C.4/C.240

**The University of Melbourne.**

June 18: 1907.

My dear Clark,

I was glad to get your interesting letter on the Income Tax cases. I think you know my opinion on the main question — that D'Emden v. Pedder was right, but that the principle was wrongly applied in Deakin v. Webb; & that if it is necessary to say so, [illegible] v. Inc Comrs was also wrongly decided. On this point I pray in aid the sophistries of Isaacs J.

As to the relations of the High Ct. ~~[illegible]~~

the Privy Council, I agree with Higgins J. ~~I think~~ First of all it is undeniable that the P.C. stands at the head of the Colonial system of Judicature, and that its supremacy is not the consequence merely of an appeal lying to it — but the appeal lies because it is supreme.

I agree that when ~~as~~ section 74 was originally drawn there was an intention — which even then perhaps did not receive adequate expression — to make the High Court the sole and final interpreter of a particular class of questions. That intention however was distinctly abandoned when after consideration, it was deliberately determined to leave a perfectly open road from the States Courts to the P.C. in all cases

whatever. The High Court now says that the P.C. in matters before it from the State Courts ought to follow the High Court, for which I can find no warrant.

I think also the certificate ought to have been granted. Suppose there were a difference between two co-ordinate courts & an appellate tribunal over both of them; that would be a typical case for granting an appeal. I cannot see that the case is weakened by the fact that the appeal lies to one of the tribunals which has actually determined the matter.

I suppose the High Court has considered another reason for granting the certificate in this case — I mean the

personal interest each of them has in
the ~~question passed~~ immediate question in
this particular litigation. I was not
briefed in the application for a
certificate and I should certainly have
urged that it should be mentioned.
I should have had no delicacy about it
myself because I am perfectly well aware
that no member of the Court is in the
slightest degree influenced by his interest in
the matter. But a great many people
— judges & lawyers among them — do think
that their proximity of interest ought to
have weighed with them; & there may be
& I doubt not are many persons who will
think & say that they ~~were~~ are influenced

The C.J. impresses everybody
with his ability & particularly his mental

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**The University of Melbourne.**

agility. He does not impress them to the same degree with soundness of judgement; he is apt to be very impatient of difference from his own views, & when these views have been expressed too hastily as is not infrequently the case, he is over much given to display his skill in getting out of a tight place which would ~~inspire~~ evoke more admiration if he were at the Bar & not on the Bench. If only he combined a judicial temperament with his extraordinary ability he would be a great judge.

Irvine's argument was one of the finest efforts I have ever heard. He had three days & a half during which he never got a clear five minutes' speaking, most of it sharp fencing with the C.J. & Isaacs. I am glad to know privately that hostile as they were they were impressed with the way in which he tackled all his difficulties at close quarters — a thing which Salomons appears to have declined.

I look forward with interest to your submarine. I think the decision of the Ct. Appeal in England in Tozeland v. West Ham Union (~~Apr.~~ May K.B. reports) rather supports my view, & I am inclined to think that the "remarks of Counsel" which brought out

the Irish cases that convinced the Ct of Appeal did not go back much beyond my article in the L.Q.R. for January. I notice that counsel cited Gibson v. Young (N.S.W.)

I was glad to hear you were interested in my book. The L.Q.R. notice was a scurvy & unintelligent one, and I took the unusual course of writing to Pollock about it; he sent it on to G. S. Robertson who wrote the review.

My article on the Privy Council & the Australian Constitution – attacking the reasons in Attorney v. Webb – comes out in July. Pollock writes: "You cannot think worse than I do of Lord Haldane's judgment in Webb v. Attorney".

With best wishes

Very truly yours

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