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AIR MAIL

Professor H E Maude  
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Australia

Please quote T&M71/948/NDI

Your reference

Date 5<sup>th</sup> June 1975

Dear Professor Maude

OCEAN ISLAND PHOSPHATES

1. I understand that you have already been consulted about litigation which is in progress in the High Court in London and which relates to a number of questions concerning the phosphates on Ocean Island. As you will, therefore, be aware, the plaintiffs in these proceedings are representatives of the Banabans and the legal action which is at present being heard relates to claims by the Banabans that areas on Ocean Island which have been worked out following phosphate mining should be replanted with food bearing trees. The defendants to this action are the British Phosphate Commissioners and (on behalf of the Crown) Her Majesty's Attorney-General, for whom I act. (No doubt you are also aware that this present action is to be followed by a further action, which will probably commence at the beginning of October, in which Her Majesty's Attorney-General will be the only defendant; that action will be concerned with questions relating to the royalties which were paid from time to time to the Banabans in respect of the phosphate mined.)

2. A problem has arisen within the last few days on which I should be most grateful for your urgent assistance, if you would be willing to provide this. The manner in which the plaintiffs' case is being presented has involved (and is involving) a wide-ranging rehearsal, by means of documentary information and oral evidence, of the history of the Banaban community throughout the present century, with particular reference to the various sets of circumstances in which the British Phosphate Commissioners were enabled to take possession of land on Ocean Island for phosphate mining. A witness who has very recently given evidence on these matters is Mr Rotan Tito, the Chairman of the Banaban Council of Leaders and himself one of the plaintiffs. Part of his evidence has related to the events which led up to and followed the making of an agreement, dated 10 April 1947 between "the Banaban Landowners of Ocean Island... and The British Phosphate Commissioners... in the presence of F G L Holland, administrative Officer, Fiji" (the agreement dealt with the transfer of a substantial area of phosphate mining land to the Commissioners).

3. Some of the remarks made by Mr Rotan, while giving his evidence in chief, can reasonably be regarded as damaging to the Crown and detrimental to its case in this action; I am enclosing pages 12 - 23 of the relevant transcript of Mr Rotan's evidence. I would draw your attention particularly to the references on page 16(B - F) to "forced" and "coerce", on page 17 to alleged problems of interpretation and lack of advice, also on page 17 to discussions with yourself and Mr (F D) MacDonald - and (especially) on page 18 (particularly C - H) on the question of the Banabans being "frightened". The subsequent pages of this

enclosure show how, according to Mr Rotan, the matter developed; pages 12 - 14 refer to a separate problem, but one of which you may have some recollection.

4. It may also be of interest to you to see how some of these points were dealt with when Mr Rotan was cross-examined by Mr J G le Quesne, QC, on behalf of the Crown and, again, pages of the relevant transcript are enclosed.

5. Mr le Quesne and his colleagues acting on behalf of the Crown have requested me to write to you with this information in the hope that you will be prepared to supply any comments or recollections which you are able about these points in Mr Rotan's evidence. If you would be willing to do this in the form of a signed note or statement, this would be helpful - and (if this should be practicable) for me to receive any such comments within the next fortnight would be of particular assistance, as it is anticipated that the plaintiffs' evidence will then close.

6. While I apologise for the formidable appearance of these, I am also enclosing two of the bundles of documents which are before the Court and which deal with the events of 1946 and 1947 - in case they contain material which you might find useful in refreshing your memory. My impression is that the Bundle Mod. "39" is likely to be of much more assistance in this respect - possibly, in particular, pages 32, 33, 36, 39 - 47, 48 (the agreement referred to in paragraph 2 of this letter), 67 - 72 (the "statement of intentions" referred to on page 20 of the enclosed transcript of evidence - there is a somewhat clearer copy on page 81 of Bundle 38), ~~and 79~~ <sup>and 89-93</sup>. Further, I enclose a copy of a Memorandum which you yourself prepared in connection with Banaban questions in September 1946 (which is also before the Court).

7. I hope that this request will not prove troublesome to you and, in any event, will greatly appreciate your giving it, and the enclosed documents, some consideration.

MDI/JAT

Yours sincerely

N. D. Ing

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Assistant Treasury Solicitor