ROTAN TITO AND OTHERS v. SIR ALEXANDER WADDELL AND OTHERS
(RE-PLANTING ACTION)
SUMMARY OF PROCEEDINGS: TUESDAY, 18 NOVEMBER 1975.

1. Mr Macdonald (Counsel for the Banabans) gave an outline of the Order for a specific performance which the plaintiffs were inviting his Lordship to make. This included planting trees in a sufficient planting medium, such that they would take root and grow, and for the purposes of the Order the plaintiffs maintained that a sufficient planting medium would be a depth of 6 feet and a uniform radius of 10 feet for each tree. The defendents, said Mr Macdonald, should have sufficient access to the plots to enable coconuts, pandanus and almonds to be planted and the defendents who would demolish all pinnacles for that purpose. The defendents would prepare, or cause to be prepared, within three months of the Order a contour and land survey. Furthermore, they would within nine months of the Order prepare or cause to be prepared a schedule of work to enable the foregoing provisions to be carried out. Mr Macdonald said that the extent of the Order would be by reference to two schedules which he indicated broadly as:

(a) those plots for which, in respect of the A and C Deeds, the plaintiffs can claim specific performance;

(b) in respect of the 1913 Agreement for all 15 plots concerned.

2. When invited to comment Mr Browne-Wilkinson (Counsel for the BPC) said that he required more elucidation from Mr Macdonald. What, for example, did he mean by "planting"? Did he mean in baskets, and if so, was he laying down any stipulations concerning the construction of those baskets, e.g. whether they were to be lined with limestone rock as had been suggested. The Court had heard evidence about schemes for planting in a 2 feet depth of soil or other planting medium, but not 6 feet.

3. In reply Mr Macdonald cited evidence to show that the extra soil required for planting in 6 feet deep baskets was available and would not seriously complicate the operation nor prolong it unduly. He argued that the levelling and preparation of baskets

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could be achieved in one year and the importation of soil in another two years at the most.

4. Mr Macdonald then dealt with the question of access saying that the BPC already had access since they were in possession of the land or, if that were not true, they were entitled to access for mining under the 1913 Agreement and therefore, by implication, were entitled to access to re-plant also.

5. Mr McCrindle had earlier maintained that specific performance should not be carried out since damages were an adequate remedy. He had argued that the re-planting was mainly for purposes of food production, not beautification of the Island, and that food could be obtained at a fraction of the cost elsewhere. Money from damages on the other hand could be more profitably spent on the development of Rabi. Mr Macdonald did not accept that the re-planting was only for food production but in order to make Ocean Island acceptable as a home for the Banabans. Mr Justice Meggary asked if this really made sense when a thousand acres of the Island was not involved in the case and would never, in fact, be re-planted. Mr Macdonald pointed out that even the re-planting of one-sixth of the Island which the plaintiffs claimed would double the area of greenery on the Island and this, he said, was very relevant to whether or not the Banabans could use the Island as a home.

6. The remainder of the day was taken up with an examination of the evidence concerning Banaban plans for the future of Ocean Island.

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