

C.4/C.241

University of Melbourne
August 10: 1907.

My dear Clark,

Marie & I held a

session on your memorandum upon
the Judiciary Bill last Sunday night &
I was to write you the result.

We entirely agree with
you that even the States Courts when
recognizing the Constitution & Acts of the
C'wealth Constitution, ^{under} § 5 are exercising
state & not federal jurisdiction, in spite
of the Chief Justice's suggestion to the

2

contrary in the Income Tax case with
which Isaac J. very pointedly disagreed.

But we do not understand
how you reach the conclusion that §
77(2) is merely a power to define the
extent to which the jurisdiction of any
federal court (other than the Sup. Court)
shall be exclusive of the fed. gov compared by
the Parl: with any court of a State.
It seemed to us, first, that this ignores
the jurisdiction which belongs to the State
which is expressly mentioned in the section &
which we take not to be federal jurisdiction,
& secondly — though on this we were
~~not~~ hardly I think so confident —
that there is no sufficient reason for

for reading into the sub-section the
exception of the High Court.

With regard to your definition
of federal jurisdiction (page 6), ~~§ presumes~~
~~the~~ two difficulties occur to me which
you have probably considered & may
remove.
The first arises from the
pluritude of State jurisdictions under their
Constitutions or Supreme Court Acts which would
enable them to entertain any action
or suit for the maintenance of any right
from whatever source derived. For instance,
the C'wealth passes a Bills of Exchange Act
which supersedes state laws, or a device
or patents Act; would you consider
an action in a State Court thereunder

4

(apart from such an investment of federal jurisdiction as is contained in § 29 of the Judiciary Act) to be an exercise of federal jurisdiction? I am inclined to think it would be State jurisdiction.

In the second place, in the case of matters "arising under this Constitution", do you give sufficient force to the words "or involving its interpretation". And see Coburn v. Virginia 6 Wheat. 378.

How this ~~scope of federal~~ Constitution of ours is opening out. I am ~~taking~~ taking a short term in meditative political philosophy & wish I could get hold of any thoroughly satisfactory

account of the relations of that stage
 of courts feudal, royal, imperial, &
 ecclesiastical which co. existed in
 Europe of the Middle Ages.

Have you given any
 thought to the validity of the "new
 protection" as contained in the Excise
 Acts of last year & as proposed in
 connection with the new tariff. I
 very greatly doubt whether an Act
 imposing an Excise duty generally &
 then exempting it in all cases where
 certain labour conditions are fulfilled is
 a law "with respect to Taxation".

of it is, it seems to me
 that the ~~taxing power~~ taxation
 power can be used for any purpose
 of legislation whatever. It adds a
 new interest to the old discussion
 whether rewards are sanctions!
 You will remember also that "laws
 imposing taxation shall deal only with the
 imposition of taxation" (p. 58.)

Yours very truly
 W. Harris Moore.

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University of Melbourne
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My Dear Clark,

Ernie & I held a
session on your memorandum upon
the Judiciary Bill last Sunday night &
I was to write you the result.

We entirely agree with
you that ~~are~~ the State Courts when
recognizing the Constitution & Acts of the
C'wealth Constitution, of Sth an exercising
state & not federal jurisdiction, in spite
of the Chief Justice's suggestions to the

contrary in the Income Tax case with
which Isaacs J. very pointedly disagreed.

But we do not understand
how you reach the conclusion that §
77(2) is merely a power to define the
extent to which the jurisdiction of any
federal court (other than the High Court)
shall be exclusive of the fed. jur. conferred by
the Parli^{am} upon any court of a State.
It seemed to us, first, that this gives
the jurisdiction which belongs to the State
which is expressly mentioned in the section &
which we take not to be federal jurisdiction;
& secondly — though on this we were
~~not~~ hardly I think so confident —
that there is no sufficient reason for

²
(apart from such an investment of federal jurisdiction as is contained in § 25 of the Judiciary Act-) to be an exercise of federal jurisdiction? I am inclined to think it would be State jurisdiction.

In the second place, in the case of matters "arising under this Constitution", do you give sufficient force to the words "or involving its interpretation". And see Coburn v. Virginia 6 Wheat 378.

How this ~~is~~ ^{is} opening out. I am ~~taking~~ ^{taking} a short term in moderate political philosophy & wish I could get hold of any thoroughly satisfactory or patents Act; would you consider

³
for reading into the sub-section the exception of the High Court.

With regard to your definition of federal jurisdiction (page 6), ~~5~~ ⁶ ~~pages~~ ^{two} difficulties occur to me which you have probably considered & may remove.

The first arises from the plentitude of State jurisdiction under their Constitutions or Supreme Court Acts which would enable them to entertain any action or suit for the maintenance of any right from whatever source derived. For instance, the O'Connell cases a Bill of Exchange Act which supersedes state laws, or a device which supersedes state laws, or a device in action in a State Court - thereunder

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of conti. feudal, royal, imperial, &
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Have you seen any
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protection" as contained in the Excise
Acts of last year & as proposed in
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very greatly doubt whether an Act
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certain labour conditions are fulfilled is
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that the ~~taxing power~~ taxation
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of legislation whatever. It adds a
new interest to the old discussion
whether rewards are sanctions!
You will remember also that "laws
imposing taxation shall deal only with the
imposition of taxation" (p. 18.)

Yours very truly
W. Harris & Moore.