remaining 15% of their 'take' would be paid monthly by BPC along with the proceeds from phosphate extracted from old lands, not covered by the new agreement.

The agreement further provided that, at the end of the day, any surplus paid or deficiency owing would be made up by incorporation into the payments being made to the relevant party by BPC in the last year of mining.

Phosphate prices rose in 1974 and 1975, higher than had been anticipated and by the end of 1975 the Banabans were owed a sum of over \$1,000,000 by the Gilbert Islands. Although there was no contractual obligation to do so, the Gilbert Islands Government invited the Banabans to come to Tarawa to discuss an amendment to the 1973 agreement so that earlier payment could be made. With difficulty the Banabans were persuaded to discuss an amendment in Tarawa in June which was agreed and signed in London in July.

The Banabans have maintained, contrary to the truth, that a sum of money has been unlawfully withheld from them. They are also now maintaining that the Gilbert Islands has misappropriated the sum owed to the Banabans. The Gilbert Islands negotiated phased payment of the large sum involved in order not to disrupt its cash flow unduly and in order not to realise sterling investments at the present state of the market. This negotiation was entirely in keeping with the terms of the original agreement which envisaged a phased payment of any sum finally outstanding.

The Gilbert Islands Government has been understanding of the Banabans financial position and has acted generously. Any difficulties over the settlement of this matter have been made by the Banabans themselves. In the first place they wanted to deal only with the United Kingdom, refusing to recognise that the Gilbert Islands was a signatory to the agreement. This probably lost them six months before settlement. Even after agreement had been reached in

Tarawa, the Banabans legal advisers, objected to a Minister of the Gilbert Islands Government signing on behalf of the Government and nearly caused further delay.

### The Reserve Funds

In the last decade revenue from phosphate has enabled the Gilbert Islands to build up reserves to provide income when phosphates are exhausted. The size of the reserves is no secret. It is published annually as are all the accounts of the Government. The reserves are invested overseas and are managed by a highly reputable firm of London stock-brokers with considerable international experience. The Gilbert Islands Government believes that the Banabans could also have built up reserves in recent years and acquired a similar fund, which, because of the population involved and because the Rabi community derives the full benefit of Fiji Government services, would by now have been worth far more per head than our own fund.

The case presented on behalf of the Banabans is emotionally attractive but those who feel convinced by it would do well to call for an account from the Banaban Funds Trust Board of the management of their funds, and their relationships with official and other advisers. We have sympathy for their treatment in the past and for the difficulties which as an immigrant group they face. We wish them well, but we believe that our kinsman deserve advice from those better acquainted with the people of the Pacific, and better leadership.

## Future of the Banabans

*From Mr Russell Johnston,  
Liberal MP for Inverness*

Sir, At a referendum held in the Ellice Islands in September 1974 over 90 per cent of the population voted in favour of the separation of the Ellice Islands from the Gilbert and Ellice Islands Colony.

The decision has been accepted in principle by the United Kingdom Government which has thereby impliedly undertaken a continuing financial responsibility for the Ellice Islands. The Colony is splitting up. It is time to look again at the future of Ocean Island which is by chance also part of the Colony.

Ocean Island the homeland of the Banabans is isolated in the Western Pacific. Phosphate has been mined there since 1900, however, in 1978 the phosphate deposits will be worked out. From then on Ocean Island will be of no interest to the United Kingdom or the Gilbertese. This was admitted by the Chief Minister of the Gilberts at the United Nations in November 1974. The Banabans own Ocean Island. The Gilbertese have only ever gone there as transient workers in the phosphate industry.

The Banabans want a separate future for Ocean Island in order to preserve their separate identity and culture. There is no valid reason why they should be treated differently from the Ellice Islanders. Ocean Island is already in fact administered separately from the rest of the Colony by the British Phosphate Commissioners. A separate Ocean Island would cause no problems in the international sphere because the Fiji Government is prepared in principle to look after the Banabans. What is proposed is that Ocean Island should be an associated state with Fiji.

The only problem is what is to be done with the proceeds of the phosphate mining during the past four years of its life. This is a separate issue which is capable of solution round the conference table. The Australian and New Zealand Governments who have benefited from cheap phosphate from Ocean Island over the past 50 years will be concerned to see that neither the Gilbertese nor the Banabans suffer. Is it really too much to hope that the British will assume some financial responsibility for the Gilbertese in the future, as they are doing for the Ellice Islanders?

It is time for the United Kingdom Government to take the initiative and solve the Ocean Island question. This is particularly so as there would be no problem if the British had let some of the Banabans return to Ocean Island in 1945 when they were released from Japanese captivity. There were some 1,000 of them. They were told they could not return to Ocean Island because there was no housing for them.

At the same time the British were busy recruiting 1,700 Gilbertese and Ellice Islanders to work in the phosphate industry on Ocean Island. Was this quite above board? Is it surprising that the Rev Tebuke Rotan (February 20) is angry?

Yours faithfully,

RUSSELL JOHNSTON,  
Liberal Foreign Affairs Spokesman,  
House of Commons.

*June 8/3/75*

ing action alone would deprive the Banabans of their "day in court," they would be all the more eager to pursue the royalty action, "either for publicity or in order to bring pressure on the British Government to give a very substantial sum to avoid publicity."

"We assume neither the Australian nor New Zealand Governments would wish to put us in such a situation" the British communication said.

But just in case this assumption might be wrong, it proceeded to spell out the potentially unpleasant consequences for Australia if it left Britain to cop the royalty suit alone.

The legalistic view that the royalty action related solely to the actions of the British Government, it said, "does not take account of the most important fact that one of the main claims made by the Banabans in the royalty action is that the alleged trustee, the British Government, did not obtain the best price possible for phosphate.

"Our two partner Governments will be aware that the main, if not the only, reason why we did not obtain a higher price during the 1950s and 1960s was because of the constant opposition by Australia and New Zealand.

"The British Government cannot, however, prove this without disclosing the content of confidential communications between the three Governments regarding phosphate pricing."

Elsewhere in the letter, the point is reiterated for further effect: "I feel sure you will not misunderstand our stressing that one of the main themes to emerge from the documents was the firm opposition of Australia and New Zealand in the past to higher phosphate prices and to proposals that the revenue received by the GEIC (Gilbert and Ellice Islands Colony) Government should be increased to correspond to the levels of taxation which a commercial company mining phosphate might have been expected to pay.

"Had higher phosphate prices prevailed, both GEIC and Banaban revenues would undoubtedly have been higher. But our essential point today is simply that Australia and New Zealand benefited over many years from cheap phosphate.

"We recognise that the United Kingdom also benefited in that the revenue accruing to the GEIC reduced the amount of aid needed from the United Kingdom.

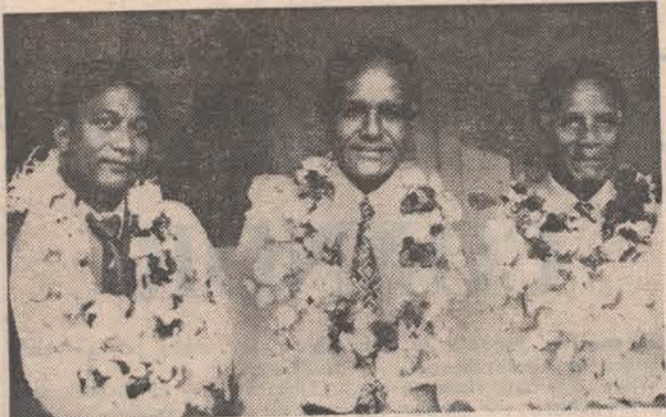
"Our conclusion from all this is not to indulge in recrimination over the past but to urge that all three partner Governments have a common interest in resolving the outstanding problems with the least possible rancour."

The British letter added that they were "not simply looking to the Australian and New Zealand Governments for help over the two legal actions.

"We are seeking their active co-operation in the wider context of tidying up the residual disputes and problems, at a time when the GEIC is moving towards independence and we and our partner Governments are in the process of winding up our formal colonial roles in the South Pacific.

"We hope your Government will agree that it is reasonable to use part of the phosphate commissioners' surplus to resolve the problems bequeathed by the history of the phosphate industry.

This urging has at least part of the desired effect on Australia.



A Banaban Council of Elders . . . two High Court actions instigated.

In a submission to Cabinet dated January this year, Senator Willesee told his colleagues that he had agreed to an Australian delegation taking part in "forthcoming negotiations in London, "aimed at securing basic agreement between the three member governments of the BPC" to facilitate . . . an out of court settlement with the Banabans relating to two separate legal claims . . . one against the BPC and the other against the United Kingdom Government."

Senator Willesee cited several technical reservations about the specific settlement terms proposed by the British.

"However," he continued, "It could be contended that prior to 1968 Australia benefited from cheap Ocean Island phosphate and hence we cannot ignore the possibility of becoming involved in the royalty claim. The two claims may . . . eventually have to be settled together."

The senator went on to give two reasons why he had decided to try and fit in with Britain's plan.

"● There is a possibility that publicity adverse to Australia may emerge from any court hearing.

"● Separate court decisions in the Banabans' favour on each of the two claims could create



SENATOR WILLESEE

precedents and encourage attempts to recover damages from similar extractive ventures in other former territories."

The British letter to Rowlands had broadly suggested a maximum cash settlement of £2.5m.

An added political sweetener, if necessary, would be that the three Governments "should be ready to discuss the principle of separation of Ocean Island from the Gilbert and Ellice Islands after completion of phosphate mining, on the basis of some form of association with Fiji."

Before the talks with the Banabans, however, the three Governments had to meet in London to agree on what they would offer and how it would be paid.

This they did, and the final terms were presumably given a final OK by the Australian Cabinet, since Senator Willesee had said in his Cabinet submission that government endorsement would "of course be required."

It is known that the Australians refrained from endorsing the British proposal to link any out-of-court settlement with the politically delicate question of Ocean Island's independence — maintaining that this was a matter purely for the British,

the Banabans and the Gilbert and Ellice Islands colony to decide.

It is also understood that the three BPC partners agreed to alter the carve up of the residue of the Nauru surplus, should a joint settlement of the two court actions be paid from that source.

The Willesee document makes clear that New Zealand had been pressing for these funds to be distributed not in accordance with the basic interests in BPC (42 per cent Australia, 42 per cent Britain and 16 per cent New Zealand) but on a user of phosphate basis, which would give Australia 60 per cent, New Zealand 30 per cent and Britain 10 per cent.

Senator Willesee and Australia was on that point "uncommitted to either view," but

## Today's letters — page 4

he added that settlement of the question of distribution of the Nauru surplus was "a necessary prerequisite to discussion of the Banaban problems."

Whatever carve-up was finally adopted, one can only hope it at least covered the share of the proposed royalty case settlement, which Australia gratuitously agreed to shoulder.

In any event, Australia and Britain went into negotiations with the Banaban representatives together, at least that a single settlement of the two court actions would be sought, and sought as cheaply as possible.

They reportedly opened with an offer of a mere \$A2.5m or thereabouts.

But while sources close to the negotiations say they regarded this as "starting point only," it effectively finished the negotiations before they really began, since a submission to the British Government prepared for the Banabans by Sydney consultant Phillip Shrapnel and Co in 1968 suggested that — on the cost experiences of neighbouring Nauru — rehabilitation work alone on Ocean Island would cost \$40m. And those were pre-inflation dollars.

The failure to link any financial settlement to a political proposition on the independence issue also guaranteed the exercise's failure.

So there you have it. The talks broke down and the British Government went on to make a largely unsuccessful appeal for crown privilege on most of the embarrassing confidential documents dealing with phosphate dealings between the BPC partners (a course it had foreshadowed in its original letter to the Australian Government).

Despite this setback, the first case against the BPC commissioners went ahead with remarkable little adverse publicity of the sort Australia feared, and the Banabans await their "just dues" with hope — and one imagines, not a little trepidation if the sorry history of their case is any guide.

PNC



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# Pacific Ocean man is at least 30,000 years old

New York, Sept. 3.—All mainland areas surrounding the Pacific, except South America and Antarctica, were settled by man as early as 30,000 years ago, far earlier than many archaeologists had supposed, according to reports to the Pacific Science Congress in Vancouver, British Columbia.

Even in Australia, isolated by the sea for the last 15 million years, man apparently was building fires as early as 40,000 years ago. A decade ago, the oldest accepted dates for human settlement there were 8,700 years ago.

By 12,600 years ago, according to the new reports, human beings had reached Patagonia, near the southern tip of South America. They had thus completed a slow 12,000-mile progression from Beringia, the region now largely submerged beneath the Bering Sea, that was above sea level during the ice ages.

New dates were also reported for early man in California, extending the possible arrival of

man there even further into the past. Last year Dr Jeffrey L. Bada and his colleagues at the Scripps Institution of Oceanography in La Jolla, California, reported establishing an age of 48,000 years for one human specimen in a Los Angeles museum.

Dr Bada gave the congress ages for 10 specimens that had been found, at one time or another in California from La Jolla, a suburb of San Diego, north to Sunnyvale, just south of San Francisco Bay. The age of a specimen from Sunnyvale was put at 65,000 years. One from Los Angeles was 50,000 years old, three others were more than 44,000 years old and three were more than 30,000 years old.

These ages are far greater than those of from 15,000 to 25,000 years traditionally given for man's first penetration southward from Beringia. It was then, according to the established view, that an ice-free corridor opened along what is now the valley of the Mackenzie River.

At the Vancouver meeting it was

clear that a number of archaeologists were uneasy about the older dates, although Dr Bada reported the efforts made by his group to narrow down any margins of error.

The ages were obtained by the so-called racemization method. This records the extent to which molecules of aspartic acid in a specimen have altered their configuration from the form that occurs in living bone to its mirror image. The rate at which this process occurs is slow enough for it to be used as a stopwatch in determining bone ages reckoned in tens of thousands of years.

It is therefore possible to calculate ages far greater than those obtained by the widely used measurements of radioactive carbon decay. However, the rate of the racemization clock is affected by such things as temperature, and some delegates at the conference questioned whether Dr Bada had been able adequately to correct for these variables.

Soviet archaeologists, who sub-

mitted papers but did not attend, reported evidence that the Diuktai people of Siberia, with bifacial knives (stone blades worked on both sides), and spear and dart points, moved into Beringia during a cooling period, between 30,000 and 35,000 years ago, in pursuit of mammoths.

The possibility that an earlier human form, more akin to the Neanderthal man of Europe, reached the Americas earlier was discussed but classed as uncertain.

The finds in Los Toldos Cave, Patagonia, were reported by Augusto Cardich of the national university of La Plata. Some were made early this year. The oldest level was 12,600 years, with horse bones at the 11,000-year level.

Señor José Luis Lorenzo of the National Institute of Anthropology and History in Mexico, reviewing the evidence from many sources, said man's arrival in the Americas at least 30,000 years ago was well established. — New York Times News Service.



# UDI IN THE SOUTH PACIFIC

The Times 3/9/75

The attempted secession of the island of Bougainville on September 1 from Papua-New Guinea, due to become independent on September 16, poses Australia with one of those last minute unpleasantnesses with which other decolonizing powers are all too familiar. Papua-New Guinea, formed of a former British dependency and a United Nations trust territory, is one of the largest colonies still under white tutelage, and Australia has been hurrying it towards nationhood by forced marches in recent years.

This process has been difficult because the territory consists of hundreds of tribes (some still being discovered) in every stage of culture from the neolithic onwards, speaking several hundred vernaculars, and only imbued with the proper modern spirit of militant anti-colonialism in the developed areas like Port Moresby—if even there. It has been an expensive as well as ticklish bit of nation-building, and Australia wishes to be quit of cost responsibility and colonialist stigma.

The development of Papua-New Guinea has been in part paid for by the revenues accruing from the vast copper riches of the offshore island of Bougainville, and after independence it would without Bougainville remain dependent on Australian subsidies. But Bougainville is fully 600 miles offshore, is ethnically different, and was so neglected until copper was discovered in the sixties that it did not appear on all maps of the territory. Now the copper, which is worked by an Australia-based subsidiary of Rio Tinto-Zinc, accounts for two thirds of Papua-New Guinea's exports and

half its budget. The Bougainvillans get royalties, but complain of inadequate finance for development. Even so, they are on average the wealthiest part of the Papua-New Guinea population. Yet they see themselves as the "fat cow" milked by the less advanced Papuans, and perceive how much richer they would be if they could go it alone.

Their legal local council gave notice of secession, and they have rebelled, they say, on a basis of Gandhian non-cooperation. The Canberra or Port Moresby Governments repudiate the provisional Bougainville government and the United Nations ignored its petitions. The Rio Tinto-Zinc Corporation, which has large interests in Australia, is highly unlikely to help the rebels in the way that the Union Minière assisted Tshombe in Katanga, which may be why the Bougainvillans have threatened nationalization. The taxation agreement was made between RTZ and the Papua-New Guinea Government (which is juridically still dependent on Australia) and the money will continue to be paid to Port Moresby. Unless the Bougainvillans physically stop the copper operations, the financial position will not change. They might do so. The Papua-New Guinea Government might also decide to assert its authority, before or after independence—and then there could be bloodshed. The police on the island are not Bougainvillans and troops could be landed.

This is the moment therefore for cool heads and sensible talks. The Bougainvillans have a case, though their call for self-determination would look more plausible if they wanted to join

up with their ethnic neighbours the British Solomon Islands protectorate—which could do with some copper money (one of the British Solomon islands has threatened already to join the Bougainville Republic). But Papua-New Guinea, which owns a fifth of the mine, has also a claim on the copper revenues, at least until its own vast mineral wealth, recently discovered, can be exploited in perhaps ten years' time.

Politically Port Moresby cannot afford a secession for it is already threatened by breakaway movements in Papua, New Britain and other islands. Yet it can only hold Bougainville by force with Australian naval aid which would generate a bitterness that would in the end produce violence. The alternative for the Australians is to copy the British action over Anguilla's secession from St Kitts-Nevis—which would no doubt bring down on them comparable obloquy.

Small countries, which were once poor provinces of larger countries but suddenly hit the jackpot are rarely reasonable. They forget that others found their wealth and that fair shares ought to be the rule. The Banaban affair is another example of a relatively rich Pacific island which wants to secede and no longer share its wealth (with the Gilberts, due for independence in 1977 like the Solomons). There are many other examples. The Pacific communities are now astir with new ideas and ambitions, and these problems are growing pains. More effort must be spent in persuading them that even in these huge, but valuable, wastes of water they need to work together.

# 11,000-mile trip to mediate in 'peppercot' colony

By VINCENT RYDER, Diplomatic Correspondent

**M**R EDWARD ROWLANDS, Parliamentary under-Secretary at the Foreign Office, set off at the weekend on an 11,000-mile trip to the Pacific to investigate the threatened break-up of one of Britain's "peppercot colonies."

The Gilbert and Ellice Islands, scattered over two million square miles of ocean, are separating in October into two colonies, the Gilberts and the Ellice Islands.

This is by mutual consent and with Foreign Office blessing.

But Ocean Island, a 1,500-acre speck in the ocean is demanding independence from the Gilberts, a move that would take away about 75 per cent of the colony's income.

Ocean Island is rich in phosphates, now bringing a high price in the world markets.

It has been heavily excavated for decades and the deposits will be exhausted after two more years of highly profitable digging.

## Young men sent

The natives, the Banabans, have lived 1,600 miles away on Rabi Island, Fiji, since the war, after first being uprooted by the Japanese invasion. They still own the land on the island and have recently sent some of their young men back to it to reinforce their claim to sovereignty.

The 2,000 Banabans, denying that they want to grow wealthy on the revenue from phosphates before the deposits run out, insist they are entitled to inde-

pendence because they are ethnically different from the 60,000 Gilbertese. They have petitioned the Foreign Office and the United Nations.

They are pressing for British agreement to independence at the same time as the Gilberts and the Ellice Islands go their own ways.

The Gilbertese hope that Mr Rowlands will recommend a flat rejection by the British Government. But they admit they are not certain what they or Britain could do if the Banabans made a unilateral declaration of independence.

The Banabans, despite their small numbers, have run a sophisticated political campaign in London and at the United Nations.

They are also engaged in some of the most complicated, lengthy, and expensive civil litigation to be heard in the High Court. In one case they are seeking restoration of the island's surface and food-bearing trees after the turmoil created by 75 years of mining by a British-Australian-New Zealand corporation.

In another case they are claiming that they were underpaid by £22 million in phosphate royalties over many years.

Mr Justice Megarry, after 66 days of legal battle in the first case, has decided that he ought to inspect Ocean Island — the first High Court judge to go abroad as part of his duties. He is to set out in October, accompanied by his clerk.

The trip by plane and boat to Ocean Island and Rabi is expected to cost £40,000. Who foots the bill will be decided at the end of the case.

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# DISPUTE IN THE PACIFIC OCEAN

## The Banaban people want their island back

IF the International Date-line did not bend but ran straight down the 180th meridian, the people of Rambi Island, when looking across to Vanua Levu, Fiji's second island, would be looking into tomorrow.

It is with Fiji that the people of Rambi see their future. Populated by about 2,000 Banabans — who came from Ocean Island 27 years ago when that island became virtually uninhabitable from phosphate mining — Rambi Island was bought by the British Government and given to the Banabans, though it remains Fijian sovereign territory.

The rich phosphate is the main obstacle to the Banaban aim of making Ocean Island (or Banaba) independent in free association with Fiji.

The phosphate is being mined by the British Phosphate Commission, comprising Britain, Australia and New Zealand, which pays royalties to the whole British colony of the Gilbert and Ellice Islands, which includes Ocean Island. Of these, the Banabans get about a seventh, or \$A3 million a year. Until recent rises in phosphate prices, this figure was much lower.

However, the Banabans assert that Ocean Island is not part of the Gilbert Islands which are 450 kilometres away, and that the Banabans are a separate race from the Gilbertese and therefore should be independent. They point out that Ocean Island was not taken over by the British and made part of the Gilbert Islands until after the discovery of phosphate in 1900, eight years after the Gilbert Islands were made a British protectorate.

The Banabans say neither they nor the Gilbertese were consulted in the union. As one Banaban spokesman said, "It was like a shotgun wedding with the British holding the gun".

The Banabans therefore argue that all the phosphate money, about \$A21 million a year, should go to them.

The Chief Minister for the Gilbert and Ellice Islands, Mr. Naboua Ratieta, strongly opposes the Banaban move. About 52 per cent of the Gilbert Islands' income is from phosphate revenue. Mr Ratieta says the people of the Gilbert and Ellice Islands receive only \$A14.17 per head for each \$A1 million in phosphate money, whereas the Banabans get \$A68.83 a head.

These figures look fine until

Gilbert and Ellice Islanders compared to 2,000 Banabans. The Banabans say that in absolute terms, the Gilbertese are getting too much especially as the phosphate is coming from "their" island.

Mr Ratieta has another problem which would make him more reluctant to see Ocean Island go. The Ellice Islanders, comprising about 5,500 people, mainly Polynesians, have voted overwhelmingly in a referendum to break away from the 55,500 mainly Micronesian Gilbert Islanders to form a separate British dependency.

No action has been taken on the referendum yet, but it poses another threat of fragmentation to the colony and is being used as a precedent by the Banabans. The Banabans say if the Ellice Islanders can break away why cannot they do the same?

The British Government, which must make the final decision, has rejected this analogy and seems to be avoiding the issue. A spokesman for the British High Commission in Suva said that the Banaban proposal was still under study.

Unless the Government of the Gilbert Islands agreed to an independent Ocean Island, Britain could not allow it.

As the Gilbert Islands had internal self-government, it was not purely a question for the

From CRISPIN HULL in Suva

British Government, but a decision to be taken in conjunction with the Gilbert Islands Government.

In rejecting the analogy with the Ellice islands, the spokesman said the Gilbert Islands Government had agreed to the Ellice proposal but had rejected independence for Ocean Island — however, the Ellice Islands have no phosphate.

The Banabans allege the British want to keep Ocean Island with the Gilberts so that the Australian and New Zealand Governments, through the Phosphate Commission, will indirectly subsidise British obligations to the Gilbert and Ellice Islands colony.

There have been allegations that the Phosphate Commission has been stepping up production on Ocean Island to mine it out before a decision on the Banabans has to be made. Present estimates indicate there are about four years of phosphate left, but with reports that production has been increased from 400,000 tonnes a year to 600,000 tonnes, this could be shorter.

Australia has an interest in the future of Ocean Island in that, as a member of the Phosphate Commission, it is being sued in the High Court of Justice in London by the Banabans.

There are two court cases both expected to be heard in the

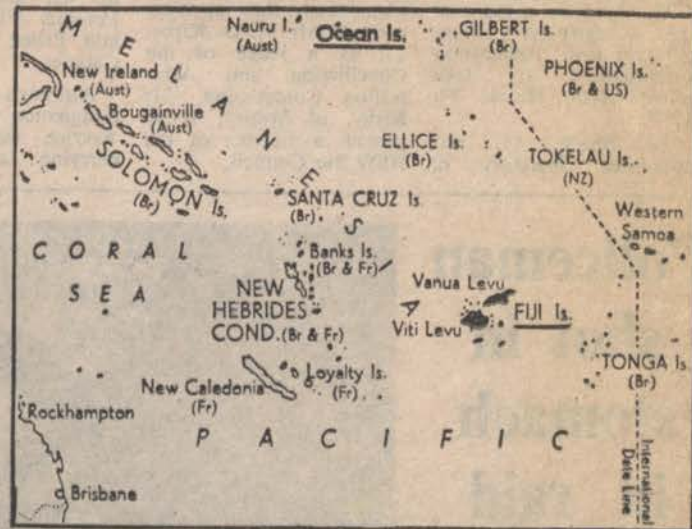
middle of next year. The first, to which Australia is a party, is against the Phosphate Commission seeking to enforce an agreement made with the Banabans in 1913 which allegedly provided for the replanting with food-bearing trees areas on Ocean Island affected by phosphate mining. As this involves most of the island it will cost about \$A20 million.

The second case, against the British Government, is a claim for all the royalties paid to the Crown by the Pacific Phosphate Company, which mined Ocean Island before 1913 when it was superseded by the commission. The Banabans are claiming this money should have been paid to them.

Despite the court cases, a spokesman for the Australian High Commission in Suva said the Banaban proposal was essentially a problem for the Fijian and British Governments, and the Banabans.

The Fijian reaction to the Banaban request for free association has been hedged with qualifications. Fiji has said it will consider the proposal "favourably" and will accept it if all the parties are agreeable. The problem is that Fiji will not say if it regards the Gilbert Islands as one of the parties.

Mr Ratieta has interpreted the Fijian Government and the Prime Minister, Ratu Sir Kamisese Mara, as saying the problem is "not Fiji's business". However, it seems clear that



Fiji would welcome an independent Banaba — and with it the phosphate income and a guaranteed source of fertiliser for its sugar industry.

The Banabans have not been idle. A delegation, led by the Reverend Tebuke Rotan, put their case before the United Nations decolonisation committee in New York last month and invited members to visit Ocean Island next year.

Mr Rotan went from the UN to London where he hopes to meet the Foreign Secretary, Mr Callaghan. He will argue that the financial problems that will arise for the Gilbertese are no reason to bar independence for Ocean Island.

He suggested at the UN that the Australian and New Zealand Governments should join the British Government in giving extensive aid to the Gilbertese — after all, they had the

benefit of cheap phosphate for their farmers for many years.

Meanwhile, the Banabans have realised the phosphate income will not continue indefinitely and have expanded their businesses in Suva and have entered the shipping industry. Despite large injections of phosphate money, however, these enterprises are not running at a profit.

Most Banabans are Fijian citizens because of the Government's strict work-permit system. Free association would allow the citizens of an independent Banaba to live and work in Fiji without permits.

The Banabans are set on stopping the drain of phosphate money from what they say is their island to the Gilbert Islands and if the British Government, like the International Dateline, bends a little, then the Banabans will be able to do this and look to a future in association with Fiji.

## LETTERS TO THE EDITOR

## Future of the Banabans

*From the Reverend Tebuke Rotan*

Sir, As spokesman of the Banaban people here in London, it was a sad moment when I read the letter you published from the Gilbertese Chief Minister (February 6).

We do not blame the Gilbertese for our present plight. It is under the British Government that Ocean Island and the Banabans have seen their natural resources extensively exploited with little profit or benefit to themselves. Britain has sovereignty, and any decision in our case must come from Whitehall. We had hoped that the Chief Minister would not want the British Government to evade its responsibility for the past by turning the problem over to the Gilbertese.

I can hardly believe the Chief Minister really thinks we Banabans are Gilbertese. We have vast differences in our cultures. To quote H. E. Maude, Department of Pacific Studies, Australian National University, who lived amongst us and the Gilbertese for 40 years: "Forgotten in Gilbertese tradition, unrecorded in the Gilbertese genealogies, it may be doubted if a single Gilbert Islander was aware of the existence of the Banabans at the time of their first contact with Europeans." On Banaban culture, Maude writes: "Much of their (Banaban) social organization has, however, been recorded and this indicates that the structure was essentially different from that of the Gilbertese . . ."

The Gilbertese have agreed to the separation of the Ellice Islanders because they are a different people: seeing the evidence I have provided, will the Chief Minister now agree that the Banabans should also decide their own future?

The Chief Minister will agree that there is one custom shared generally in the Pacific Islands: it is contrary to our traditional beliefs for the people of one island to take something that belongs to the people of another.

When Gilbertese and Ellice Islanders agreed to British protection in 1892, Britain ignored Ocean Island and none of the leaders of the 16 Gilbert Islands asked that Ocean Island should be included in their group. Research done by Robert Langdon, a leading writer on Pacific affairs, has shown that after we were persuaded in 1900 to sell our birthright for £50 per year, the Law Officers of the Crown found that Ocean Island "became part of His Majesty's Dominions in consequence of the occupation by the Pacific Islands Company and their hoisting of the flag, together with the British sovereign's licence to occupy it". If we Banabans, unskilled in the ways of the Western world, agreed to licence a commercial company to excavate our lands, we never agreed that our homeland should be included with islands which were strange to us so that when Britain left, sovereignty over us would be handed to others. We were never asked if we wanted to

join the Gilberts, and if the British had asked us we would have refused. But we have had to watch the fruit of our land pay for the administration and running costs of a colony that was Britain's responsibility and of which we never considered ourselves part.

We were told we could not return to our homeland after the war, but we agreed to go to Rabi Island in Fiji and reside there only after the Commonwealth Office had made clear in their 1947 statement of intent that our rights to own, return to and reside on Ocean Island would be maintained. We struggled for survival in our strange, new environment and, to establish projects for our children's future, we borrowed money from an American bank in Fiji, and we are still borrowing money from other banks. All this while Britain's Gilbert and Ellice Colony Government was enjoying the bulk of the dwindling resources of our homeland. This year if we receive Australian \$3 million, they will collect A\$17 million, and their accumulated reserves are already very substantial.

Sometimes, it seemed that the spirit of the Banabans on Rabi was almost broken. But always in our soul there has been a vision. It is a vision of home. It is a vision that has sustained us and encouraged us in our fight to right what we consider to be great wrongs, even if that home on Ocean Island consists, after the phosphate has been excavated, of nothing but sharp-ended rugged pinnacles of coral.

In 1967 we came to London to try and get help. We had discussions with the Commonwealth Office and felt we owed it to ourselves to get the best advice we could. Had it not been for the experts in Fiji and Australia referred to by Mr Ratieta, our efforts might have been in vain. And now in London a great legal battle launched by us over the sharing of the proceeds and other aspects of our case is nearing its climax. It would not be proper for me to comment on that except to say that we could not fight this battle against the British Government without foreign lawyers.

But it should be understood that the question of independence goes much deeper than material matters, it touches on the Banaban soul. What we are now asking for, after all these years of tribulation, is the fundamental human right to control our destiny. We want Ocean Island to become independent in associated status with Fiji amongst whose people we have lived for 30 years. Using Rabi Island as our platform, we want to return once more to our ancestral homeland. We were our own masters before the British came and we must be our own masters again.

Yours faithfully,

TEBUKE ROTAN.

Rabi Council of Leaders,  
Buckingham Court,  
78 Buckingham Gate, SW1.

# Banabans face 'last battle'

All eight members of Rabi Island Council will leave Suva tomorrow for New York and London for their "last battle" to gain Ocean Island's independence.

The council's manager, the Rev. Tebuke Rotan, said they expected to go before the United Nations Special Committee on Colonialism in New York on Monday.

Afterwards the council members would go to London for a High Court action against the British Government and to approach Britain directly for independence.

"This is the last battle," Mr Rotan told the Fiji Times.

"It is the first time the whole council has gone abroad and I don't know how long we will be in London."

## THREE WITNESSES

He said three Gilbertese who had married Banaban women and lived with the Banaban community would go to London as witnesses in the Banaban court case.

The Banabans are claiming damages from Britain in connection with the mining of Ocean Island's phosphate deposits.

In Suva the council is due to meet Mr Anthony Bullock, a British Commonwealth Office official.

Mr Bullock flew from London to discuss the Ocean Island question with the Gilbert and Ellice Islands Colony Government.

Ocean Island is part of the

British-administered GEIC about 1000 miles from Fiji.

The Banabans, who now live in Fiji, left it in 1945 and now want it back as a separate country.

# South Sea islanders to get their day in court

5/3/75

Nothing must be done to deprive the group of South Sea islanders who are suing the British Government of their day in court, Mr Justice Walton said in the High Court yesterday.

The islanders, known as Banabans, have lodged large claims over the use of Ocean Island for phosphate mining.

The judge rejected an application by the Crown that certain matters should be dealt with as preliminary points before the main actions, fixed for hearing in April and June, were tried.

The judge said: "It could not, I think, fail to appear to the Banabans as a lawyer's trick, designed to prevent their case being heard.

He added that the Crown feared that the practical effect of allowing Banaban witnesses into the witness box might be to provoke "a wide-ranging attack upon the conduct of the Crown in relation to Ocean Island and the Banabans generally".

However, he said, he was content to accept the assurance of

the Banabans' counsel that they did not intend to make such an attack.

He upheld the United Kingdom Government's claim to Crown privilege for 23 documents that the Banabans said should be disclosed to enable their case to be put fully.

The islanders, led by Mr Rotan Tito, aged 75, a substantial landowner on Ocean Island, and the Council of Leaders of Rabi, another Pacific Island, where the Banabans now live, have two actions pending in the High Court.

In the first, due to start on April 8 and expected to last 34 days, the islanders claim that the Crown and the British Phosphate Commissioners must either replant exhausted mine workings with food-bearing trees and shrubs, or pay compensation in lieu.

The second action has been fixed for June 3 to last 20 days. In it the Banabans claim declarations that the Crown must hand over phosphate royalties running into millions of pounds.

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## HOME NEWS

# South Sea islanders challenge Crown over mining royalties

A group of South Sea islanders, in the High Court yesterday, opened the preliminary stages of their law suit against the British Government over the use of Ocean Island for phosphate mining.

They demand production by the Crown of documents that they said are necessary to prove their case. The Crown contends that it is entitled to refuse production of some documents because of Crown privilege.

The islanders are led by Mr Rotan Tito, aged 74, a big landowner on Ocean Island, and the Council of Leaders of another Pacific island, Rabi, about 1,600 miles away, where Mr Tito and other Banabans ("Ocean Islanders") have been settled since the Second World War. Mr Tito is chairman of the Council of Leaders.

In forthcoming actions, estimated to last 54 days in the High Court, the islanders claim declarations that the British Government must hand over more than £7m which it has received as royalties for phosphate won from the island. They seek further compensation for phosphate sold, they allege, at less than its value. They also want the scarred landscape of the island restored.

The action in which the landowners seek to compel the Government to replant the exhausted mine workings or pay compensation in lieu is expected to take 34 days starting in April.

The action in which the landowners claim royalty money and an inquiry on how much more, if any, the Government should pay is expected to last 20 days.

Mr John Macdonald, counsel for the islanders, told Mr Justice Walton yesterday that in 1900 phosphate was discovered on Ocean Island by an employee of the Pacific Islands Company.

In that year the island became a British settlement, and two years later a subsidiary of the company was granted a 98-year concession by Edward VII to remove phosphate on payment of a royalty of 6d a ton. From 1920 the phosphate had been extracted by the British Phosphate Commission, a consortium of the British, Australian and New Zealand governments, which bought up the mining rights for £3.5m.

Mr Macdonald said the islanders alleged that between 1920 and 1966 the commission sold phosphate in Australia and New Zealand at well below the world price. Users benefited at the expense of the royalties fund, which, he said, was for the benefit of the islanders.

He alleged that royalties paid by the phosphate commission under a 1930 proclamation were below what should have been paid if the phosphate had been sold at its commercial price. If the islanders had known that, they would not have agreed in 1947 to grant mining rights on two new areas.

Mr Macdonald said the islanders were removed from Ocean Island by the Japanese, in 1942.

After the war they were taken to Rabi, which had been bought by the Colonial Office from Lever Brothers for £25,000 paid out of the Banaban Provident Fund. In 1947 they voted to stay on Rabi.

They signed a statement of intent with British colonial officers providing that the Banabans' decision to stay on Rabi should not affect their rights to their land on Ocean Island.

The hearing was adjourned until today.

## Catharism in England

*From Mr Ben Vincent*

Sir, Miss Desmulie-Ennesh (February 14) will be interested to know that although the Great Church obliterated all trace of the Albigensian, Cathar or Paulician church in England, its doctrines influenced our Quakers, no doubt through Lollardy. Puritan is, of course, Latin for Greek Cathar. There are hostile references to the Cathars in English literature, eg, Henry Fourth Pt 1, Act II, Sc IV, where Falstaff echoes the Cathar doctrine that "the world is a bad place" and adds, "I would I were a weaver. I could sing psalms or anything".

The French Cathars were called Tixeronts because their Parfaits posed as weavers as cover for missionary work. Poulenc set to music an ancient lampoon on the "tisserants'" love-feasts, unaware apparently that the reference was to heretics and not simply craftsmen. Ironically his name probably derives from Publicain or Paulician. The English surname Weaver may refer back to some heretic.

Threatened by ruthless persecution the Perfecti encouraged their laymen to recant and conform. The sin would be vicariously atoned for by the Bonshommes' austerities. They themselves infiltrated Catholic orders where their asceticism would not attract suspicion of heresy. It was so extreme that it sometimes led to suicide by starvation. Their strict celibacy was attributed by their persecutors to homosexuality and one of their nicknames, Bougre, from Slavonic Bogomil, Friend of God, came to be synonymous with homosexual practice.

It is no accident that in the late eighteenth century a remnant, discovering that there was an English sect of "Friends" which preserved the Cathar doctrine of the Inner Light, joined the Quakers en masse! Fox had resembled a Perfectus, with no sense of sin, ascetic, mystical, thaumaturgic, foot-loose and fiercely hostile to Catholic and Protestant churches alike. Penn represents another type of Cathar, that of the gentleman under whose patronage the movement spread. The Templars were accused of Catharism and of the concomitant homosexuality.

Dr Guirdham (February 18) mentions the Canons of Ashridge, who called themselves Boni Homines. It is hard to believe they did so in all innocence. They could have been Perfecti under a thin disguise, for the Pope's writ did not run far in England then.

At Piccotts End near by stands a cottage owned by Mr A. Lindley, who discovered in it a late medieval mural. Outwardly orthodox, well, fairly, and none the less Albigensian for that, it contains scores of cryptographic symbols which look like the work of a peasant Hieronymus Bosch, who was himself suspected of Catharism. Mr Lindley authorizes me to say that we would be grateful if anyone knowledgeable in the field of Manichee, Cathar or related symbolism, would contact us, visit the mural and give us the benefit of his knowledge.

Thy friend sincerely,  
 BEN VINCENT,  
 4 Hawthorne Road,  
 Radlett,  
 Hertfordshire.



# Pinewood director bankruptcy

MR. W. J. GODFREY, managing director of Pinewood Homes, today filed his own petition in bankruptcy.

A receiving order and an order of adjudication was made by Bournemouth County Court and a meeting of creditors and a public examination will follow.

Mr. Godfrey, who had given certain personal guarantees for a development loan obtained from Burston Finance decided to take this step when Burston was put into the hands of a Receiver last week.

Pinewood Homes, which had Mr. Martin Spencer, of London accountants Stoy, Hayward and Co., appointed as Receiver and Manager last July, will not be affected by Mr. Godfrey's bankruptcy. His decision to take this step was made after full consultation with his solicitors and with Pinewood's Receiver.

Mr. Spencer today commented: "I regard this as a purely technical bankruptcy imposed upon Mr. Godfrey by circumstances beyond his control or mine. I have used every endeavour possible to avoid such action being taken.

"As a bankrupt this means that Mr. Godfrey may no longer hold a directorship in Pinewood Homes, but he has

● Continued in back page

# PINEWOOD DIRECTOR

● Continued from page 1

accepted my offer to remain as a consultant and to continue to assist in the management of the company.

"I would stress that Mr. Godfrey's action in no way affects the planned completion of all Pinewood current developments for which there has recently been an increase in demand.

"Since the beginning of the year there has been a substantial improvement in the number of inquiries and reservations for Pinewood flats and houses and earlier this month, with the full approval of the 10 banks involved in the current building programme, a local and national advertising campaign has been launched with encouraging initial results."

## "UNORTHODOX"

Today a spokesman for Stoy, Hayward said that the guarantees had been given by Mr. Godfrey and not Pinewood Homes although Pinewood held the land bank.

It was not a question of Mr Godfrey sacrificing himself to save Pinewood. "The situation has been forced upon him by this unexpected and unorthodox demand from Burston Finance."

Pinewood had about 18 developments in the Bournemouth area at the moment in various stages of completion. During the course of this year about 300 flats and houses would be available for sale.

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# Future of the Banabans

From Mr Russell Johnston,  
Liberal MP for Inverness

Sir, At a referendum held in the Ellice Islands in September 1974 over 90 per cent of the population voted in favour of the separation of the Ellice Islands from the Gilbert and Ellice Islands Colony.

The decision has been accepted in principle by the United Kingdom Government which has thereby impliedly undertaken a continuing financial responsibility for the Ellice Islands. The Colony is splitting up. It is time to look again at the future of Ocean Island which is by chance also part of the Colony.

Ocean Island the homeland of the Banabans is isolated in the Western Pacific. Phosphate has been mined there since 1900, however, in 1978 the phosphate deposits will be worked out. From then on Ocean Island will be of no interest to the United Kingdom or the Gilbertese. This was admitted by the Chief Minister of the Gilberts at the United Nations in November 1974. The Banabans own Ocean Island. The Gilbertese have only ever gone there as transient workers in the phosphate industry.

The Banabans want a separate future for Ocean Island in order to preserve their separate identity and culture. There is no valid reason why they should be treated differently from the Ellice Islanders. Ocean Island is already in fact administered separately from the rest of the Colony by the British Phosphate Commissioners. A separate Ocean Island would cause no problems in the international sphere because the Fiji Government is prepared in principle to look after the Banabans. What is proposed is that Ocean Island should be an associated state with Fiji.

The only problem is what is to be done with the proceeds of the phosphate mining during the past four years of its life. This is a separate issue which is capable of solution round the conference table. The Australian and New Zealand Governments who have benefited from cheap phosphate from Ocean Island over the past 50 years will be concerned to see that neither the Gilbertese nor the Banabans suffer. Is it really too much to hope that the British will assume some financial responsibility for the Gilbertese in the future, as they are doing for the Ellice Islanders?

It is time for the United Kingdom Government to take the initiative and solve the Ocean Island question. This is particularly so as there would be no problem if the British had let some of the Banabans return to Ocean Island in 1945 when they were released from Japanese captivity. There were some 1,000 of them. They were told they could not return to Ocean Island because there was no housing for them.

At the same time the British were busy recruiting 1,700 Gilbertese and Ellice Islanders to work in the phosphate industry on Ocean Island. Was this quite above board? Is it surprising that the Rev Tebuke Rotan (February 20) is angry?

Yours faithfully,

RUSSELL JOHNSTON,  
Liberal Foreign Affairs Spokesman,  
House of Commons.

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# Justice *Guardian* plans a 19/4 coconut court

By PATRICK KEATLEY,  
*Diplomatic Correspondent*

THE ASTONISHED citizens of Ocean Island in the South Pacific may soon be visited by a British judge whose normal habitat is the Royal Courts of Justice in the Strand.

Mr Justice Megarry has already made a name for on-the-spot inspections. In 1973, during the hearing of a dispute involving the parish church at Iken, Suffolk, he visited the territory, the better to comprehend the arguments of rival counsel.

His possible extension of the technique to the South Seas is much less quixotic than might at first appear. Petitioners, counsel, and expert witnesses would accompany him.

The difficulty is that Ocean Island—or rather, Banaba, to use the name used by its inhabitants—is a most unusual place. Words and phrases used in English courts may have very different connotations in the peculiar circumstances of this remote islet.

At the turn of the century, some Australians found the island was a solid cone of guano and in no time it had been proclaimed a dependency, with a consortium of Australian, British, and New Zealand freebooters moving in for the economic kill.

Later the British Phosphate Commission was formed to control the mining and during World War Two the Colonial Office evacuated the islanders to Rabi in the Fiji group where 2,500 of them reside to this day.

But Banaba remains their spiritual home and after a series of frustrating visits to London in the past decade, one of their leaders the Reverend Tebuki Rotan regretfully launched a legal action against Her Majesty's Commissioners.

The Banabans say they want to go home, to have their due share of half a century of revenues from phosphate mining, and the gaping holes in their island filled in and replanted with grass and coconut palms.

Approval for Mr Justice Megarry's proposed trip would have to come from the Lord Chancellor.

# Storm on Ocean Island

*Guardian  
9/4/75*



Mr Rotan Tito, one of the Ocean Islanders, outside the High Court yesterday

A 1,500-acre island in the Pacific will occupy the attention of a High Court judge for the next five weeks. Mr Justice Megarry yesterday began hearing a claim by representatives of the former inhabitants of Ocean Island against the British Government and the British Phosphate Commissioners.

The islanders—known as Banabans—have brought two actions. In the first they allege that the Government and the Commissioners are obliged to replant worked-out phosphate mines with food-bearing trees, or pay compensation. In the second, the claim is for £22 millions in phosphate royalties.

Mr John Macdonald, for the Banabans, said the first action was a test case brought by 12 Ocean Island landowners. After the last war, when Ocean Island was occupied by the Japanese, the islanders were removed to Rabi, another island 1,600 miles away.

"The Banabans have never given up their homeland," Mr Macdonald said. "They agreed to live on Rabi only because a solemn undertaking was given by Her Majesty's Government that they would be able to return to Ocean Island and not lose any of their rights as land owners."

There were 2,500 Banabans, and, although they realised that the island could not support them all, they were anxious to maintain a settlement there and develop a fishing industry.

"It is very difficult to convey the strength of the feeling of the Banabans for their land. It is not only their home—it is a feeling for the land."

Mr Macdonald said Ocean Island contained one of the richest deposits of phosphates in the world. Phosphate was discovered there in 1900 and had been mined since. The deposits would be worked out in another three years.

When the phosphate was removed, great pinnacles of coral were exposed. The worked-out areas looked "not unlike the moon," he said.

He showed the judge a set of photographs to show the "devastation" caused by the mining.

Since the British flag was raised over Ocean Island in 1900 there had been a conflict between the desirability of exploiting the phosphates and the need to preserve the environment so that the people could live there, Mr Macdonald continued.

The Banabans' case was that in 1913 the British Government and the phosphate mining company had agreed that coconuts and other food bearing trees would be planted on worked-out mining areas. That obligation, they claimed, was also included in the deeds under which individual landowners granted mining rights.

Just enough re-planting had been done to show that it could be done, but not enough to fulfil the obligation, Mr Macdonald submitted.

The hearing continues today.

# LETTERS TO THE EDITOR

## Unrest in South Pacific islands

*From Sir Bernard Braine, Conservative MP for Essex, South-East*

Sir, Your thought-provoking leader, "UDI in the South Pacific", September 3, rightly draws attention to the difficulties arising for metropolitan powers during the decolonization process.

However, you implied that the wish of the Banaban people for the return of sovereignty over Ocean Island is founded upon an unwillingness to share their phosphate wealth. The truth is that the main recipients of this wealth for the past 75 years have been Great Britain, which as the administering power has insisted on extracting from it over half the Gilbert and Ellice Islands Colony annual budget, and Australia and New Zealand, whose farmers have for years been able to buy Ocean Island phosphate at well below world prices.

In any event, these phosphates will be exhausted in 1978. Therefore, there will be no wealth from this source either for the Banabans or anyone else. The real issue is whether the Banabans should have the benefit of the last three years' production in order to restore their devastated homeland thus providing for their future existence as a people, or whether Britain, by refusing them independence, should continue, at Banaban expense, to subsidize the Treasury's responsibilities towards the Gilbert and Ellice Islands Colony.

The position regarding Bougainville is not parallel since the vast copper deposits are likely to last not three years but very much longer.

While Bougainville, as part of Papua New Guinea is primarily an Australian Government responsibility, it nevertheless concerns Britain for two reasons:

(i) it has been, until September 16 this year, a United Nations Trust Territory and Britain, as a member, must therefore share responsibility for the consequences of vesting this sovereignty in a unitary PNG Government;

(ii) it is of further significance to Britain that following the attempted secession of Bougainville from PNG the whole of the Western Islands District of the British Solomons Islands Protectorate (comprising a third of its population) has asked through its District Council to join Bougainville.

In April this year I visited the GEIC, Ocean Island and Fiji with my colleague Mr John Lee, MP. Our joint report, submitted to the Foreign and Commonwealth Secretary, called for an immediate round table conference to which Britain should invite Australia, New Zealand and Fiji in order that the Banaban dispute should be settled in the spirit of Commonwealth cooperation. Sadly, our recommendations were ignored.

The situation is drifting perilously. It is not surprising, therefore, that the shadows are lengthening across the Pacific.

As in the case of the Banaban issue, there is surely an urgent need arising out of Britain's responsibility for the Solomons to discuss these matters with our Commonwealth partners in the Pacific while there is still time to prevent a proliferation of Anguilla-like situations or worse.

Yours faithfully,  
BERNARD BRAINE,  
House of Commons,  
September 12.

*From Mr Grenville Jones*

Sir, May I as an economic and constitutional adviser to both the Government of Bougainville (now styling itself the Independent Republic of the North Solomons) and the Rabi Council of Leaders representing the Banaban people,

comment on your leader (September 3) "UDI in the South Pacific"?

You rightly stress the dangers of possible fragmentation while, at the same time, underlining the need for small island communities, with strong nationalistic feelings, to work together. This is precisely what both the peoples of Banaba and Bougainville have been and are trying to do.

The Banabans, who were never consulted over their incorporation as part of the Gilbert and Ellice Islands Colony, have for long protested about their treatment. Although the Banabans fund over half the GEIC budget, they receive no benefits and have no representation either in the GEIC House of Assembly or in the various government departments. They want associated status with Fiji where most of them have been living since 1945 while at the same time seeking economic cooperation with the GEIC (surely the exact opposite of fragmentation?). However they are adamant that they alone should not shoulder the whole financial burden, but that this should be shared equitably—the brunt being borne by those governments (United Kingdom, Australia and New Zealand) who have for the past 75 years reaped the benefits of phosphate mining.

The situation of Bougainville differs in that the discovery of copper was a relatively recent event though Bougainvillean nationalism long preceded this. Despite their strong nationalistic feelings, one of the Bougainvillean leaders, Fr John Monis, Member for Bougainville in the Papua New Guinea House of Assembly, was deputy chairman of the PNG constitutional planning committee specially set up for the purpose of creating a constitution for an independent PNG which, while preserving the unity of the territory, would nevertheless recognize the ethnic and cultural differences between the various peoples comprising that state.

After several years of deliberation resulting in the creation of a constitution that seemed to reflect the aspirations of all the peoples of PNG, the PNG Government, ignoring the recommendations of the constitutional planning committee, have effectively gagged debate in order to force through the PNG House of Assembly a constitution which bears little resemblance to that originally and democratically agreed upon. Hence the declaration of independence by the Bougainville Provincial Government.

What is also disturbing is the attitude of both the administering powers concerned, the United Kingdom and Australia. The underlying reason for their policies seems the desire, on the one hand of the British Government, to avoid any charge to the Treasury through a total or partial loss of phosphate money from Banaba, while in the case of Australia, Bougainville is bundled with PNG for similar reasons.

In view of the bloodshed suffered in the past as a result of coercing the diverse peoples of new nation states into accepting colonial boundaries drawn in the distant past without regard for ethnic, cultural or geographical realities, is it too much to ask that these lessons should be learnt and a more statesmanlike approach adopted towards the feelings and political aspirations of large minorities? Fragmentation should, if possible, be avoided, but surely the regrouping of islands such as Banaba and Fiji, or Bougainville with the whole or part of the British Solomons, should be welcomed.

Yours faithfully,  
GRENVILLE JONES,  
22 Charing Cross Road, WC2,  
September 11.

# Banabans welcomed

Banabans received a big welcome from a Gilbert and Ellice Islands Government official when they went ashore at Ocean Island from the ship Ai Sokula, Fiji Times reporter Leone Vuetivavalagi reported from Nauru last night.

Of the group of 60, 36 stayed at the island, including four women.

The ship Temple Hall, bringing equipment for the group from Australia, was

delayed on the way to Ocean Island.

One Banaban with the group, Teem Takoto, was fined \$40 at Ocean Island for criminal trespass at the home of a British Phosphate Commissioners' official.

The magistrate, Mr Kamuta Laatasi, said it was a disgrace that Takoto committed the offence when drunk. Takoto pleaded guilty.

● 'LAST BATTLE' P3.

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Fiji Times 22/3/75.

Canberra Times 23.7.75.

## BANABANS' CASE

# Judge to see island

LONDON, Tuesday (AAP). — The British High Court judge hearing a dispute about Ocean Island in the South Pacific is to visit the island in October.

Chancery judge Mr Justice Megarry announced yesterday that he had decided to agree to the wishes of the Banabans, the former inhabitants of Ocean Island, that he should see their former home for himself.

The trip is expected to cost the equivalent of \$A66,000.

The judge will also call in at the island of Rambi, 2,500 kilometres away in the Fiji group of islands where the former Ocean Islanders have lived since phosphate mining made their former home virtually uninhabitable.

The case, which has taken 67 sitting days so far, centres around royalties for the mining of phosphate and restoring ruined land.

January 14.

# Plight of the Banabans

From Mr Frank Hooley, MP for Sheffield, Heeley (Labour)

Sir, The plight of the Banabans first came to my attention nearly 10 years ago, when I was invited to look into their difficulties by my own church, the Methodists. I was considerably shocked by the information I managed to unearth by parliamentary question and discussions with Ministers, and not surprised to discover that this squalid story had provoked criticism in the Commons from members on both sides of the House over a long period of years.

It must be almost unique in colonial history that a tiny community of about 2,000 souls should have the very land they lived on excavated from under their feet, for the profit and benefit of three of the richest countries in the world, Britain, Australia and New Zealand. The specious briefs supplied by FCO officials and their predecessors to a long line of Ministers cannot excuse the sordid exploitation of these people, now exposed to public gaze by the forthright terms of the Megarry judgment, and I concur with every word of the eloquent article by Sir Bernard Braine in yesterday's *Times* (January 10).

I hope, in fact, that the existence of pressure from both sides of the House of Commons (which is both sincere and determined) will cause the Government in Sir Bernard's words "to deal generously with the Banabans, both financially and politically" so that the United Kingdom may relinquish with honour, not disgrace, our last responsibility in the South Pacific. Australia and New Zealand have a moral, if not a legal, responsibility, too, and as Pacific powers an even stronger incentive to make Ocean Island a healed wound, not a festering sore in that part of the world.

Yours faithfully,  
FRANK HOOLEY,  
House of Commons.  
January 11.

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# Judge flies to inspect phosphate island

Mr Justice Megarry, aged 65, flew from London yesterday to the South Seas to inspect Ocean Island, a 1,000-acre speck on the Equator which its former inhabitants claim has been left "ravaged and looking like the surface of the Moon".

The islanders, the Banabans, want him to see the effect of 70 years of phosphate mining by a British-Australian-New Zealand corporation. They want the island's surface restored and food-bearing trees replanted.

New Zealand agency drive

Government had restricted entry to the island, which is part of the British colony.

## INDEPENDENCE

The GEIC order said only Government officials or Banabans actually born at the island could land there without a special permit.

The order followed demands by the Banabans, the island's indigenous inhabitants, for its independence and their decision to land 120 settlers there to support their claim.

The Banabans migrated to Fiji in 1945 and settled at Rabi Island.

Early last week the Fiji ship Ai Sokula left Rabi with 60 young men to resettle phosphate-rich Ocean Island.

The GEIC Government, which is partly self-governing, opposes the Banaban demand for independence.

Mr Rotan said he was pleased to learn from the phosphate commissioners that the first 60 settlers were able to land.

"But I don't agree they

# THE FIJI

ESTABLISHED 1869

Second Century No. 1719

THURSDAY, MARCH 20,

# BANABANS LAND - BUT UNDER PERMITS

**Sixty Banaban settlers from Fiji have landed at Ocean Island — but only on a six-month permit from the Gilbert and Ellice Islands Colony Government.**

An immediate protest about the permit requirement was going to the Commonwealth Office in London, Rabi Island Council's manager, the Rev. Tebuke Rotan, said yesterday.

"I don't see the need for permits," he said. "I don't believe the British Government would back down from a gentleman's agreement."

Under the 1947 statement of intent, it has been agreed between our leaders and the British Government that our people have complete freedom to return to the island.

Mr Rotan telephoned the British Phosphate Commissioners, who mine the island, in Melbourne yesterday to find out whether the 60 settlers could go ashore at Ocean Island.

He had read in the Fiji Times that the GEIC

should be granted permits for only six months," he said.

Mr Rotan said most of the 60 settlers were young men born at Rabi.

## SECOND BATCH

Another batch of 60 settlers would leave for Ocean Island later this month, he said.

Telephoned by the Fiji Times yesterday, the Nauru Broadcasting Service confirmed that the Banabans had landed at Ocean Island.

Ai Sokula called at Nauru to get Mr Tekesi Rotan, a Banaban leader who flew from Fiji.

A broadcasting service official said Fiji Times staff reporter Leone Vuetinivavalagi had travelled from Nauru to Ocean Island also to report the landing.

The Rev Tebuke Rotan returned to Suva this week from London, where the Banabans have begun a High Court action claiming more than \$12 million in damages from the British Government.

They say the amount is the value of royalties for Ocean Island phosphate wrongly paid to the GEIC Government instead of to them.

**Energy**

# No Nukes is Good Nukes

The great energy crisis of the past two years led most developed nations, and in particular the US, France, Japan and Germany, to accelerate their nuclear power programmes. In Britain, partly because of North Sea Oil, and partly because of Britain's long history of nuclear disasters, the nuclear lobby achieved little progress. But with Tony Benn at the Department of Energy this is likely to change.

Before Benn's recent canonisation as the High Priest of the British Bolshies, he was better known as a singularly unsuccessful Minister of Technology in the Labour Government of the 1960s. Concorde, nuclear energy, the disastrous computer programme and hovertrain were just a few of the wasteful and ill-conceived wheezes that came from his Ministry. Never one to be unfaithful to a mistress as pure as technology, Benn has taken up his new role with relish. Officially, there is only one great issue on nuclear power yet to be decided by the Government, and that is the degree of international cooperation and technology-sharing Britain will choose. This is largely the sphere of Sir John Hill, chairman of the Atomic Energy Authority for the past eight years, and he lobbies for greater collaboration still.

Benn's own intervention is very much more discreet, controversial, utopian, and potentially more wasteful. Benn now wants British nuclear power to go slow on the old technology of nuclear fission — the same basic principle which gave us Hiroshima — and to begin a massive research programme into nuclear fusion. There is only one problem. Nuclear fusion technology has barely begun. It involves the energy released when atoms are brought together, rather than the old coarse form of splitting heavy atoms asunder. Its advantages include lack of radio-active dirt, and the ability to use the common atom of hydrogen, rather than the expensive and complex uranium. But so far, nuclear fusion has occurred only for milliseconds in two American laboratories, where the requisite high temperature was achieved by focussing batteries of lasers upon a single point.

From this stage, the scientists have yet to be able to control the subsequent energy, and to apply it. Indeed, although early US experiments have been promising, no effective energy has yet been wrung from the fusion process. None the less, for Benn this is the fuel of the future and Britain had better use it. Like many of Benn's ideas, this one is superficially plausible and attractive — but its implementation will be altogether different. Britain's nuclear experts have been alarmed by Benn's as yet tentative proposals, partly because they are aware of his unimpressive track record as a Minister, and partly because they suspect that his prime motive in choosing fusion is to get his own back on Eric Varley, who has just replaced him at the Department of Industry.

But Varley only last year finally drew up the blueprint for Britain's nuclear future — and it did not include fusion. The Varley plan involved using the single great corporations — AEA for the research, British Nuclear Fuels for the raw materials and the Nuclear Power Company to build the power stations. Two men run it. First Sir John Hill, chairman of AEA and of BNF, and trustee of the government's shares in the design and construction business. The other is Dr Ned Franklyn, chairman and chief executive of NPC. Lurking behind all these groups is the single National Nuclear Corporation, in which Sir Arnold Weinstock's GEC is the major shareholder.

The Varley plan was simple. The disastrous second generation programme for British nuclear power stations had to continue and be made to work. Instead of buying off-the-shelf

American stations, he chose to go ahead with British designs for fast-breeder reactors, which form the third generation of nuclear technology.

Generation One was the Magnox designs of the 1950s, some of them now almost 20 years old, highly effective and trustworthy, and operating at 98% of their potential capacity. But they are small (less than 10% of British electricity) and old.

Generation Two was the AGRs — launched ten years ago, costing £1,000 million so far, and still not producing any power. They have so far put about 6p onto every pound of the British consumer's electricity bill, and ruined the British nuclear industry in the process. All with separate designs, they all had separate and brand-new teething problems. These included:

1. At Dungeness B a boiler was designed and built too big for the concrete shell which was to store it.
  2. Cracks in the fuel assembly complex — one of the most dangerous points — at Hinckley Point.
  3. Corrosion problems at all the plants, leading to extensive re-design of cooling systems at all the stations.
  4. Under-estimation of the effects of vibration on steel and concrete components.
- All of these defects should have been designed for. All of them cost money. All of them involved major danger problems in what are, effectively, barely-controlled nuclear bombs.

With this disastrous background, Benn wishes to commit the tattered expertise of the nuclear industry to a brand new technology, in the birth of which they have played little part.

*"Private bye"*  
25/7/75.

**Colonialism**

# YES WE HAVE NO BANABANS

Last week, day 63 was reached in a little-publicised legal action between the British Government and a group of South Pacific islanders who are suing them for £22m. The islanders, who are called Banabans, are involved in two separate actions. In the first, they seek to get the Crown and the British Phosphate Commissioners either to replant areas of their homeland (Ocean Island) which have been exhausted by mining work, or to pay them compensation. (Ocean Island was one of the richest sources of phosphates in the area although most of the deposits have now been worked out). In the second action, the islanders are seeking a declaration that the Crown was the trustee for royalties from the mining works and obtained insufficient revenue from them by selling the phosphates at much lower than market prices.

The history of Ocean Island is a simple one. In 1900 Albert Ellis, an employee of the Pacific Islands Co. discovered extensive deposits of phosphate ores on the island and, according to the report of two MPs who recently visited the area, "at the insistence of the Pacific Islands Company's representatives in London, Britain annexed Ocean Island." (Report of a Mission to the South Pacific. John Lee and Sir Bernard Braine 21.4.75.) The Banabans were not consulted and for reasons of administrative convenience the island was later included as part of the Gilbert and Ellice Islands Colony.

In 1900 Ellis had "signed" an agreement with two of the Banabans which stated that for a mere £50 a year the Pacific Islands Co.

would have exclusive rights to remove phosphate from the island for a period of 999 years. The islanders had little idea what they were signing, but in the same year the British government gave the company an exclusive licence to mine the phosphates, despite the fact that neither the island nor the deposits belonged to Britain in the first place.

This was just the start of the islanders' problems. Under the 1900 "agreement" the Company had undertaken "not to remove any alluvial phosphate from where coconut or other trees or plants cultivated by the said natives are growing" but this undertaking was rapidly forgotten and the island was stripped of vegetation as the phosphates were mined as cheaply as possible. As a result the company made vast profits for its shareholders — in 1908 with an ordinary capital of £125,000 made a profit of £300,000, paid a 50% dividend and made a two for one bonus share issue.

In 1920 phosphate extraction was taken over by the British Phosphate Commissioners, a non-profit making organisation formed by the British, Australian and New Zealand governments. The three governments paid the company £3.5 million for its rights at Ocean Island and Nauru with the governments contributing 42%, 42% and 16% respectively. The declared policy of the BPC was to supply phosphate to the partner countries at the lowest possible prices irrespective of any wishes or interests of the Banabans.

In 1930 the most fertile part of the island was acquired by compulsory purchase and in 1942 the islanders were deported to be used as slave labour by the Japanese. In 1947 the Banabans moved to Rabi Island which had been bought for them by the British government using money provided by the Banabans themselves.

Ever since this time, the Banabans have unsuccessfully sought to return to their home. Since 1966 their phosphate has been sold at world prices but until 1973 85% of the proceeds were taken by the British Government in taxation for the Gilbert and Ellice Islands as a whole, leaving only 15% for the Banabans. As the two MPs discovered, an answer to a parliamentary question in the Australian Parliament on 5th December 1974 revealed that "the f.o.b. prices for different grades of (phosphate) rock from Nauru and Ocean Island for use in Australia are negotiated by the BPC under fixed contracts and are treated as confidential by the parties concerned."

In April 1965 the Banabans expelled the British Colonial Service Officer appointed to Rabi and known as the "Banabian Adviser" and two years later they sent representatives to meet Judith Hart at the Commonwealth Office. She asked them to sign a minute accepting a once and for all payment of £80,000 in consideration of the effects of phosphate mining since 1900. Not unnaturally the Banabans contemptuously refused the offer. This paltry offer was repeated by Lord Shepherd in 1968. After this, the islanders came to the reluctant conclusion that their only hope lay in the courts and in November 1971 they issued writs in the High Court against the BPC and the Crown.

Over the last few years, the Banabans have added a new demand. Having been so badly treated by the British government for so long, they now wish to be independent of the Gilbert and Ellice Islands and free to join Fiji. To back up their demands, the Banabans gave notice to Miss Joan Lester MP of the Foreign and Colonial Office that they intended to resettle on the island. To this end they have bought a launch. In March, however, Ocean Island was termed a "closed district" under the Closed District Ordinance of 1928. This means that anyone not born on Ocean Island needs a licence to live there. (Many of the

# THE FIJI

ESTABLISHED 1869

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WEDNESDAY, MARCH 1951

# BANABANS FACE GEIC ISLAND CLOSURE

**Free entry to controversial, phosphate-rich Ocean Island has closed to all but Banaban people born there and Gilbert and Ellice Islands Colony Government officials.**

The GEIC has issued an order declaring the island to be a "closed area" from March 3 — two days before Banaban leaders in Fiji announced plans to land 120 settlers at the island.

The first 60 men were due to arrive there in the Fiji inter-island ship *Ai Sokula* today or tomorrow.

Sources close to the Banaban community said last night that the GEIC island closure could prevent many of the men landing, because they were born in Fiji.

The Banabans said in Suva on March 5 that the GEIC Government did not oppose their resettlement of the island.

They plan to keep settlers there to support their claim for the island's return to them as an independent country.

Ocean Island, about 1000 miles north of Fiji, is politically part of the British-ruled Gilbert and Ellice Islands Colony.

The Banabans lived there until their mass migration in 1945 to Fiji, where they settled at Rabi Island.

A GEIC Government newspaper, the *Atoll Pioneer*, reported that entry to the island was restricted "to improve the administration and control of the island as the phosphate-mining operation enters its final stage."

## LICENCE NEEDED

The closed district order exempted indigenous people actually born at the island. Government officials and people acting on the Government's behalf.

All other people wanting to visit the island needed a licence obtainable from a district

Banabans have been born outside the island as they were all deported in 1943).

The two civil servants most intimately involved are Sir Duncan Watson and Tony Bullock of the Pacific Dependencies Department. They also called upon the Fijian Ministers when they were in London seeking to get them to pressurise the Banabans. They were rebuffed. When John Lee MP and Bernard Braine MP went to the South Pacific, their luggage was mysteriously "lost" and the Banaban boat which was to take them to Ocean Island developed a strange hole in the hull just before it was due to pick them up. They were first told that they could not visit Ocean Island before going to the rest of Gilbert and Ellice islands because of the need for a licence. When the MPs resisted this demand, the Foreign Office eventually climbed down. The MPs then duly reported in highly critical terms towards the British government. They recommended that "irrespective of the cases now before the High Court, there should be immediate discussion between the Governments concerned with a view to wiping the slate clean and making a fresh start."

Nevertheless, the Foreign Office has refused to take any notice. In June, the two MPs said, "only the fullest possible debate through the media and Parliament can help to steer the Government from a course which may end in the ignominy of another Anguilla situation."

Both the New Zealand and Australian governments are extremely embarrassed by the case of the Banabans. Confidential Australian government background documents point out the necessity for an out of court settlement, because:

"a) there is a possibility that publicity, adverse to Australia may emerge from the court hearings"

b) separate court decisions in the Banabans' favour on each of the two claims could create precedents and encourage attempts to recover damages for similar extractive ventures in other former territories."

The British Government's stance might be summed up as one of blackmailing the Australians and New Zealanders into forming a united front to resist the Banabans. Thus, in a letter of 16th December, 1974, Mr D.P. Aiers of the British High Commission in Canberra wrote to the Deputy Secretary at the Australian Foreign Office: "Our essential point is simply that Australia and New Zealand benefitted over many years from cheap phosphates.... Our two partner governments will be well aware that the main, if not the only reason why we did not obtain a higher price during the 1950s and 1960s (for phosphates) was because of constant opposition by Australia and New Zealand. The British Government cannot, however, prove this without disclosing the content of confidential communications between the three governments regarding phosphate pricing. In order to protect the wider interests of the three governments (including the desirability of protecting confidential documents dealing with diplomatic negotiations between Governments) the British Government have claimed crown privilege for such documents and that claim is now being disputed by the Banabans". In consequence, "We think it will be essential to get them (the Banabans) to lower their sights and we feel that a firm negotiating stance by all three Governments will be needed in all contacts with the Banabans."

So the situation remains. The Banabans have announced their firm intention of returning to Ocean Island despite the fact that it is environmentally a complete ruin. The British government retains its "firm stance" believing, in

Aiers' words, that "it is by no means certain that the Banabans are in a mood to consider a reasonable compromise". The future lies in the hands of the Labour governments of Australia, New Zealand and Britain and specifically with Joan Lester and Jim Callaghan of the Foreign Office. The Banabans' confidence in Miss Lester's ability to dominate her officials will not be increased by the recent remark of a senior Foreign Office official with whom she deals regularly, "She has the body of an ox and the brains of a gnat."

Police

## Forty P.C's of Silver

With the life imprisonment of Soho's number one racketeer Bernie Silver on July 8 the count-down has begun towards the expected trial of at least five senior Scotland Yard detectives on corruption charges. These arise from the 'failure' of the Metropolitan Police to prevent the huge prostitution and porn profits made in the late sixties and early seventies by Silver and his Maltese syndicate plus James Humphreys and other porn dealers.

At least six detectives have been suspended out of the 40 who have been investigated by Scotland Yard's A10 branch since the biggest ever internal investigation into the Metropolitan Police began three years ago.

Delays in bringing charges against any serving or former police officer, following the allegations of payoffs totalling £2,000 a week made by Humphreys and other porn dealers to the police in order to keep their book shops open, have aroused suspicions as to the extent of Commissioner Sir Robert Mark's determination to open up this particular can of worms.

So too have the decisions to allow 21 investigated police officers to retire - five suspended detectives subsequently have done just that.

Furthermore there has been added concern felt both inside and outside the Yard, that there is a 'leak' somewhere in or close to A10 which has kept those most concerned well informed as to the state of the investigations and warned off certain likely witnesses.

A threatening phone call made to Humphreys' wife Rusty advised her to 'lay off' one suspended detective, and her husband to withdraw certain allegations, while book dealer Robert Shaw was beaten up a day after giving a statement to A10. Both incidents showed knowledge that could only have come from inside the Yard, where certain friends of Humphreys' "Friends" are still in residence. Humphreys, currently serving an 8 year sentence for an attack on his wife's lover, has made his allegations in his diaries and a series of subsequent statements to his solicitors, journalists and the police.

Five of the six suspended detectives are mentioned in either the diaries or the statements. Such a high correlation of mention

and suspension increases Humphreys' credibility.

The following police officers figure in Humphreys' statements:

**Commander Kenneth Drury**, Head of the Flying Squad. Suspended March 1972. Retired on ordinary pension. Drury went on holiday with Humphreys to Cyprus in January 1972. Humphreys alleges he met Drury in 1971 at a Soho party he gave for a Flying Squad detective Alec Ingrams on his promotion to Detective Inspector. Humphreys claimed several other senior police officers were at the party.

**Detective Chief Superintendent Alfred Moody**, Head of 'F' Division CID. Suspended June 1974. Retired on medical pension. Moody headed the Obscene Publications Squad in 1969-70. Humphreys alleges that he met Moody and Bernie Silver at the Empress restaurant in 1969 when he wanted to move into the book business. He alleges Moody took a particularly keen interest in three book shops.

**Detective Chief Inspector George Fenwick** Former head of Number 9 Regional Crime Squad. Suspended April 1974. Retired on medical pension. Fenwick was in the 'Dirty Squad' at one time. He was moved out, according to Humphreys (who knew him) because he was too officious. In 1969 the Director of Public Prosecutions decided no proceedings should be brought against Fenwick and two other detectives over an October 1968 article in The People alleging they had cooperated with an informer to 'set up' a bank raid in order to catch the criminals involved. The three detectives issued a writ over the article. Fenwick met Humphreys socially for dinner at least once.

**Detective Inspector John Legge**, Tooting CID. Suspended January 1974. Still serving but suspended from duty. Legge, a Flying Squad man, went on holiday to Ibiza with Humphreys in 1971 accompanied by two strippers. This was disclosed in June by London Weekend Television's "London Programme".

**Detective Inspector Cyril Jones**, Detective Training School, Hendon. Suspended April 1974. Still serving but suspended from duty. Jones was also on the 'Dirty Squad' with Moody. Humphreys claims he met Jones regularly.

There are police officers mentioned by Humphreys who have not been suspended or retired. There is naturally no suggestion of anything improper in their behaviour.

**Commander Wallace Virgo**, Head of the Yard's Central Office. Retired on ordinary pension March 1973. Humphreys claims Virgo approached him in 1969 to help prevent an attack on a prison officer. Virgo was then prison security advisor to the Home Office. Humphreys claims to have met Virgo on several later occasions. At one time Virgo was Moody's superior.

**Detective Inspector Rod Tilley**, Former member of the 'Dirty Squad'. Retired on medical pension. Humphreys says he was told by a News of the World reporter that Tilley had been seen with blue film dealer Jeff Phillips.

It is natural for detectives to meet criminals who are often also informants. There is therefore no suggestion of any reflection on them through their appearance in Humphreys' statements. It is not suggested that any of these retired officers has been guilty of an offence.



James Humphreys

MINUTE

AUSTRALIAN HIGH COMMISSION

London 22/7

To Harry & Honor,

Further developments!

Best wishes

John.

# Judge bemoans visit to the South Seas

By Marcel Berlins  
Legal Correspondent

The hard life of a High Court judge was movingly described by Mr Justice Megarry yesterday when he announced his decision to visit a remote South Sea island at the centre of a long legal battle.

The judge is to inspect the site of the phosphate workings in Banaba, an island of the Gilbert and Ellice group. Its citizens have launched two High Court actions against the British Government. The first is in its sixty-sixth day.

He said his visit "would be far from a pleasant holiday trip to the South Seas. The journey would be long and exhausting, and a proper inspection of the rugged terrain would probably involve a considerable degree of strenuous agility in a high temperature.

"Nevertheless . . . it seems to me to fall within the bounds of what a litigant is reasonably entitled to expect from the judge."

In the first action, Banaban landowners want the Government and the British Phosphate Commissioners (a consortium formed by Britain, New Zealand and Australia) to replant worked-out phosphate mines with food-bearing trees so that the citizens can return. Since 1942 they have lived in Rabi, an island of the Fiji group, but they want to return when the phosphate mining ends in a few years.

In the second action, which will start when the first has finished, Banaban islanders claim £22m phosphate royalties.

Mr Justice Megarry's trip is expected to last three weeks. It is believed to be the first time a High Court judge has carried out his duties abroad.

Law Report, page 7

hearing opens today



# Judge to 'view' two South Seas islands

**Tito and Others v Waddell and Others**

Before Mr Justice Megarry

Mr Justice Megarry is to view Ocean Island and Rabi, two South Pacific islands, in connexion with a case which has already occupied him for 66 days. In stating the considerations a judge would have to take into account when asked to view a locus in quo, his Lordship said that the visit, which would occupy at least 11 days, "would be far removed from being a pleasant holiday trip to the South Seas".

The claim has been brought by Rotan Tito and 11 others as representatives of land owners in Ocean Island, in the Gilbert and Ellice group, primarily for specific performance of certain agreements to replant with coconut and other food-bearing trees some 250 acres of the island, which have been substantially worked out by phosphate mining, leaving a rugged terrain of jagged peaks of coral limestone dropping down some 80ft or more to excavated pockets.

During the war Ocean Island was occupied by the Japanese, who deported many of the inhabitants. After the war the surviving inhabitants for nearly 30 years have been living some 1,600 miles away on Rabi Island, in the Fiji group.

The defendants are or represent the British Phosphate Commission, the Attorney General, and some 14 other persons who have been joined so that they may be bound by the result.

Mr John Macdonald and Mr Charles Purl are for the plaintiffs; Mr R. A. MacCrimble, QC, Mr N. C. H. Browne-Wilkinson, QC, and Mr Donald Rattee, for the commission; Mr J. G. Le Quesne, QC, Mr John Vinelott, QC, Mr Peter Gibson, and Mr David Unwin for the Attorney General. The 14 other defendants were not represented.

HIS LORDSHIP said that Mr Macdonald had applied for him to view Ocean Island. Mr MacCrimble and Mr Le Quesne had opposed the application on behalf of the commission and the Attorney General respectively. Later Mr Le Quesne suggested that if his Lordship were to visit Ocean Island he ought also to visit Rabi. Main grounds of opposition were that a view was unnecessary; that it would disrupt proceedings and cause serious delay; and that the expense would be very substantial. Those considerations, it was said, outweighed any advantages that would flow from the view.

The matter was dealt with by Order 35, rule 8 (1) of the Rules of the Supreme Court: "The judge by whom any cause or matter is tried may inspect any place or thing with respect to which any question arises in the cause or matter." There seemed to be little in the rule or in reported cases which afforded any guidance on the principles to be applied in exercising the jurisdiction. However, his Lordship thought that he could properly act on the following propositions.

1. There was nothing to restrict the rule to cases where the place or thing lay within the jurisdiction. His Lordship could see no reason why the rule should not apply, where equity, acting in personam, was concerned with land outside the jurisdiction.

2. The rule clearly conferred a discretion on the judge which must be exercised judicially. No litigant could compel a judge to hold a view, nor had he the right to prevent the judge from so doing. Normally the matter would be agreed between the parties, but the decision was the judge's and even if the parties were united in opposing a view, the judge might still regard a view as essential to enable him to reach a proper conclusion.

3. Where the parties disagreed, the judge should weigh the advantages against the disadvantages and strike a balance. Considerations of time and money might point against a view, whereas those of assistance in reaching a proper decision would often be in favour of it, yet the degree of assistance could not readily be measured in time and money.

The visit to Ocean Island alone would take at least 11 days and the expenses would clearly be great and would involve a disruption of normal life. The party would have to include his Lordship's clerk and one counsel and one solicitor for each side. As against that his Lordship had to weigh up the assistance to be given. Plainly the view would be of some assistance, but how much?

Manifold photographs and plans had done much to inform him of the characteristics of this most

unusual island, but from time to time he had not fully understood what was being said. At times it seemed that it was due to the fact that all concerned—four of the counsel having already visited the island—had a general knowledge which his Lordship lacked. Much expert evidence had been given, which his Lordship had to evaluate.

The expenditure of time and money involved, though very substantial, had to be considered in relation to that already expended and still to be spent, as well as the magnitude of the issues.

As a means of enabling his Lordship to understand and apply the evidence the advantages and disadvantages of a view seemed more or less to balance, and if that were all it would not be easy to reach a decision. One matter—the inconvenience to the judge—should be left wholly out of account.

A view of Ocean Island would be far removed from being a pleasant holiday trip to the South Seas. The journey would be long and exhausting, and a proper inspection of the rugged terrain would probably involve a considerable degree of strenuous agility in a high temperature. Nevertheless, although there must be limits to the degree of judicial wear and tear, it seemed to fall within the bounds of what a litigant could reasonably expect from a judge.

There was a fourth proposition, based on Order 35, which seemed of fundamental importance, concerning the juridical nature of a view. It was once said that the function of a view was to enable the judge to follow the evidence, but since *Buckingham v Dally News Ltd* ([1956] 2 QB 534), *Tameshwar v The Queen* ([1957] AC 476) and *Goold v Evans & Co* ([1951] 2 TLR 1189), it seemed that what a judge perceived on a view was in itself evidence in the same way as what he saw and heard in the court room. Just as a portable object brought into court might by being made an exhibit be made evidence, so if a judge visited a place or object which could not be brought into court, that place or object provided real evidence through the medium of the judge's eyes, ears, touch or his nose. The present application must be treated as an application to tender certain evidence. True, it was evidence the adduction of which was a matter of judicial discretion, but it was still evidence. Quite properly it had not been suggested that it was irrelevant or inadmissible, merely that it was unnecessary and too expensive in time and money.

Nevertheless the court should exercise caution in refusing an application for a view. Except in reasonably plain cases, the court ought to lean in favour of granting any such application. In short, the proper approach was not whether a sufficient case for a view had been made out but whether there were sufficient grounds for rejecting it.

That approach was supported by three further considerations. (1) In a case of complexity the Court of Appeal would get greater help from findings of fact by a judge who had held a view. (2) There was always the risk if a view were refused that a litigant who had lost would ascribe his defeat to the judge's refusal. (3) There were the powers of the court as to costs. If the visit proved unjustified the party who had successfully applied for a view could be ordered to pay the costs whatever the outcome of the case. The court had adequate powers to make an order for costs to avoid any real injustice.

Substantial inroads having thus been made into objections on the score of expense and delay—since the case would not finish before the Long Vacation—his Lordship felt that Mr Macdonald's application for a view ought to succeed.

All questions as to costs would be reserved.

As to the Rabi application, his Lordship said that it was a much more difficult matter. Mr Le Quesne said that a visit to Ocean Island without a visit to Rabi might be misunderstood or misrepresented in harmful way.

His Lordship's mind had fluctuated considerably. The additional expense and delay, though not insubstantial, were likely to be relatively moderate in relation to the cost and delay caused by visiting Ocean Island. In the end, in the light of the importance of the issues, his Lordship concluded hesitatingly that the application should be granted; the costs might have to be borne by the Attorney General.

Solicitors: Davies, Brown & Co.; Freshfields; Treasury Solicitor.

# Governor opposes Banabans' claim

A plea that some £30m in royalties from phosphates expected to be extracted from Ocean Island should not be withheld from the people of the Gilbert and Ellice Islands was made by the Governor, Mr John Hilary Smith, at a press conference in London yesterday.

The people of Ocean Island, the Banabans, who now live in the Fijian island of Rabi, are involved in a High Court case claiming the whole of the royalties and other dues to the landowners for themselves. The phosphates are expected to be exhausted in 1978, and the island, virtually uninhabitable now, will then be unable to support a resident population.

The Banabans are considering

secession from the Gilberts and Ellice group with which they are linked, although the colonial government has very limited jurisdiction in Ocean Island which is virtually run by the British Phosphate Commission, an Anglo-Australian-New Zealand Corporation.

Mr Smith pointed out that 80 per cent of the revenue of the islands as a whole has been derived from phosphates. The remaining royalties were needed to develop sources of livelihood for the 60,000 islanders.

There were, he said, only 2,000 Banabans, in effect, nearly all absentee landlords, living in Fiji at far higher standards than their fellow countrymen

in the other islands. Ethnically, they were identical with the Gilbertese. (The 5,000 Ellice islanders have now decided to be a separate colony.)

Mr Smith said the Banabans had the wealth to put their side of the case in Britain, and he felt it his duty to urge the claims of the poorer majority, of whose interests he was trustee, irrespective of the British Government's policy.

Mr Rowlands, Parliamentary Under-Secretary at the Foreign and Commonwealth Office, will shortly be visiting the area to assess the situation. Meanwhile, Mr Smith said: "Nobody is interested, and terrible things are happening."

*The Times 20/8/75*

# OCEAN ISLAND TREE PLAN PUT

**LONDON.** — A special programme could restore food-bearing trees at Ocean Island which phosphate mining had devastated, a Fiji senator told a High Court judge yesterday.

Senator Charles Walker, a former Fiji Director of Agriculture, was giving evidence in an action by 12 Ocean Islanders against the British Government and the British Phosphate Commissioners.

The islanders allege a breach of promises to replant worked-out mining areas with coconuts and other food-bearing trees and shrubs.

They want the court to order either replanting or payment of compensation.

In a related action later,

more than 300 Banaban landowners will seek about \$40 million in phosphate royalties from the British Government.

Senator Walker, called to give evidence for the islanders, said the first stage in replanting would be to prepare sites by building roads and putting down topsoil.

During the second year, coconut plantings could begin and the seedlings could be transplanted from the nursery to the sites putting about 50 to the acre.

Senator Walker estimated that a tree loss of between 20 and 30 per cent was likely at Ocean Island, requiring a similar degree of fresh planting.

## TREE LOSS

In a more favourable environment the loss would be about 10 per cent, he said.

Under average conditions, the trees would bear fruit in 12 to 14 years.

But at Ocean Island the period would be nearer 28 to 30 years before full annual production of 24 nuts by each tree.

The senator described this figure as a subsistence yield, similar to that of trees growing in non-mining areas of the island.

He said it was only one-fifth of the yield of a good growing area.

## ALREADY PLANTED

Other food-bearing trees, such as pandanus, almond, breadfruit and mangoes, could be planted on the edges of the coconut sites, Senator Walker suggested.

Pandanus and almond could be planted outside these sites, but would bear fruit only in

favourable circumstances.

Some coconuts had already been planted in the mining areas — about 20 in one area, five or six in another and 40 in another.

"Some palms looked fair for Ocean Island — terrible for a good coconut island," he told Mr Justice Megarry.

## CHEAPER MEANS

Cross-examined by Mr Robert McCrindle, QC for the British Phosphate Commissioners, Senator Walker agreed that his proposals would cost a great deal by the time the trees bore fruit.

He agreed that if the object of the exercise was simply to provide a certain number of coconuts for people who might live at Ocean Island, it could be achieved by other, cheaper means.

Mr McCrindle suggested that plantation land already producing could be bought elsewhere in the Pacific for \$300 to \$500 an acre.

Virgin land elsewhere could be bought for \$150 an acre or coconuts would be bought and shipped to Ocean Island, he said.

Senator Walker agreed with the counsel's statements.

The hearing is continuing.

— AAP



WITH THE COMPLIMENTS  
OF THE  
ADVISER ON PROFESSIONS  
MIGRATION BRANCH

*This came from John Pomeroy  
and may interest you if you  
haven't seen it*

*Alain*

Australian High Commission  
Canberra House

10-16 Mulgrave Street

01 839 5432 EXT 339

## Future of the Banabans

From the Reverend Tebuke Rotan

Sir, As spokesman of the Banaban people here in London, it was a sad moment when I read the letter you published from the Gilbertese Chief Minister (February 6).

We do not blame the Gilbertese for our present plight. It is under the British Government that Ocean Island and the Banabans have seen their natural resources extensively exploited with little profit or benefit to themselves. Britain has sovereignty, and any decision in our case must come from Whitehall. We had hoped that the Chief Minister would not want the British Government to evade its responsibility for the past by turning the problem over to the Gilbertese.

I can hardly believe the Chief Minister really thinks we Banabans are Gilbertese. We have vast differences in our cultures. To quote H. E. Maude, Department of Pacific Studies, Australian National University, who lived amongst us and the Gilbertese for 40 years: "Forgotten in Gilbertese tradition, unrecorded in the Gilbertese genealogies, it may be doubted if a single Gilbert Islander was aware of the existence of the Banabans at the time of their first contact with Europeans." On Banaban culture, Maude writes: "Much of their (Banaban) social organization has, however, been recorded and this indicates that the structure was essentially different from that of the Gilbertese..."

The Gilbertese have agreed to the separation of the Ellice Islanders because they are a different people: seeing the evidence I have provided, will the Chief Minister now agree that the Banabans should also decide their own future?

The Chief Minister will agree that there is one custom shared generally in the Pacific Islands: it is contrary to our traditional beliefs for the people of one island to take something that belongs to the people of another.

When Gilbertese and Ellice Islanders agreed to British protection in 1892, Britain ignored Ocean Island and none of the leaders of the 16 Gilbert Islands asked that Ocean Island should be included in their group. Research done by Robert Langdon, a leading writer on Pacific affairs, has shown that after we were persuaded in 1900 to sell our birthright for £50 per year, the Law Officers of the Crown found that Ocean Island "became part of His Majesty's Dominions in consequence of the occupation by the Pacific Islands Company and their hoisting of the flag, together with the British sovereign's licence to occupy it". If we Banabans, unskilled in the ways of the Western world, agreed to licence a commercial company to excavate our lands, we never agreed that our homeland should be included with islands which were strange to us so that when Britain left, sovereignty over us would be handed to others. We were never asked if we wanted to

join the Gilberts, and if the British had asked us we would have refused. But we have had to watch the fruit of our land pay for the administration and running costs of a colony that was Britain's responsibility and of which we never considered ourselves part.

We were told we could not return to our homeland after the war, but we agreed to go to Rabi Island, in Fiji and reside there only after the Commonwealth Office had made clear in their 1947 statement of intent that our rights to own, return to and reside on Ocean Island would be maintained. We struggled for survival in our strange, new environment and, to establish projects for our children's future, we borrowed money from an American bank in Fiji, and we are still borrowing money from other banks. All this while Britain's Gilbert and Ellice Colony Government was enjoying the bulk of the dwindling resources of our homeland. This year if we receive Australian \$3 million, they will collect A\$17 million, and their accumulated reserves are already very substantial.

Sometimes, it seemed that the spirit of the Banabans on Rabi was almost broken. But always in our soul there has been a vision. It is a vision of home. It is a vision that has sustained us and encouraged us in our fight to right what we consider to be great wrongs, even if that home on Ocean Island consists, after the phosphate has been excavated, of nothing but sharp-ended rugged pinnacles of coral.

In 1967 we came to London to try and get help. We had discussions with the Commonwealth Office and felt we owed it to ourselves to get the best advice we could. Had it not been for the experts in Fiji and Australia referred to by Mr Ratieta, our efforts might have been in vain. And now in London a great legal battle launched by us over the sharing of the proceeds and other aspects of our case is nearing its climax. It would not be proper for me to comment on that except to say that we could not fight this battle against the British Government without foreign lawyers.

But it should be understood that the question of independence goes much deeper than material matters, it touches on the Banaban soul. What we are now asking for, after all these years of tribulation, is the fundamental human right to control our destiny. We want Ocean Island to become independent in associated status with Fiji amongst whose people we have lived for 30 years. Using Rabi Island as our platform, we want to return once more to our ancestral homeland. We were our own masters before the British came and we must be our own masters again.

Yours faithfully,

TEBUKE ROTAN,

Rabi Council of Leaders,  
Buckingham Court,  
78 Buckingham Gate, SW1.

*The Times 20/2/75.*

## MINING ULTIMATUM

# Banaban threat of 'showdown'

SUVA, Friday (AAP). — A Banaban action group is waiting in Nauru today to sail for Ocean Island for a showdown with British authorities.

Britain has refused its request for separation from the Gilbert Islands and a halt to the mining of phosphate on the island.

The leader of the group, the Reverend Kaitangare Kaburoro, said yesterday that an ultimatum would be handed to the manager of the British Phosphate Commission on Ocean Island to stop all mining.

If there was no satisfactory reply within 12 hours the delegation and the 200 Banabans now on the island would destroy all phosphate-mining equipment and machinery now on the South Pacific island.

They would block roads and obstruct operations in the mining areas, he said. The delegation members were prepared to face arrest and prison.

His warning came in a report to Fiji last night.

In Bairiki, government centre of the Gilbert Islands of which Ocean Island is officially a part, a spokesman for the Administration said that nothing was known of the Banabans' protest trip.

The spokesman, told that the group was about to leave Nauru, said the island Government would check immediately with the Nauru authorities.

In mid-1978, police reinforcements were sent to Ocean Island to help quell a strike by the phosphate miners, during which a car belonging to a mine official was set on fire.

The delegation headed for Ocean Island is said to comprise members of the Rambi (Banaban) Council of Leaders from their Fiji island of Rambi.

They flew this week from Suva to

Nauru and are awaiting the easing of rough seas to sail in the ship Cenpac Rounder for Ocean Island.

A Fiji Member of Parliament, Mr Fred Caine, a backbencher of the ruling Alliance Party, is with them.

Mr Kaburoro said of the group's moves, "This is our last resort in trying to recover our stolen homeland.

"We will block the roads so that no machinery can move . . . we will go to places where they are mining and sit there and obstruct operations.

"We have considered the consequences and we are all prepared to meet them. We are prepared to go to prison if it comes to that".

Mr Caine confirmed the determination of the members of the delegation saying, "This must be recognised by the British Government and all the governments of the world. The Banabans have been cheated for many years by Britain.

"I am not afraid of being arrested or shot at. We have to do what Gandhi did in India.

This is the last stand of the Banabans and I will go to the end with them to help them get their freedom".

The aim of the group is for a unilateral declaration of independence of Ocean Island after the formation of a Banaban Government.

The Banabans are seeking independence for the island so that it can go its own way in association with Fiji.

Britain is refusing to separate the island from the Gilbert Islands group.

A Bill on the islands's future was to be debated in the House of Commons on February 23, according to Mr Kaburoro.

He said that when the delegation reached Ocean Island it would assemble the Banabans there for a protest march on the phosphate-commission office.

## pute

the news item you  
January 25 under the  
question asks university  
"venue in dispute". The  
and an allegation by Dr  
later that the dispute  
Birmingham University "now  
to be a personal vendetta  
by Mr Bird, the ASTMS  
organizer".  
doubtedly the dispute is  
ing the university, and if the  
ation is as Dr Hunter alleges it  
surely he must now explain to  
everyone affected why, on two  
separate occasions, during the  
course of the dispute, he has  
refused to meet Mr Clive Jenkins,  
General Secretary of the ASTMS,  
to attempt to resolve the issue.

partial observers may draw the  
conclusion that for some reason  
there are forces in Birmingham  
University that prefer confronta-  
tion to settlement and the quite  
unfounded allegation levelled at me  
is no more than an attempt to divert  
attention from the real situation.

Yours faithfully,

R. A. BIRD,

National Officer,

Association of Scientific Technical  
and Managerial Staffs,

10-26A Jamestown Road, NW1.

January 25.

## Plight of the Banabans

From Sir Michael Gass

Sir, Sir Bernard Braine's letter (January 21) leaves the impression that the Banabans have been totally impoverished by the mining of phosphate on Ocean Island. Yet, as the landowners, whose rights have always been recognized and are protected by the laws of the Gilbert Islands (and, indeed, were recently reinforced by explicit provisions in the latest Constitutional Order-in-Council), the Banabans have received an income from phosphate royalties at a per capita level well above the aspirations of most Pacific islanders. It has been large enough to deflect them from the productive use to which the average islander would have been forced to put their present home of Rabi, a larger and richer island than Ocean could ever have been for a Pacific life style.

The response to the present claims of the Banabans should

surely be directed towards their social and economic integration as a community on Rabi Island with its high development potential and not at an emotional and illogical redrawing of nineteenth-century colonial boundaries.

I am, etc,

MICHAEL GASS,

Formerly High Commissioner for

the Western Pacific,

Broadway,

Butleigh Wootton,

Glastonbury,

Somerset.

January 25.

## Closure of Porton

From Mr Michael Hamilton, MP for Salisbury (Conservative)

Sir, This week you report the admission to an isolation hospital of another Porton scientist, and the voluntary quarantine of six of his contacts. It is a further reminder of the risks faced by virologists who seek to protect the public from rare diseases.

There is the military aspect of their work too—defence against the threat of germ warfare. This is a densely populated island, and already Soviet long-range surveillance aircraft visit our skies every week. It is a simple matter for a single bomber, carrying a few tons of a microbiological agent and making use of prevailing winds to bring life in this country to a halt.

The Attlee Government appreciated this, and set up this unique research establishment in the open country of Salisbury Plain in one of the largest brick buildings of modern times. Now the Government plans to close it. Where on earth are our priorities?

Yours faithfully,

MICHAEL HAMILTON,

House of Commons.

January 24.

## Monetarism and jobs

From Mr Nigel Lawson, MP for Bloby (Conservative)

Sir, In his very long and characteristically good natured letter (January 22), Mr Reginald Maudling attacks the so-called monetarist prescription on explicitly moral grounds, claiming that the refusal to expand aggregate monetary demand faster

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# New Govt in the Gilberts

TARAWA. — The Gilbert Islands have elected Mr Jeremiah Tabai, 28, as the new Chief Minister, and a much changed House of Assembly to see the territory through to full independence.

The former administration under Mr Naboua Ratieta sustained a heavy defeat at the polls.

FIT TIMES

March 23.



A.F.R. 21.3.74

# Ocean Island phosphate

SIR — To correct an misconception in Brian Toohey's remarks on Ocean Island phosphate ("Financial Review," March 18) the Banabans (not Barnabons) were not removed from their island after the discovery of phosphate there in the early part of the century but by the Japanese during World War II.

As they were unable to return to Ocean Island at the end of the war owing to the destruction of their villages they were taken, as a temporary measure and with their own consent, to Rabi Island in the Fiji Group, which had been purchased for them with part of their accrued royalties as an investment.

After three years on Rabi they elected to remain there and are consequently not claiming compensation in the English High Court for their removal but for alleged non-fulfilment of prior contractual obligations.

**HONOR MAUDE,  
Forrest, ACT.**

# PETITIONS PRESENTED

The Leader of the Opposition, Mr Jai Ram Reddy has presented a petition to the British High Commissioner to Fiji Viscount Dunrossil, supporting the Banabans' struggle for self-determination.

Mr Reddy said Viscount Dunrossil had assured him that the petition would be sent directly to London for immediate attention.

Meanwhile, the deputy chairman of the Rabi Council of Leaders, the Rev. Kaitangaré Kaburoro, visited Mr Reddy yesterday afternoon to thank him and his party for their support of the Banaban people.

Mr Reddy assured Rev. Kaburoro and the Banaban people that his party would be behind them and give them support all the way.

The Mayors of Ba and Nausori Cr Kishor Govind and Cr Krishna Chaudhary, have also sent petitions to the British High Commissioner in support of the Banabans.

Cr Govind said he hoped the British Government would, even at this late stage, do the right thing by the Banabans and give them the separation they sought.

Cr Chaudhary said his council felt that injustice would be done to Banabans by forcing them and their Ocean Island to be annexed with the Gilbert Islands when the Banabans were seeking their legal rights over Ocean Island for separate status.

He said the course of the Banabans should be honoured and no blot should be left for the future rulers of Britain.

# FCTU BACKS BANABANS



THE president of the Fiji Council of Trade Unions, Mr Apisai Tora, (right), and executive member, Mr Fred Caine leave the British High Commission in Suva yesterday after handing a petition to the High Commissioner, Viscount Dunrossil supporting the Banaban community's efforts to attain the right to self-determination.

The council has in the past demonstrated solidarity with the Banabans.

The petition stated that the council was aware that in Britain the stage had been set for the final "betrayal", and "it is not too late for the United Kingdom to salvage some of its self respect from this sorry saga."

see whether fashion would and ignoring art injunction was being sent in the several houses ed. When the matter they should be et their feud and their ve their own ppreciation of of their

charged with activities foundations. Jiri Lederer vel in particu which carry ces. the Helsinki human rights ate, and gives ants both the y to protest ant infringe- of the charter label "dissi- and proudly as citizens explicitly support from st and com- governments re them from to death" or egal political up charges". in Prague, not let their ard, fear also ente. It must them that if harass the or 77" that is y are doing. e people, no ference in of a sover- be taken

bers of people ment proposals. e Government to follow the the Occupa- ed who have pation should is. This would to be made membership of emes, whether y unions or eing considered would be divi- any sense of

See main buildings, complete with library, Hansard and other services, stand ready to house such a body. It may be that the way back to peace, sanity and cooperation is to be found in the field of local government. I am told that at the level of the district councils the signs of cooperation are encouraging.  
Yours sincerely,  
**PATRICK MACRORY**,  
Chairman of the Review Body on Government in Northern Ireland, 1970,  
The Athenaeum,  
Pall Mall, SW1.  
January 18.

### Plight of the Banabans

From Sir Bernard Braine, MP for South East Essex (Conservative)  
Sir, Both Sir John Peel (letters, January 14) and Mr Bernard Thorogood (letters, January 12) take issue with one aspect of my article of January 10 calling for justice to be done to the Banabans. Both contend that the Banabans are Gilbertese and that the latter have, for this reason, the right to enjoy the assets of the former.  
Only Sir John produced any evidence of pre-colonial links between Gilbertese and Banabans, namely "an important chief marriage" between Beru in the Gilberts and the Banabans.  
I hesitate to question a former Resident Commissioner of the Gilberts, but a paper I have before me by a predecessor of his, Mr H. E. Maude, the acknowledged authority on the area, dates this link at AD 1650 when some fugitives from political upheavals in the Gilberts arrived on Ocean Island and inter-married freely with the Banabans.  
There was scarcely any other contact because Ocean Island was virtually inaccessible to the Gilberts until the arrival of European sailing ships. In short, there is no evidence that Ocean Island was regarded as part of the Gilberts until it was made so by British officials after the discovery there of rich phosphate deposits.  
The right to tax Banaban phosphates to finance the administration of the Gilbert Islands, a charge which would otherwise have fallen to the British Treasury, derives from the exercise of British sovereignty over the area, not from any kinship links between the indigenous inhabitants.  
No Member of Parliament, as far as I am aware, has any wish to ignore the interests of the Gilbertese people. But it is Ocean Island, not any one of the 16 Gilbert atolls, which has been totally ravaged for British, Australian and New Zealand benefit. It is the Banabans, not the Gilbertese, who have been mercilessly bullied and cheated by successive British administrations. The Government must not be allowed to continue to thwart the Banabans' profound emotional and cultural attachment to their homeland until the proceeds from the last tone of phosphate has been used to absolve Britain from her financial obligations towards her Gilbert Islands Colony.  
Yours sincerely,  
**BERNARD BRAINE**,  
House of Commons.

representatives of the Newspaper Publishers Association (NPA), the proprietors) and the unions including craft and industrial representatives.  
This report, which had taken many months to prepare, was intended to be entirely confidential to the industry. However, because sections of the report gained unauthorized publicity, it was decided by the Joint Board that the report should be published in its entirety for general circulation. This was done and it was freely available to all who wanted a copy from the offices of the NPA.  
This report, which remains available in many reference libraries, fully vindicates the statements of Mr Astor. At the time of its publication it was agreed by the representatives of management and unions that it was a fair independent and reliable study of the national newspaper business although each representative of the JBNNI did not necessarily agree with every sentence in the report.  
The present problems which the industry faces are not the outcome of difficulties which developed in recent months, or the past two or three years, they have been developing since the 50s. That they are receiving the attention they deserve now is a measure of the extremely precarious financial position of the majority of national newspapers which has in large part arisen from the mismanagement and trade union practices of the past 20 years.  
Yours sincerely,  
**KENNETH G. BRAIDWOOD**,  
15 Pembroke Court,  
Edwards Square,  
Kensington, W8.  
January 19.

### The sale of Mentmore

From the Editor of The Connoisseur  
Sir, I am writing to you about Mentmore because the wrong decision has been taken about the future of this house and its collections, which are not widely known and which are of paramount importance. The case of Mentmore demonstrates in extreme form the problems faced by the owner of such a heritage, the government department responsible for negotiating its future and the saleroom, in this case Sotheby's, brought in to advise.  
Mentmore was built for Baron Meyer Amschel de Rothschild to the designs of Sir Joseph Paxton and G. H. Stokes between 1850 and 1855. It is a grand, cumbersome and remarkable building in the English Renaissance style. Meyer Amschel's taste was in advance of his time and given the resources at his disposal, it is not surprising that he was able to bring together one of the most remarkable collections in Britain.  
Even if one were to leave aside the paintings by Rembrandt, Murillo and Turner, the Sevres porcelain, tapestries, bronzes, Limoges enamels and priceless objects from the Doges Palace in Venice, the collection of French furniture would rank as one of the finest in the world.  
The fifth Earl of Rosebery

3 Bedford Road, Westerhope, Newcastle Upon Tyne. January 16.  
**'What the Papers Say'**  
From the Chairman of Television  
Sir, David Astor's strange in his letter to *The Times* 19, about the programme *Papers Say* appeared the a large and friendly gathering newspaper proprietors, editors and journalists had met for a celebrate the programme anniversary and to announcement of its annual to the press.  
Any evidence of a state between the media was ously absent. Had Mr Astor even a representative sample 1,010 editions transmitted would realize that the pro criticism of Fleet Street is friendly and often apprecia course there is the skirmish, as there must criticism is lively, but any to discredit the press exists his imagination. If Mr Astor this, he could consult any following Maoist guerrillas, whom has presented a score editions of *What the Papers Say*. Brian Inelie, Michael Frayn, Eysan, Bill Grundy, Michael son, Anthony Howard, Ingrams, George Gale; or as founding producers: Jeremy David Plowright, Michael and myself.  
Yours faithfully,  
**DENIS FORMAN**, Chairman  
Granada Television,  
36 Golden Square, W1.  
January 20.

married Rothschild's daughter in 1878 and his grandson, the Earl, offered the house and tents to the nation in lieu of duties. Negotiations went on many weary months to determine the feasibility of this plan. Finally, the cart was put before the horse and the Victoria and Albert Museum who would have the task of running the house, had less opportunity to examine the collection than the Sotheby's representatives, whose view of the problem must be very different. They are after all, primarily concerned with making money for clients and themselves and should be thought of as guardians of the nation's heritage.  
It seems that Mentmore might go the way of Blackmore and other comparable houses. In terms of intrinsic quality and historical interest, the importance of the collection as a collection, cannot be overestimated; it reflects the civilized taste of a very wealthy man, collecting at a time when Britain's real power was at its greatest. It is scandalous that it should be broken up, and the Department of the Environment perhaps even Sotheby's, but those interested an explanation.  
Yours faithfully,  
**WILLIAM ALLAN**,  
Editor, *The Connoisseur*,  
Chestergate House,  
Vauxhall Bridge Road, SW1.  
January 19.

# Future of Gilbert and Ellice Islands

*From the Chief Minister of the Gilbert and Ellice Islands*

Sir, Recently there has been discussion in Parliament of the affairs of the remote dependency of which I am Chief Minister. It has concerned the status and future of Ocean Island, one of the 42 islands which comprise the Gilbert and Ellice Islands. The landowners of Ocean Island, known as Banabans because our Gilbertese name for the island is Banaba, have been resident in Fiji since 1945. Their land on Ocean Island is leased to the British Phosphate Commission which mines phosphate there.

The profits from phosphate mining are shared between the Government of the Gilbert and Ellice Islands and the Banabans. For many years our share of the profits were small—the original agreement in 1904 sold mining rights for a mere £50 a year. We have in fact long been subsidising the farmers of Australia and New Zealand with very cheap phosphate. But as my people have been allowed to play an increasing part in the government of their own country so things have improved and today we enjoy not only a fair world market price for our phosphate but currently an extremely high one.

This has encouraged the Banabans to seek separation and independence. They would then enjoy all the income from phosphate during the few years which remain before the deposit is totally exhausted. The people of the Gilbert and Ellice Islands are sad that greed should have tempted their own kinsmen in this way—but the Banabans have been living apart from us for some while and have been much influenced by strangers who hope to enjoy a share of their riches.

And rich they are. This year they will receive over \$A3,000,000; one seventh of the total phosphate profits and completely untaxed by my Government. This they share between some 2,000 people whereas my Government has a population of over 60,000 to care for, a population living on narrow, drought plagued atolls whose coral soils can support only the coconut palm and pandanus. The Banabans enjoy the agriculturally rich island of Rabi in the Fiji group. They have also been able to use their wealth to invest in business enterprises in the larger and relatively booming Fiji economy.

This does not mean that we do not sympathize with the Banaban claims for compensation for past exploitation. We do. Where my Government differs from the Banabans is in our belief that it was the entire country which was exploited not only the Ocean Island landowners.

The Banabans contend that they are not related to the Gilbertese. But we are all Micronesian people. We have the same gods, the same language and the same cultural traditions. Common administration for nearly 75 years under the British has developed contact and

communications established long before. We have always married between the islands and if there are differences between the Banabans and other Gilbertese they are the differences between the people of one village and another village in the same country, the differences between one family and another family in the same village. They are not the differences between one people and another people.

An indication of how closely we are related can be found in the composition of the 1,003 persons who were taken from Ocean Island and settled on Rabi Island in Fiji in 1945. Three hundred were from islands in the Gilberts other than Ocean. Of the 317 men in the party 152 were not Banabans. A recently conducted census showed that of the 2,000 people living on Rabi Island some 250 had both parents born in Gilbert Islands other than Ocean.

The Banabans also claim that the decision of my Government to allow the Ellice Islands to separate from the Colony is a precedent for according similar treatment to Ocean Island. This we cannot accept. In the first place it is a matter of regret to the Gilbertese people that the Ellice islanders have decided to seek separation but we can understand their reasons.

Unlike the Banabans they are not Micronesian people; unlike the Banabans they do not speak our language; unlike the Banabans their cultural traditions are different to ours. The separation of the Ellice Islands will be undertaken with the consent of my democratically elected Government while the separation of Ocean Island would be in direct opposition to our wishes.

As I told the United Nations Committee of 24, last November, the Government of the Gilbert and Ellice Islands consider the issue to be straightforward. Is our territorial integrity to be preserved or is fragmentation to take place before independence? against the direct wishes of the elected representatives and the vast majority of the people? Is our only mineral resource to be used to benefit the country as a whole or only a few privileged landowners? To us the answers to these questions are clear and present an irrefutable case for the total rejection of the Banabans' request.

Unlike the Banabans my Government does not have the money to spare to engage international experts, foreign lawyers and public relations consultants to lobby on our behalf. I seek the indulgence of your columns in order that the British public be made aware of our strong opposition to the Banaban claim and the reasons for that opposition.

Yours faithfully,  
NABOUA T. RATIETA,  
Chief Minister of the Gilbert & Ellice Islands,  
PO Box 68,  
Suva, F.W.S.