

ON HER MAJESTY'S SERVICE.



*C 4/615. (Garden)*

*The Hon. A. J. Clark*  
*M.P.*  
*Chambers*  
*Hobart*  
*Tasmania*

FEDERAL CONVENTION,  
PARLIAMENT HOUSE, MELBOURNE.

FEDERAL CONVENTION  
  
VICTORIA

BARTMANSIA  
FEB 18 1895



PARLIAMENT HOUSE,

MELBOURNE.

14<sup>th</sup> Feb 1898

My dear Clark

The papers will have told you that your note, was laid by me on the table of the convention & ordered to be printed. The paper is regarded as a very valuable one, & by it you have added to your many services to the cause of Federation. There is not a set of Blatchford's reports to be had in Melbourne and the case you cited, therein reported, of the Holzkohe Water Company & the Connecticut Water Company, is not mentioned

mentioned in the Digest or ~~in~~  
by the text writers, so that  
all we can find out about  
the case is contained in  
your notes. Worse than the  
decision of Shipman J  
(probably a judge of a  
State Court invested with  
federal jurisdiction in  
circuit) is good law, but  
so far as I know, O'Connor  
I feel a good deal of  
doubt about it, if it  
means that the creation of  
the federal jurisdiction confers  
on a citizen of a State a legal  
right, against a citizen  
of another State, which right  
was previously non-existent.  
Your paper came at an  
opportune moment, & assisted  
towards the settlement of the  
Rivers

question on the lines I had been suggesting - i.e. simple reliance on the "Trade & Commerce" power of legislation:

I have to thank you further for your telegram as to the striking out of the power given to the High Court to deal with cases of mandamus & prohibition against officers of the Commonwealth. Have you, here, had read the case mentioned by you <sup>of *Yellow Pine v. Madras*</sup> or if seen it had been forgotten - It seems however to be a leading case. I have given notice to revise the words on the reconsideration of the clause.

Yours

Our work here will occupy two or three  
weeks more, I think. Things are going very  
well so far, & there is a disposition on the  
part of delegates, ~~so far~~ to realise the  
difficulties of colleagues who come from other  
Colonies.

Yours very truly

Edmund Barton

Clark's contribution to Federalism

C4/C15 E. Barton to A.I. Clark

Federal Convention  
Victoria

Parliament House  
Melbourne  
14th February 1898

My dear Clark

The Papers will have told you that your notes were laid by me on the table of the convention & ordered to be printed. The paper is regarded as a very valuable one, & by it you have added to your many services to the cause of Federation. There is not a set of Blatchfords' reports to be had in Melbourne, and the case you cited, therein reported, of the Holgate\* Water Company v. the Connecticut Water Company, is not mentioned in the Digests or by the text writers, so that all we can find out about the case is contained in your notes. Wise thinks the decision of Shipman J (probably a Judge of a State Court invested with federal jurisdiction on circuit) is good law, but so far Isaacs, O'Connor & I feel a good deal of doubt about it, if it means that the creation of the federal jurisdiction confers on a citizen of a state a legal right as against a citizen of another state, which right was previously non-existent. Your paper came at an opportune moment, & assisted towards the settlement of the Rivers question on the lines I had been suggesting - i.e. simple reliance on the "trade & commerce" power of legislation;

I have to thank you further for your telegram as to the striking out of the power given to the High Court to deal with cases of mandamus & prohibition against officers of the Commonwealth. None of us here had read the case mentioned by you of Marbury v. Madison or if seen it had been forgotten - It seems however to be a leading case. I have given notice to restore the words on the reconsideration of the clause.

Our work here will occupy two or three weeks more, I think. Things are going very well so far, & there is a disposition on the part of delegates to realise the difficulties of colleagues who come from other Colonies.

Yours very truly

Edmund Barton

---

\* It might be Holyoke