

THE BANABAN FUNDS ORDINANCE, NO. 25 OF 1948.
(Fiji file F. 128/22).

1. Section 10 of the above Ordinance reads as follows:-
"All sums payable by way of royalties in respect of minerals mined by the Phosphate Commission on Ocean Island shall be paid into and form part of the Trust Fund".
2. As I understand the transcripts which I have seen of the second case, the plaintiffs are claiming that the above provision refers, not only to the agreed royalty payable to the Banabans as a result of the meeting between them and Maynard, but also the royalty payable to Government by the Phosphate Commission, and that the latter should therefore have been paid into the Trust Fund too.
3. The circumstances of the enactment of the Ordinance are briefly as follows. Arising out of the Statement of Intentions, which provided that a Trust Fund Board should be set up to administer the Trust Fund, comprising the old Banaban Royalty Trust fund and the Banaban Provident Fund, the CS asked the AG to prepare the necessary Bill. The AG did so, forwarding a provisional draft Bill which would require careful scrutiny by the experts in Banaban affairs.
4. Maude and I discussed the Bill, and then with the AG, who submitted an amended draft Bill (May, 1948). The Bill was then sent to the Chief Secretary, WPHC, and the District Officer, Rabi, for their consideration and comments.
5. The former had no comments, whilst the latter, who discussed the Bill with the Rabi Island Council, felt that the Bill admirably fulfilled the provisions of the Statement of Intentions in this regard.
6. Executive Council advised the introduction of the Bill into the Legislative Council, (26th August, 1948).
7. In moving the second reading of the Bill in the Legislature, the Assistant Secretary for Development stated:-
"I have the honour to move the second reading of a Bill to make provision for the vesting of certain funds held by the Government of the Gilbert & Ellice Islands Colony on behalf of the Banabans in a Board of Trustees established for the purpose.....".

(It should be noted here in passing that such funds were not transferred to the Fiji Government until the 1st January, 1949).

8. The Bill was read a third time and passed, no debate taking place thereon; it became Ordinance No. 25 of 1948. It was sent to the SS under cover of the Governor's despatch No. 81 of the 8th October, 1948, and the SS acknowledged it in his despatch No. 1 of the 1st January, 1949. The Governor's despatch was purely formal; that of the Secretary of State raised a point about Section 11 of the Ordinance, but not Section 10 above-quoted.
9. Whether or not the Fiji Government was legally empowered to legislate in respect of funds held by the GEIC Government, I do not know (though the Ordinance was not to come into force until the 1st January, 1949,) but it is clear that the mover of the Bill was only concerned with funds, i.e. royalties, to which the Banabans were legally entitled. It could never have occurred to him that Section 10 included royalties paid to the GEIC Government as he could not have known about them. Nor could the AG have known of this. It never occurred to me at the time that the royalties mentioned in Section 10 could have referred to other than those to which the Banabans were entitled, i.e. not those paid to the Government. Do you hold the same view? (The matter was cured by a Fiji Ordinance of 1970.