

SETTLEMENT OF DISPUTES IN CUSTOMARY LAND IN THE BRITISH SOLOMON ISLANDS PROTECTORATE

F. M. Talasasa

Land disputes in the British Solomon Islands Protectorate are processed in one of five different ways now in operation. This depends on the nature and the circumstances under which a dispute has emerged. The methods employed are:

1. Out of Court discussions and negotiations.
2. Through the Native Courts.
3. By means of Land Settlement processes.
4. Conducting of adjudications when Government wishes to buy or lease customary land, and
5. Adjudications when claims of objections are raised against an application to register the titles of alienated land.

Methods 1 to 4 are employed when disputes over customary land are involved, whereas method 5 is used only when claims of objections are raised by Solomon Island landowners, against the registration of titles in respect of alienated lands—freehold or leasehold interests. Disputes settled under discussions, or through the Native Courts, are those which arise purely under normal circumstances between landowners. These disputes are not prompted directly by any outside pressure, influence, or any form of agencies. Out of Court discussions and Native Courts also have wide general applications irrespective of the location of the area under dispute, the size and extent of the area and so on, as long as these disputes are in respect of customary land. Disputes settled under these two methods are also being dealt with almost immediately the disputes emerge, because they are readily accessible to the landowners. These two methods, and in particular the Native Courts, have been created to serve disputes of this type.

Disputes dealt with under methods 3 to 5 are slightly different in character. These disputes in some cases may be brought into the open from the operation of these agencies themselves. In other words, these disputes may not have arisen, if these agencies had not been at work upon them. There are cases, however, in which disputes settled under these processes have already been dealt with in Native Courts, only to be revived through the implementation of these forces.

Claims of objections following an application for registration of titles are slightly different again. These may not have been dealt with previously under any form of settlement, because there have been no machineries in the past through which they could be settled. Disputes of this kind are usually lying dormant for many years, but they are not completely forgotten. They are lying dormant only because no other ways are readily available to settle them. They are not forgotten, because stories of how the land became alienated initially have been handed down to the new generations.

Settling of disputes under Land Settlement processes, and by means of

adjudications, are used in certain areas only. Their application in relation to location is limited and confined only to the areas of operation. However, these methods are very useful indeed, because in many respects the ownership position of the area under dispute, including the whole area within the locality, is investigated and established. Proceedings conducted under these methods are also very thorough and the results are rewarding. Native Courts, regrettably, sometimes fail in this regard. It is also of interest to note that settlement of disputes under these methods eventually leads to registration proceedings, whereas disputes conducted in Native Courts still remain under customary rights.

It may be said that, irrespective of these differences and limitations, each method used has its advantages within its own field of jurisdiction. The majority of disputes in customary land are still dealt with in Native Courts.

The foregoing then are some points of difference, relating to the circumstances under which disputes may emerge, and the methods available to deal with appropriate cases.

1. SETTLEMENT OF DISPUTES BY MEANS OF OUT OF COURT DISCUSSIONS AND NEGOTIATIONS

(a) Establishment

The method of open discussion is commonly used in Melanesian societies as part of their social way of life. This method is really a "carry forward" from the olden days in which all types of social conflicts were discussed by means of compromise solutions. The form it took in the olden days as compared to its present form may be slightly different due to change of circumstances and other social factors, but it is still used today as a first resort to deal with all types of disputes relating to social misunderstandings.

In the olden days, for instance, settlement of social wrongs by means of this method may have followed the offering of customary monies, or the performance of ceremonial feasts in accordance with native customs. Some islands within the Protectorate still perform these functions in practice, but only in relation to purely social violations against customs and not directly related to any form of land dispute. In other islands, however, the practice of settling disputes by offering compensation in the form of native monies or ceremonial feasts has already died away completely due to social changes. But discussions still survive as an integral part of village life—all wrongs committed against social customs are discussed through this method.

Because this type of settlement is an inherent part of primitive societies, its initial establishment is not known. It must be a part of those evolutionary forces which give rise to social customs, traditions and so on. The idea of settling social disputes by this method, however, still prevails—only the form and method used have been modified during the course of time.

(b) Kinds of Disputes

As far as I know and from what I have collected during general discussions, adjudication duties and meetings with older members of village societies, including leisurely conversations with village folks, land disputes in the olden days were practically nil. The majority of disputes were entirely connected with social wrongs. There were no demands for land. The main occupation in the olden days was geared towards the cohesion of a community against other rival tribes rather than territorial possession of land belonging to other tribes. Social customs and ceremonial functions were

performed in order to knit the community together and there was hardly any time available to get themselves involved in land disputes. Another reason why land disputes were hardly entertained was because the ownership of the land was clear-cut and undisputed. They knew who were the landowners in accordance with native customary rights.

Numerous disputes over land have now arisen. This is due to the breaking up of the old form of societies brought about by social changes in the behaviour and attitudes of the present generation. Whenever disputes arise, the method of open discussions is employed initially because this method was already in existence long before any other forms were invented. For this reason it is naturally accepted, and the general tendency is to use this method to discuss and settle the disputes, if possible, rather than taking them direct to the Native Courts in the first instance.

(c) Procedure and Proceedings

Usually the Headman of the village or the Council President of the area, if available, or even the Council Member—one of these officers is asked by the parties to a dispute to conduct the discussions or enquiries. The conduct of discussions may take the form of initial investigation into the nature of the dispute or may even try to discuss and settle the whole matter by means of a compromise solution. But no set proceedings are followed. Anyone who knows about the ownership position of the land under discussion is at liberty to speak out. If he speaks too much, a row ensues which may lead to physical combat, so instead of settling the real issues, personal reconciliations have to be restored first. Discussions obviously cannot continue under these circumstances. The meeting is called off and further discussions have to be arranged later. If the matter is settled, however, then no further discussions will be necessary. In some cases the procedure adopted may be similar to Native Court proceedings in which witnesses are called to give evidence. The only difference is that evidence is not given on oath.

(d) Decisions

Decisions are sometimes reached in open discussions. If this is so, it is only because the parties to the dispute are prepared to come to a settlement. Even if they are prepared, sometimes their attitudes may change during the course of discussions, in which case no decisions can be reached at all. Even if decisions are issued, they are not binding in any case. Whether a decision is binding or not depends entirely on the attitude and behaviour of the parties concerned. In most cases, settlement of disputes under this method is by means of compromise solutions rather than the issuing of decisions.

(e) Advantages and Disadvantages

The advantages under this method are obviously related to the question of saving the Native Courts from overloading themselves with numerous petty disputes which may involve only minor misunderstandings. There is also the question of maintaining good social relationships between the parties which may be destroyed in Court proceedings. This is of particular importance when members of the same families are involved, unless the dispute is of such magnitude that it has no alternative but to go through the Native Courts.

One great disadvantage relates to the non-binding character of the decisions themselves, or the compromise solutions reached. Disputes are

bound to come up again, whereas in the olden days once social disputes were settled under this method in accordance with native customs, they were accepted as binding. Sometimes discussions may only breed further discussions and complicate the whole issue, followed by unpleasant exchange of words and even fists. This aspect is even more dangerous than losing one's good social relationships.

2. SETTLEMENT OF DISPUTES THROUGH NATIVE COURT PROCEEDINGS

(a) Establishment

The *Native Courts Ordinance* was made by the High Commissioner in 1942. Following this enactment Native Courts have been established by Warrants signed by the High Commissioner. Today there are over fifty Native Courts in operation throughout the Protectorate. The establishment of Native Courts is based on the understanding that the majority of disputes, whether relating to social customs or otherwise, have already been dealt with under the method of discussion but decisions issued from these informal discussions are not binding—no penalties or punishments in the form of fines or imprisonment are entailed. Fines take the form of compensation when personal wrongs are involved, but no suitable penalties can be given for public wrongs. A clear definition of the difference between criminal cases and civil cases has been made possible by the establishment of Native Courts. Powers and jurisdictions conferred on Native Courts are embodied in their Warrants.

(b) Appointment of Members, Including some Criteria for Appointment

The appointment of members to a Native Court is based on certain criteria. These include the standing in the community, personal character, intelligence and common sense of the persons appointed. Appointments are also made so as to give a full representation of the community. This is intended to ensure that impartiality is preserved during Court sittings.

The number of members appointed varies from district to district over which the Native Courts have jurisdiction—population density is also taken into account. A sufficient number of members is always appointed, however, as stocks in reserve.

The quorum in a Native Court sitting consists of not less than three members, one of whom shall be the President or Vice-President, and in the determination of any case or matter, the opinion of the majority of the members shall prevail. The President presides in all sittings and in the absence of the President the Vice-President acts as President.

If a member of the Native Court is involved in a dispute or if he is related to one of the parties, he cannot sit to hear the case. His place is then taken by a member from the reserve pool of membership. If one of the members, including either the President or Vice-President, is intimately known by the parties in a friendly relationship, then it is best for that member not to hear the case. If practically all the members, including either the President or the Vice-President, are involved in one way or another, then a completely new Court must be established specifically to hear the particular case only, after which its Warrant will be revoked. Various ways can thus be employed to meet a given situation in the interest of justice. Every Native Court has a Court Clerk who keeps a record of all the proceedings. Proceedings are recorded in simple English by the Court Clerk.

(c) Conferring of Jurisdiction

Native Courts have complete jurisdiction in all matters relating to customary land. In the initial stages of Native Court development, jurisdiction over customary land disputes was limited to areas of land, the value of which did not exceed \$100. During these stages appeals from Native Courts were conducted by District Commissioners and District Officers as Deputy Commissioners for the Western Pacific. Jurisdiction to hear land cases in customary land was also conferred on the Deputy Commissioners' Courts. The Magistrates' Courts established under the *Magistrates' Courts Ordinance* 1961 have now replaced the Deputy Commissioners' Courts and jurisdiction over customary land is no longer conferred on the Magistrates' Courts or a Deputy Commissioner as such. Appeals against decisions issued by the Native Courts relating to customary land disputes lie direct to the High Court. The High Court has jurisdiction in all matters of disputes over customary land.

(d) Proceedings in Land Cases

Proceedings in land cases are initiated when one of the parties applies to the Court Clerk for a hearing. The Court Clerk liaises with the Court President who sets a date for the hearing. The Court Clerk issues the relevant summonses to the defendants. The Court opens by calling upon the plaintiffs and their witnesses to present the matter of dispute. Witnesses then give evidence on oath and are cross-examined by the other side. The case for the plaintiffs closes. The defendants are now called to present their case by giving evidence on oath. They are cross-examined by the plaintiffs' side. Independent witnesses may be called, if required, to give additional evidence. The case for the defendant closes. The members now retire and before a decision is issued they may have to inspect the land under dispute to ascertain the properties on the land. When all the members are satisfied after considering the case, the Court resumes and a decision is issued orally by the Court President from the bench.

(e) Decisions Issued by the Native Courts Subject to Appeal to the High Court

The nature of a decision issued by a Native Court depends on the circumstances of the case. Sometimes a decision is forthright in favour of one party. In other cases the decision may be in favour of one party as the real owners of the land under dispute while the other party may still have customary rights to use the land. A decision of this kind is issued when the land under dispute has been used by both parties together for many generations. The party with customary rights to use the land may be one whose ancestors have been granted permission by the members of the landholding families to settle the land and their descendants have continued living with the members of the landholding families up to the present generation. Clearly they would not have right of ownership, but they would have customary rights only to use the land under permission granted by the members of the landholding families. If the other party, on the other hand, never used the land, or lived on the land, then clearly no interests in land relating to customary rights exist, in which case the decision may be issued entirely in favour of one party only.

Sometimes a complicated situation may be encountered and a decision

by way of a compromise solution may have to be given. Whatever the decisions may be they are in general based on a variety of factors in a given situation. If one party is aggrieved by the decision of a Native Court, and wishes to appeal to the High Court, he is entitled to do so. The party wishing to appeal must pay \$2. The period under which an appeal must be lodged runs for one month from the date of the decision. The decision of a Native Court is not binding because the same land is still subject to disputes by other persons. The decision does not lead to the eventual registration of that land whether such decision is issued by the High Court on appeal or not.

(f) Some Factors Influencing Decisions in Native Courts

The normal procedure adopted in arriving at a decision is based on the assessment of evidence. I am not really thinking of this aspect. The factors I have in mind are those which may intrude into the decisions unnoticeably and somehow flavour the decisions. Fear is probably one of the main factors—this is a fear of being criticized if the other party loses the case. There is also fear of losing one's social relationships, of losing one's friends and so on. Favouritism is another. Popularity is another and familiarity is also one of them. Weakness is another which may result directly from popularity and familiarity. The Court President, for example, may be a very popular man; everybody in the district is familiar with him. His attitude and his nature are such that he is not really respected although quite unintentionally. He is easily swayed and influenced one way or another. If this is the case, then his work as Court President must be affected. There may be isolated instances as well, in which the Court President and other members are subjected to pressure of one form or another such as bribery and intimidation. There are many other factors which one can think of, but the ones I have mentioned are some of the most important.

(g) Advantages and Disadvantages

One of the great advantages gained through the operation of Native Courts is that all land disputes relating to customary rights are attended to promptly and immediately which is impossible under any other methods. This has been made possible by the fact that Native Courts have complete jurisdiction over customary land. The main streams of disputes are connected with customary land, and had it not been for the establishment of these Courts, plus the conferring of complete jurisdiction, a great deal of backlogging could easily be experienced. Knowledge and skill of the members relating to customary rights of ownership are also an advantage. Therefore I do not see that any disadvantages, due to the conferring of jurisdiction over customary land disputes, have ever been experienced. The disadvantages I can think of are not related to the establishment of Native Courts, or the conferring of jurisdiction over customary land disputes as such. The disadvantages I have in mind are rather related to the personal character of the persons comprising the panel of membership. In other words, a good Native Court depends on good membership, and an efficient Court Clerk. The President must be a man of good repute, and respected in the community. The Court President and all the members must shoulder their responsibilities. In general this has been the case, but regrettably, one or two have failed in this respect. In some instances, advantages and disadvantages may also depend on the size of an area over which a Native Court has jurisdiction. If the area, for example, is large enough, the Native

Court has a better chance to exercise impartiality in its decisions, whereas in a small area it is sometimes difficult to avoid emotional flavour intruding into the decisions unobtrusively.

3. LAND SETTLEMENT

(a) Establishment

The main purpose of establishing Land Settlement under the provisions of the present land legislation is to encourage individual ownership of land, by means of documentary titles. Land Settlement may be defined as a process of investigation and recording of interests in land, and the establishment of the ownership of those interests which will eventually lead to the registration of the title to the land. It is a process by which customary rights are converted to legal rights. The most important way to register customary land is by means of Land Settlement processes.

(b) Selection of Land Settlement Projects

No statutory rules have been laid down concerning the selection of an area for a Land Settlement Project. All customary lands are eligible for the application of this method but for purposes of administrative control, and to get useful results, some criteria for selection have been kept in mind. An area which has already been put into intensive cultivation of cash crops by Solomon Island farmers may be selected, or an area surrounded by alienated lands where the ownership position has not been cleared up may also warrant selection. Other factors take into consideration the relative existing economic utilization of the land but where security of ownership is of a dubious character. Application of Land Settlement to such areas gives security to an individual farmer who is anxious to develop his land. The speed with which Land Settlement processes are applied depends on the availability of staff to carry out the various official functions required in this operation. Meetings with affected landowners to explain the process are also held at frequent intervals. The purpose of these meetings is to find out if the landowners are willing to have their lands registered under this method. If a landowner does not wish to have his land registered, then it will have to be registered as customary land, or it can be left out of the settlement area altogether. Once an area has been selected the High Commissioner then issues a Notice of Declaration declaring the area to be a Land Settlement area.

(c) Appointment of a Land Settlement Team

Following the declaration of the Land Settlement area, various officers are then appointed to make up what is called a Land Settlement Team. The team consists of a Settlement Officer, a Recording Officer and a Demarcation Officer. The Settlement Officer is in charge of the whole project. He is, so to speak, the captain of the team. The Recording Officer is responsible for the investigations and recording of interests in land with a view to establishing the ownership of each parcel of land within the Land Settlement area. The Demarcation Officer, who is usually a qualified surveyor, is responsible for demarcating the boundaries of the parcels of land within the Land Settlement area. These officers have quasi-judicial functions to enable them to settle disputes as they arise within their own fields of activities.

(d) Field Investigations, Recording of Interests and Demarcation of Boundaries

Field activities are preceded by two or three meetings of the Land Settlement Team with landowners to plot out the general plans of operation. Both the Recording Officer and the Demarcation Officer are actually engaged on field activities. The Settlement Officer, who is the co-ordinator of the operations, is kept informed by the two officers engaged in the field on up-to-date developments. The Recording Officer records all the interests in land and hears disputes relating to claims. He settles the disputes when he can do so. If he feels that he cannot settle them, he then refers them to the Settlement Officer who issues a decision. If one of the parties is aggrieved by the decision of the Settlement Officer, he can appeal to the High Court for a ruling, otherwise the decision of the Settlement Officer is final. In the same way the Demarcation Officer investigates the boundaries of the parcels of land within the Land Settlement area. If any disputes arise, the Demarcation Officer tries to settle them. If he cannot settle them, then he refers them to the Settlement Officer, who hears them and issues a decision. The Settlement Officer's decision is subject to appeal to the High Court. Otherwise his decision is final. The appeal is possible on points of law or procedure only.

(e) Compilation of Settlement Records and Application for Registration

After all the field activities have been carried out and completed and the Demarcation Plan has been drawn by the Demarcation Officer, Settlement Records are then compiled by the Recording Officer. A Settlement Record is a sheet of paper on which the names and descriptions of the owner or owners are written. All other interests attached to the land as appropriate in each case, such as public rights of way, customary rights of access, incumbrances in favour of other parcels of land, are also written in the Settlement Record. A parcel of land within the Land Settlement area is given a number and if the Settlement Project involves a large, extensive area, it may be divided into several sections. If the area is small, it may comprise only one section and so on. After all the Settlement Records in respect of each parcel of land have been completed, they are submitted to the Registrar of Titles with an application for registration. This then completes the whole operation of the process and the land is converted from customary rights to a new tenurial system under registration of titles.

(f) Advantages and Disadvantages

Many advantages are gained under the operation of this system. The landowner no doubt feels for the first time the security of his ownership. He can now work his land free from any hindrance. He is justly proud of his newly secured possession and he can do whatever he likes with it. He can sell it if he wants to, lease it if he wants to, or develop it himself, whichever the case may be. He can also apply for loans to develop his land and charge the land as a form of security. Through this acquisition of security and complete authority of ownership, he is further encouraged to develop his land. All these points are advantageous to the farmer because he now feels free to deal with his land. Those whose lands have already been converted this way are absolutely satisfied, because they realize the value and importance involved. Many Solomon Islanders are becoming conscious of the many advantages gained under this process and a constant

stream of applications for their land to be registered has been received. The advantages are so great that any disadvantages there are have been outweighed in areas under economic development. But there are perhaps disadvantages in some other aspects, particularly in relation to legal implications which may arise in the future. For instance, the system is not properly understood by Solomon Island farmers as yet, even though it has already been applied to them. There is the question of the squatters' rights, for instance, when persons not having rights to the titles of the land may continue occupying the land in the form of subsistence agriculture, or other activities, but the farmers do not tell them to leave the land. Another disadvantage may also involve the complete freedom of the farmers to have dealings in land. This is a danger in this system. For example, some farmers may decide to sell their land to non-Solomon Islanders for say \$200, due to some kind of pressure. They accept the price and spend all the money but lose their land in the process. The idea of security under this system becomes paradoxical if this happens. Therefore remedial legislation in my opinion must be effected to control this kind of freedom in land dealings.

4. ADJUDICATION WHEN GOVERNMENT WISHES TO BUY OR LEASE CUSTOMARY LAND

The method by which Government acquires customary land by means of purchase or lease agreements has changed since 1st January, 1969, under the *Land and Titles Ordinance* 1968. The system of adjudication, following the signing of agreements, if claims or objections are raised, has also changed. All the agreements which have already been made prior to 1st January, 1969, however, still operate and must be completed under the repealed legislation by virtue of a saving provision under the 1968 *Land and Titles Ordinance*. Quite an amount of outstanding adjudication work has yet to be done under the old legislation. For this reason I intend to describe the system of adjudication under the recently repealed Ordinance. It may be sufficient to say that under the new law, an Acquisition Officer is appointed by the Commissioner of Lands to acquire customary land by means of an agreement to purchase or lease the land. The Acquisition Officer is responsible for this operation right from the beginning to the end, including settlement of disputes arising from acquisition proceedings. The decision of the Acquisition Officer is subject to appeal to the Magistrates' Court. The operation of agreements under the old legislation on the other hand involves a number of officers in the District Administration and the Lands and Surveys Department. The Adjudication Officer who deals with disputes arising from the agreements is also a different person. These are some of the differences.

(a) Discussions and Negotiations leading up to Purchase or Lease Agreements

When land is required for a public purpose such as a school site or a clinic site, initial discussions and negotiations must be carried out first to find out who owns the land. Under present legislation non-Solomon Islanders are not allowed to purchase or lease customary land. Only the Commissioner of Lands is empowered by law to acquire customary land. If a Church Authority or a Council wishes to acquire customary land for the purpose already described, the Commissioner of Lands is asked by the respective authorities to acquire the land. Negotiations to lease the land

are carried out by the Commissioner of Lands, who in fact leases the land from the owners and transfers the lease to the respective authorities. If the Government on the other hand wishes to acquire customary land for the purpose of timber operations, the Commissioner of Lands negotiates with the landowners direct for this purpose. In fact the Commissioner of Lands authorizes either an officer of the Lands and Surveys Department or District Administration to carry out the actual negotiations, signing of agreements and posting of relevant notices etc. on his behalf.

(b) Signing of Agreements

After having established the owners of the land required by means of meetings and discussions etc., an Agreement to Lease form is prepared by the authorized officer for signing. Conditions and covenants are incorporated into the lease agreement form relating to the terms of the proposed lease, premiums and rents etc. The owners then sign the agreement as lessors. The authorized officer also signs on behalf of the Commissioner of Lands. Immediately following the signing of the agreement, the authorized officer posts a notice to this effect and informs the Commissioner of Lands accordingly. The Commissioner of Lands then issues an Order to the authorized officer specifying a date on which a period of appeal begins which runs for three months, this date being also the date on which the duties of the Commissioner of Lands in causing the boundaries of the land to be marked out and publicized are deemed to have been completed. The authorized officer then posts another notice to this effect.

(c) Appeal Period

During the period of objections, appeals against the agreement to lease or purchase may be raised. These are submitted in writing by the appellants to the District Commissioner in whose district the land is situated. The District Commissioner forwards the notice of appeal to the Commissioner of Lands. Appeals are entered into appropriate forms before being submitted, and must be signed by the appellants with the grounds of appeal entered thereon. If there are no appeals within the given period, then the lessors are deemed to be the owners of the land and a Lease Document is made accordingly. The lessors in fact are appointed by the landowning group as trustees and representatives of that group in accordance with current native usage.

(d) Processing of Appeals

The Commissioner of Lands on receipt of the Notice of Appeal refers the matter to the Adjudication Officer, who in turn advises the parties concerned regarding the date, time and place for hearing. Notifications are issued to the parties in appropriate forms. Sufficient warning is given to ensure that all parties and their witnesses are fully aware of the date, time and venue for the proposed adjudication. Radio messages and announcements also serve as useful channels for publicity purposes. No set procedure is provided under the law concerning the adjudication. The Adjudication Officer may in his discretion adopt whichever procedure is appropriate and suitable to conduct the adjudication. Rules of evidence do not apply. The Adjudication Officer is at liberty to investigate the case under the most appropriate method with a view to bringing out all the facts relating to the ownership of land. In recent adjudications the pro-

cedure adopted is similar to ordinary Court proceedings. Witnesses for the objectors' side are called first to give evidence on oath followed by the witnesses for the lessors' side. Witnesses for both sides may be recalled and further recalled by the Adjudication Officer for questioning, and the Adjudication Officer may call independent witnesses to give additional evidence. After the submissions of witnesses for either side, question after question is put to each witness by the opposing side. The Adjudication Officer also asks questions to establish doubtful points. Each witness signs his or her own statement after it has been read back to him or her and found correct. The Adjudication Officer also signs the statements of the witnesses. After the witnesses for both sides have completed their submissions, the land under dispute is then inspected by the Adjudication Officer, including both parties and their witnesses. During the course of ground inspection, the Adjudication Officer asks the parties concerned to show him the properties in the land which have been mentioned during the course of adjudication proceedings, such as tambu places, old village sites, old garden sites etc. It is possible to find out during inspection who owns the properties in the land and who does not own any properties. Also it is possible to establish who knows about the land and who does not know about it. It is also possible to establish who has right and control over the land because of his knowledge of properties in the land, and who does not have any right and control because he does not know the location of these properties as he has never seen them before and has not been informed about them and so on. During the course of adjudication proceedings, the Adjudication Officer also observes the behaviour, attitude and manner of speaking of each witness. He is able to assess, then, whether the witness is genuine and sincere in his submission or not. All these points are taken into consideration. In compiling the adjudication records the Adjudication Officer includes a separate section on each of these points—the Nature and Particulars of the Claims, the procedure adopted including preliminary preparations, the Inquiry Proper and Inspection of the land, also Assessment of Evidence, Summing up and Conclusion. Genealogies submitted by each witness or by a witness on behalf of the party and the rest of the witnesses are also recorded. This completes the whole process of adjudication proceedings. In fact proceedings are incomplete until the land has been inspected by the Adjudication Officer. This is a procedural requirement under the provisions of the *Land and Titles Ordinance*.

(e) Decision of the Adjudication Officer

The decision of the Adjudication Officer, which depends on the submissions by the witnesses, may be based on the following points—the history, origin and genealogies of the landholding families; the sphere of influence exercised by which landholding families; the continuity of settlement and occupation over the land from generation to generation; the existence of tambu places, old villages, old gardens and what controls have been exercised over these properties; the authority and control over the land, whether unbroken or not, and who exercised the control and authority; the traditions, customs and magical powers pertaining to the ownership of the land; what tribe has control over them and how they were originated; the movements and activities undertaken on the land and by whom; the major tambu places and the form of spirit worship undertaken at these tambu places and by whom they were undertaken and controlled; the present

control and authority exercised over the land and by whom they are being exercised; which tribe now uses the area for garden making, coconut growing and any other form of utilization; which tribes occupy the land now, where their present villages are situated etc. The basis for a decision may be slightly different of course, depending on the points to be submitted by the witnesses, but these are the basic points relating to the ownership of customary land in accordance with native customs.

After the Adjudication Officer has arrived at a decision he then notifies the parties in writing of his decision. An appeal period running for three months begins from the date the decision has been issued. The aggrieved party may wish to appeal to the High Court against the decision. If so, a notice of appeal is lodged with the Registrar of the High Court, and if the grounds of appeal are considered justified by the Chief Justice, the appeal will be conducted. The records of proceedings of the adjudication are submitted to the Chief Justice, who studies them in detail. He will then consider whether it is necessary to call for additional evidence or not, or whether the records are complete in themselves for a decision to be given. The grounds of appeal against the decision of the Adjudication Officer must be based on points of law only and not on points of fact. If there are no appeals against the decision of the Adjudication Officer then his decision is final. If his decision is in favour of the objecting party then a re-negotiation is necessary to draw up a completely new agreement, and the whole process starts all over again. This is a defect which has been remedied in the new Ordinance. If, on the other hand, the decision of the Adjudication Officer is in favour of the lessors, then it is deemed the lessors are the owners of the land. A Lease Document is then made and executed between the lessors and the Commissioner of Lands. This is followed by an application for registration by the Commissioner of Lands to the Registrar of Titles. The Registrar of Titles then registers the lessors as the owners of the freehold interest and the Commissioner of Lands as the owner of the leasehold interest. This completes the process from the beginning to the end and the land is converted from customary ownership to a registration of titles ownership. It must be pointed out that the lessors as owners are really trustees and representatives lawfully appointed by their tribe in accordance with native customs. The advantage gained by this system is that the ownership position of the land is established and vested in the tribe and the legal interest is vested in the representatives of the tribe. The land is now secured against any other forms of dispute which may arise in the future. The disadvantages are clearly related to the great length of time involved before completion is achieved. So many officers are also involved in one agreement. For this reason, the system has been amended to ensure speed of operation.

5. ADJUDICATION WHEN ALIENATED LAND IS REQUIRED TO BE REGISTERED BY THE OWNER

(a) Application for Registration

The holder of a leasehold interest or a freehold interest lodges an application to the Registrar of Titles to have his interest registered. The Registrar of Titles issues copies of a notice to this effect to the District Commissioner in whose district the land is located. The District Commissioner then incorporates a statutory period of appeal into the notice, which should be not less than six weeks, and posts the notice on the land and at other prominent

places. During the period of claim, objections may be submitted by any persons against the application for registration. So far only Solomon Island landowners have raised objections against the applications for registration of alienated lands. If no objections are raised, investigation of the documentary title proceeds in the Land Registry. If objections are raised, these are set out in writing and sent to the Registrar of Titles. If the Registrar considers that the objections appear to be genuine, that is not frivolous, and based upon claims which require investigation in the field, he may undertake the investigation himself (very rarely), or refer the matter to an Adjudication Officer. The reference to the Adjudication Officer may be in the form of questions on which a report is required so that the Registrar can reach a decision; or it may require the Adjudication Officer himself to reach the decision. The Registrar of Titles in his written advice to the Adjudication Officer also encloses a number of related papers such as documents, maps and correspondence, etc., including the matters and questions as terms of reference for investigation. The matters and questions vary in a variety of circumstances depending on the grounds of appeal, but in general they include investigation into the nature and grounds of appeal, the possible effect of the *Statute of Limitations Act*, and the possible effect of forfeiture provisions under various repealed Land Regulations relating to the alienation of land in the Protectorate at the time the land was alienated. Phillip's Land Commission in 1922 dealt with many claims, but it was only empowered to deal with adverse claims, not to investigate all titles. If it could have investigated all titles at that date, many claims now coming up could have been dealt with when key witnesses were still alive.

(b) Procedure and Proceedings of Adjudication

The procedure and proceedings are very similar to those already described when appeals against an agreement to lease customary land are heard (see 4(d)—Processing of Appeals). The only point of interest to note here is the physical contact between two entirely opposing ideas on the battlefield of adjudication relating to the system of ownership. The applicants rely entirely on the title deeds and occupation, whereas the objectors rely on the customary system of ownership and adverse occupation of the land concerned. Both parties are absolutely ignorant about each other's system of ownership. Sometimes witnesses living around the area under dispute may voluntarily come forward to give evidence for the applicant's side, whereas in other cases the applicant may be the sole witness for his side. The Adjudication Officer considers all the aspects surrounding the case as brought out in evidence and with reference to the matters and questions before him. After having assessed all the evidence before him, the Adjudication Officer gives a summing up and answers the matters and questions. The records of proceedings are similar to those undertaken when adjudicating objections to purchase or lease of land, described previously.

(c) Report on Matters and Questions

The main body of the records consists of various sections on the Nature and Particulars of the Claims, the Procedure adopted including Preliminary Preparations, the Inquiry Proper and Inspection of Land, also a section on the Geography of the area is included and perhaps a section on the History of Title Roots. Other sections include the System of Customary Land-ownership. Assessment of Evidence and Matters and Questions. Matters and

Questions in fact only account for a small proportion of the records. The main bulk in the records consists of the formal evidence submitted by the witnesses. Genealogies are also recorded. The Report on Matters and Questions after compilation is submitted to the Registrar of Titles for his decision. The Registrar of Titles accepts the report as evidence relating to the matter of claims on which his decision is based after consideration of other aspects has been taken into account as well. The decision of the Registrar of Titles is issued in writing to the parties. Appeal against a decision by the Registrar lies to the High Court, and the High Court's decision is final. The decision of the Registrar of Titles takes into consideration the relevant land laws under operation at the time the land was alienated. Ways of reducing the bulk of the records have been considered as well.

(d) Advantages and Disadvantages

Disputes of this nature have not been processed in the past because there has until 1963 been no system of registered title to land. There is every advantage to the objectors in this regard, especially if the decision is in their favour. Even if the objectors lose the case, there is in fact nothing to lose at all if they have not exercised any previous rights over the land during the entire course of its alienation. It will be a different matter of course if the objectors have some rights, such as squatters' rights. One advantage of this system relates to the question of registration itself. The system is used to ensure that all adverse claims are adjudicated before registration. The registered title is then guaranteed by the state. The main disadvantage of course is that if the holder of the property loses the case, it may also mean the loss of effort and money which he has put in if the area being partitioned has already been utilized. The portion of land won by the objectors under this method reverts to customary rights.

SOME FORCES GIVING RISE TO DISPUTES IN CUSTOMARY LAND

What gives rise to disputes? Melanesians by nature and tradition are really an integral part of their land irrespective of whether or not they are conscious of it. Their livelihood directly depends on the land. This is inherent in the nature of their existence inherited from their forefathers and handed down to them during the passage of time from generation to generation. All traditional activities undertaken in the past and present have been directly attached to the land. This relationship has in many ways dictated their traditional mode of existence. Their behaviour and attitudes towards the preservation of that relationship have been automatically observed in a real practical way, yet without being thoughtfully and consciously realized. This situation is perhaps quite easily understood. For example, when a person is an integral part of a society, his relationship towards that society or the sense of belonging to that society is revealed through his behaviour and attitudes towards that society, yet he may not consciously realize why he behaves the way he does. The binding relationship between himself and the society he belongs to is only realized when some forces outside his own traditional mode of existence have set in and disrupted that relationship. And this is exactly what has happened in the Protectorate today.

The present Melanesian social scene as compared to that in the olden days relating to this Melanesian land relationship has somewhat changed its complexion in many respects. This climatic change in social atmosphere has been brought about by a variety of exotic forces exerted under social economic

pressures. This in effect has resulted in the disruption of that traditional relationship with their land. The interference of this inherent land relationship, however, merely leads to the strengthening of it and the awakening of a new era—the era of growing awareness of its very existence which has not been consciously realized in the past. This growing awareness of their relationship, or their attachment if you like, towards their land has given rise to many disputes in customary land. But it is not at all surprising that land disputes should arise directly from this situation in the first instance when one realizes that Melanesians by their very nature and tradition are an inherent part of their land.

There were practically no land disputes in the olden days. When did Solomon Island landowners really start to become aware of their attachment to the land? During the early period of this century large areas of valuable land had been alienated to Europeans. The method of acquiring customary land in those days took the form of verbal negotiations and discussions (there were hardly any discussions involved) followed by oral agreement between the landowners and the European purchasers, which were concluded in a matter of a few minutes. The primary aim sought at in these negotiations was initially to obtain verbal agreement from the landowners to sell their land. Once agreement had been obtained orally, and as long as the rough location of the area under agreement had been ascertained in the minds of the vendors, the sale was adequately defined. Following this process the boundaries of the land would be marked out by the purchaser. The areas marked out might include large extensive portions of land which the landowners never intended to sell under the oral agreement. The area the landowners wanted to sell might comprise only a very small portion of the land concerned. They had no idea at all about the size and extent of land required for plantation agricultural development. Their idea of giving away land in those days was in conformity with their traditional mode of existence in which areas, if granted to other tribes, would include only a small piece of land for purposes of subsistence agriculture in accordance with native customs. This sense prevailed at the time the land was sold to Europeans, whereas in the minds of the purchasers the intentions and purposes for which land was acquired were entirely different.

After the land had been marked out a document of title was then prepared and concluded between the purchasers and the vendors in the presence of a government official at the time. The document was signed by the purchasers and marked by the vendors by means of crosses because they could not read and write. There were possibilities of confusion, misunderstanding and even deception on both sides in such a dealing. Sometimes an understanding of what had happened would not dawn on the people in an area until the plantation began to be established on large areas of land—perhaps land not held by those who had signed the conveyance. This was an alarming shock to the landowners. They started to realize that the whole area in fact had been taken away. They started to become consciously aware what had happened to their land. This growing awareness resulted in the Phillip's Land Commission in 1922 in which claims were considered and portions of land already alienated reverted to customary rights. The real beginning of disputes therefore took place during this early period of alienation.

But claims submitted were entirely related to the alienation of land and not in the form of disputes between Solomon Island landowners. The claims submitted were directed towards the reversion of alienated lands to custom-

ary rights. In one or two instances leaders in societies who were not members of the landholding families and therefore not owners of lands under claims at the time, allied themselves with the members of the landholding families when these claims were raised and processed. They were merely acting together with members of the landholding families, but this did not entail their ownership or authority of the land concerned. Reclaiming of alienated lands at the time was related purely to the reversion of these lands or parts of them to customary rights and did not concern individual ownership of the lands concerned by a particular tribe. This aspect however has given rise to a few isolated cases of customary land disputes between landowners at the present time.

During the period of alienation and reversion of alienated lands to customary rights, resulting in the growing awareness of the value and importance of the land, Solomon Island landowners were beginning to assume control and authority over their land by means of land utilization in the form of coconut growing. It is of interest to note that most of the native-owned coconuts growing in the western islands of the Protectorate from which copra has been produced today were in fact planted during this period. Between this period and the Second World War, there were no further coconut growing activities undertaken by Solomon Island farmers. This was rather a period of agricultural inactivity relating to coconut growing. There were also hardly any disputes in customary land during this period.

The present period has seen a growing awareness of the value and importance of land, resulting in a sudden uprush of land disputes in customary land throughout the Protectorate. What can be the reason for this? In an emerging country such as the British Solomon Islands Protectorate, economic values and importance of land must be reassessed under a new horizon. A sound economic basis geared towards the economic development of the country for the future must be initially established. This is the key answer to the problem of overcoming the economic inertia characteristic in underdeveloped countries such as the Protectorate. The Protectorate has been termed in the past the Cinderella island of the Pacific. We do not want to remain inactive in this state of affairs waiting to be labelled with such nicknames. The initial answer therefore must be based on primary industries such as forestry, agriculture and mining. These industries depend entirely on the availability of land. Through the processes of purchase or lease agreement procedures, large areas of forest land have already been acquired for timber operations. Landowners are therefore becoming aware once again of their rights and attachment to the land. This awareness, unfortunately, instead of providing the landowners with an impetus to develop their land economically, has turned into fear. They fear that they might be dispossessed of their land completely. This fear is directly related to the acquisition of large areas of forest land by the Government for the purposes of forest activities and timber operations. This growing awareness tinged with fear has in fact thrown them into a desperate attempt to assume ownership of their lands, if possible, as a safeguard against alienation and dispossession, but in fact the land may not belong to them. Even if the land really belongs to them, members of different tribes who have not yet assumed control over large areas of land may also wish to accept a claim of rights and ownership over the same piece of land. If this situation is encountered then disputes must arise. It is thus the claiming of authority of ownership by members of opposing tribes that has given rise to disputes in customary land.

This authority of ownership however is rather confused with those aspects relating to customary rights of usage. Solomon Island landowners do not understand and appreciate this difference. In Melanesian societies, as already mentioned, ownership of land is vested in the landholding families only, but customary rights of usage are generally exercised by members of other tribes as well within those societies. It is therefore the confusion arising between the aspects of ownership of land and customary rights of usage exercised over the land which provides grounds for disputes in customary land when authority is initially assumed over an area of land by a person, persons or members of a certain tribe.

CONCLUSION

In coming to the conclusion of this article, I wish to point out that, although disputes in customary land have reached a very high level of intensity at the present time, there is in fact no land shortage in the Protectorate, except perhaps along the coastal strips where practically all valuable areas have already been taken up and worked by various groups of landholding families. The aspect of disputes against a background of land in great quantity therefore presents a paradoxical situation, but that quantity is not always available, and this often leads to disputes. No Melanesian, however, can be regarded as a landless person because there is always at least a place available for him to live and work his gardens. Even if he does not own the land, the landowners may grant him a piece of land for gardening purposes only. There is also no such thing as hunger due to landlessness.

We have seen that present disputes in customary land have been intensified through fear of dispossession due to the operations of the methods and procedures used by the Government at present in acquiring land for purposes of economic development such as forestry, agriculture and mining and, in particular, forestry. The areas acquired for forest activities and timber operations embrace quite extensive portions of land. This naturally gives rise to a feeling of insecurity in the minds of landowners towards the ownership position of their land still remaining under customary rights. They are battling with the idea that the remaining portion of customary land will also be brought under the process of alienation in future. In fact this is rather a misguided conception. Freehold interests in land brought about by means of lease agreements are in fact vested in the trustees and representatives of the landholding families. The question of fear relating to the remaining portions of land under customary rights, which comprise practically the whole of the landmasses in the Protectorate, must also be dispelled. Negotiations and discussions leading up to lease agreements have always been conducted thoroughly and in most cases in a friendly atmosphere. No lease agreements have reached conclusion until the conditions involved are properly understood by the landowners and their agreements obtained voluntarily. Claims of objections against the agreements are not levelled against the agreements as such—they are rather directed against the ownership of the lessors.

The evolution of disputes in customary land is an integral part of social and economic change. This is inevitable in a country such as the Protectorate which at present is undergoing a transitional period of economic changes, social behaviour and attitudes. This is a period too in which personal values and attachments must be reassessed and readjusted in order to meet the changing circumstances. It is also a period in which degrees of difference between national interests and individual interests must be revalued on their

own merits. Land disputes in customary land in the same way must be accepted as part of these basic changes brought about by the pressures of social and economic factors in which time itself, through its healing process, will provide the opportunity in which their gradual adjustment into the general economic and social set-up of the country is achieved.