

401. Sir Kenneth Roberts-Wray to H.E. Maude regarding the draft section on Pitcairn for *Commonwealth and Colonial Law*

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Tel.: ABBey 1266

Extension.....

Your Reference.....

My Reference.....



at the COLONIAL OFFICE

THE CHURCH HOUSE

GREAT SMITH STREET

S.W.1

11th September, 1963.

Sir Kenneth
Roberts-Wray to
H.E. Maude regard-
ing the draft section
on Pitcairn for
*Commonwealth and
Colonial Law*

11 September 1963

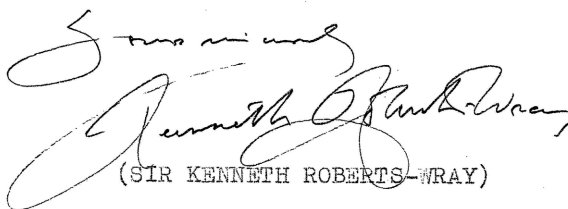
Dear Mr. Maude,

For nearly three years I have been engaged in writing a book on Commonwealth Law, which will include an Appendix with notes on every country and territory in the Commonwealth, large or small.

I have become greatly interested in Pitcairn Island, and have read a great deal about it. In addition I have received some useful information from Ashley Greenwood when he was Attorney-General in Fiji. He tells me that for some of it he is indebted to you - I gather unpublished papers. I therefore enclose a copy of my draft, since I feel that I should in any event let you see it and ask your permission to publish any parts of it which depend upon your work - though I am afraid I do not know exactly which parts they are.

In addition, if you read my draft, I should be very grateful if you would be so good as to tell me if you notice any errors or unfortunate omissions. I ought to explain that I should not be able to expand the draft very much since my space is limited, and for its size, I think I have given the Island more than its fair share. It is, however, of exceptional interest from the legal point of view.

I apologise for troubling you, but I hope that the task of reading through my notes on a subject on which you have expert knowledge will not be altogether disagreeable.


(SIR KENNETH ROBERTS-WRAY)

H.E. Maude Esq., O.B.E.,
School of Pacific Studies,
Australia National University,
Canberra.
Australia.

402. H.E. Maude to Sir Kenneth Roberts-Wray

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H.E. Maude to Sir
Kenneth Roberts-
Wray

25th September, 1963.

25 September 1963

Sir Kenneth Roberts-Wray,
Colonial Office,
The Church House,
Great Smith Street,
LONDON, S.W.1.,
England.

Dear Sir Kenneth,

I have read carefully through your draft and can find nothing inaccurate in it; except possibly the statement that the Pitcairn Island Register is our main source for early island history. However this is merely quibbling, for I will agree that it is the main single source.

Nor can I find anything in it that warrants any acknowledgement to me; everything appears to be a matter of notorious fact.

Ashley Greenwood must have read a study I made of the evolution of government on Pitcairn in 1941. I enclose a copy I have dug out of a cupboard in case you would care to glance through it to see if there is anything of use to you. Please let me have it back in due course as I really should revise it and bring it up-to-date for publication (but where?). Fortunately the last section can now be made much more optimistic, as the islanders are long over their social crisis.

There is a more detailed account of Pitcairn history, though with a different approach, in the symposium entitled The Pitcairnese Language on the eve of publication by Andre Deutsch of London. I gather that the proofs are out so you could no doubt look at them, if you thought it worth while. It has been very much abbreviated in the Colonial Office handbook A Guide to Pitcairn published last month.

I have just been through your draft again. It is a masterly exercise in condensation, a difficult art that I have never succeeded in acquiring. Two further points: Cartaret should be Carteret, and I suggest the deletion of the "a" before "Captain Moresby"; was he not *Calé* Admiral Moresby, of considerable renown?

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H.E. Maude to Sir

Kenneth Roberts-

Wray

I always seem to be landed with unpublished papers on administrative history, for in 1960 I was asked to contribute a chapter on the Evolution of Government in the Gilbert and Ellice Islands for a book which never came off. There seems to be no journal which takes this type of study.

Yours sincerely,



H.E. Maude.

25 September 1963

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Tel.: ABBey 1266

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9th October, 1963.

Sir Kenneth

Roberts-Wray to

H.E. Maude

Dear Mr. Maude,

Thank you very much for your letter of the 25th September, and for your corrections. I have referred to the Pitcairn Island Register as the source of "much" instead of "most" of what is known of the early history.

9 October 1963

It will be some months before I hand over my typescript to the publishers, and I will ask to see a copy of The Pitcairnesse Language when it is published. I saw A Guide to Pitcairn but it did not seem to contain anything new for me.

Thank you for your compliment - "a masterly exercise in condensation". Though I confess it was not easy to pick out and conflate the essentials, I must be brief for my space is limited. Nevertheless, I am most grateful to you for sending me a copy of your paper, which I return herewith. I have read it with very great interest and profit, for it has given me some fresh material which might be of distinct interest to lawyers who want to know something about the history of the island. Thanks to you I am able to amplify quite considerably what I have written about the early law and courts. I do not wish to bother you any more, but I think in the circumstances I ought to send you the enclosed pages, which are a redraft of my page 3. I enclose the original too, for the purposes of comparison - so that you can see how much I have lifted from your paper.

In these circumstances I propose to insert at the end of my acknowledgments at the beginning of my notes on Pitcairn Island, the following:

"and A Social and Administrative History of Pitcairn Island, a paper (at present unpublished) by Mr. H.E. Maude."

I do feel that your work should be published, but as your paper on Pitcairn is not specially written for lawyers (and I assume that is equally true of your Chapter on the Gilbert and Ellice Islands) I do not feel that I am in a position to make a suggestion. I suppose they are too long for the Journal of the Royal Australian Historical Society (where I found the article by G.H. Curray). Have you asked the Colonial Office whether they would be interested? Some of your paper makes delightful reading. I wish I dared introduce a note of levity and mention imprisonment for dogs and fines for vexatious litigation (page 26).

/You may

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Sir Kenneth

Roberts-Wray to

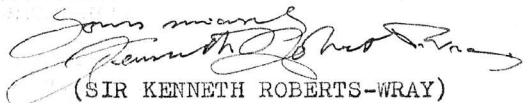
H.E. Maude

9 October 1963

You may be interested to know that there are two rather abstruse points of law illustrated by Pitcairn. First, in my book I am developing my theory that British settlers who receive no authority from the Crown have a common law right to set up their own Courts and make their own laws - hence my interest in the early "legal history" of this island. Secondly, with reference to your page 27, the British Settlements Act, 1887, gave rise to considerable difficulty in permitting the Queen to delegate legislative powers to "three or more persons within the settlement", for it is strongly arguable that a delegation to the Governor of Fiji or the High Commissioner of the Western Pacific to make laws for Pitcairn ^{is} ultra vires. The point is arguable, but the difficulty was overcome in the amending Act of 1946, which permits law-making powers to be delegated to any ~~other~~ authority. The exclusion from the definition of "British Settlement", to which you refer, gives rise to a further doubt. Does it exclude a place like Pitcairn, if I am right in my opinion that they may validly set up their own law-making body? I believe the answer is in the negative on the ground that such a body was not in the contemplation of Parliament when it used the expression "legislature constituted" in the definition. I am dealing with all these points in my book, and if it is published before you revise your draft you may like to have a look at it.

When I was about half way through your paper, it occurred to me that it might be helpful if I made a faint pencil note in the margin drawing attention to any typing errors which I noticed. I hope you approve. There were not many of them and I did not go back and mark those which I had previously noticed.

With renewed thanks and all good wishes,


(SIR KENNETH ROBERTS-WRAY)

404. H.E. Maude to Sir Kenneth Roberts-Wray

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28th October, 1963.

H.E. Maude to Sir
Kenneth Roberts-
Wray

28 October 1963

Sir Kenneth Roberts-Wray,
The Colonial Office,
The Church House,
Great Smith Street,
LONDON, S.W.1,
England.

Dear Sir Kenneth,

Thank you for returning my manuscript Social and Administrative History so promptly and for your marginal corrections and interesting comments.

I remember when working out the Pitcairn Regulations in 1940 I was in a quandary as to the sanction behind them. Ultimately, as you know, I had them drafted by a Committee appointed by the islanders (with my help) and then discussed, amended and finally approved by the entire population, male and female, over the age of 18. My hope was that, regardless of arguments about the applicability of the British Settlements Act and other legislation, the best sanction of all must surely be the written consent of every person affected by the legislation. But I imagine this is the naive view of a layman.

Your argument that "British settlers who receive no authority from the Crown have a common law right to set up their own Courts and make their own laws" interests me very much for it throws a new light on the legal position of two other British settlements in the Pacific Islands: Mazarro's settlement in the Bonin Islands in 1830 and William Marster's settlement on Palmerston Island in 1862. That serious difficulties were caused by the uncertainties regarding the legal status of the settlers will be seen in the former instance from the earlier chapters of Cholmondeley's History of the Bonin Islands (1915) and in the latter from Case No.14 in Captain Tupper's "Report on a visit to the Northern Cook Islands in 1899" (P.R.O.). Apart from Norfolk Island, which is no doubt a special case, there was a fourth British settlement on Lord Howe Island, but I have not yet had occasion to go into its early legal difficulties. I am working on

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H.E. Maude to Sir
Kenneth Roberts-
Wray

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these settlements as their land tenure systems are of particular interest, representing as they do varying degrees of British-Pacific Island blending, but I shall certainly put nothing into print until I have had an opportunity of studying your book.

28 October 1963

Yours sincerely,



H.E. Maude.

In your new p.3 there is a typist's error: 1873 should be 1893.



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Tel.: ABBey 1266

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THE CHURCH HOUSE

GREAT SMITH STREET

S.W.1

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Sir Kenneth
Roberts-Wray to
H.E. Maude

18th November, 1963.

Dear Mr. Maude,

Many thanks for your letter of the 28th October. I should have replied before, but I was hoping to find time to have a look at the books you mention in your third paragraph, but I have not had an opportunity to do so. I think I must at least glance at them before I go to print, for they may well provide me with welcome support for my views.

18 November 1963

I am not at all sure that the suggestion in your second paragraph is by any means "the naive view of a layman". Indeed, I am considering whether to make use of it. It may be that laws of this sort rarely have the written consent of every person affected, but when they do, I feel it must have some effect on the legal position.

I fear that my book may not be published until 1965, but in the meantime, if you can get hold of a recent collection of lectures published under the title "Changing Law in Developing Countries" (Editor, Professor J.N.D. Anderson, publishers Allen & Unwin Ltd.), you may be interested to read part of one lecture of mine on "The Authority of the United Kingdom in Dependent Territories". I deal (more briefly, of course, than in the book) both with the common law right of settlers to make their own laws etc. (pages 15-7) and the difficulties under the British Settlements Act (pages 21-5).

(SIR KENNETH ROBERTS-WRAY)

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