and accounting for a number of the irreconcilably divergent decisions.

In his general definition, *mens rea* in the form of a guilty mind, when it constitutes the basis of liability in a statutory offence, is established where a person intentionally does the forbidden act with knowledge of all the wrongful circumstances which the statute seeks to prohibit. A mere intention as opposed to accidental or inadvertent doing of the forbidden act can be a test which would reduce all statutory offences to terms of absolute liability.

"For too long", he concludes, "the spirit has prevailed in which the general public interest is regarded as overriding any considerations designed to protect the accused. The time has come to redress the balance."

The reader may well be disappointed if he still should find himself enmeshed on the borders of constructive knowledge, blameworthy inadvertence and purest moral innocence. If more entanglement yet lies ahead, some snares at least are now more visible.

VERNON WATSON*

LETTERS TO THE EDITOR

2nd August, 1956.

The Editor,
Sydney Law Review.
Dear Sir,

In "The Occupation of Sedentary Fisheries Off the Australian Coasts"[1] I submitted (*inter alia*) the legislative authority of the Federal Council of Australasia with respect to fisheries in Australasian waters beyond territorial limits[2] was not intended to be restricted by s.20 of the Federal Council of Australasia Act, 1885 (Eng.), but was plenary. I suggested that it could be extended to the possible need of controlling foreign vessels. With respect to the Queensland Pearl Shell and Bêche-de-mer (Extra-territorial) Act, 1888 and the Western Australian Pearl Shell and Bêche-de-mer (Extra-territorial) Act, 1889, I wrote:

> The 1886 and 1889 Acts may be characterised, therefore, as being with respect to the pearl shell and bêche-de-mer fisheries in the submarine areas defined in their Schedules. The limitation of the operation of these Acts to "British ships and boats attached to British ships" was not required by limitations on the powers of the Council imposed by either the constitutional instrument, or by international law. It was required only by Imperial policy.

This view has been usefully reinforced by my subsequent finding, in the Tasmanian Archives, a circular letter by Lord Derby (then Secretary of State for Colonies) to the "Governors of the Australasian Colonies", in which he set out the draftmen's views on the interpretation of the Federal Council of Australasia Act, 1885. The relevant portion of that letter is as follows:

> It has been questioned whether it would be constitutional and expedient for the Crown to delegate to the Council an unlimited power of dealing with the matters specified in sub-sections (a), (b) and (c) of this fifteenth clause, amongst other reasons because they are matters affecting,

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[1] (1953-55) 1 *Sydney Law Review* 84.

[2] By Federal Council of Australasia Act, 1885 (48 and 49 Vict., c.60, s.15(c)).

possibly to a considerable extent, the subjects of foreign powers. It has not been thought necessary to exclude any of these matters from the jurisdiction of the Federal Council, but it will be desirable that all Bills dealing with any of them should be reserved for the signification of Her Majesty's pleasure, or the proposed Bills previously submitted for the consideration of Her Majesty's Government.

It is proposed to introduce into the 20th clause words making the legislation of the Council applicable to British ships sailing from or arriving in a British Colony or Possession.[3]

It is true that, in the courts of a common law country, such documents as this, constituting only part of the *travaux préparatoires*, carry no weight. But that rule does not apply to the construction of documents before international tribunals. This document is therefore significant on two grounds:

(1) It is admissible in an international tribunal to settle a question of interpretation;

(2) It shows that the Imperial Parliament was aware of the international operation of legislation which could validly be passed under s.15(c), and presumably considered that it was, itself, competent to pass legislation affecting the subjects of foreign Powers "beyond territorial limits". It deemed that a legislature, to which it delegated a similar power of legislation (with respect only to the three subjects of power mentioned by Lord Derby in the above quotation) had, within those subjects, a competence similar to its own.

Yours faithfully,

L. F. E. Goldie.*

January, 1957

The Editor,
Sydney Law Review.

Dear Sir,

I would like to make an observation on the Note on *Thomson* v. *Cremin* ((1953) 2 All E.R. 1185) in Volume 1, No. 3, *Sydney Law Review*, 419-422. On page 419 it is stated that "The case . . . though originally decided in 1941 . . . escaped all notice till 1952 . . .". The Note then proceeds to refer to Mr. R. F. V. Heuston's preface to his edition of Salmond's *Law of Torts*, where on page 9 it is stated: "not one of the numerous series of reports in which one might expect to find a decision of the final appellate tribunal settling a disputed point of the common law had thought the case worthy of mention". Now Sir, I would like to point out that *Thomson* v. *Cremin* (*sub nom. Cremin* v. *Thomson*) was in fact duly reported, with over three pages of the argument, in Lloyd's List Law Reports, Volume 71, p. 1 ((1941) 71 Ll.L.R.1), which was published in 1942 and was edited by Mr. H. P. Henley, Barrister-at-law.[1]

Yours faithfully,

A. Hiller (Law II).

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[3] Circular letter of the Right Hon. the Earl of Derby to the "Governors of the Australasian Colonies", Downing Street, 11th December, 1884—Tasmanian State Archives, Premier's Office Records, D.P. 23. And see also letter from the Hon. James Service (Premier of Victoria) to the Hon. Robert Stout (Premier of New Zealand), Melbourne, 20th May, 1885—Tasmanian State Archives, Premier's Office Records, D.P. 121.

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[1] This fact was apparently first brought to light by Dr. G. P. Barton of Wellington, New Zealand, and is mentioned by R. E. Megarry in his notes to the revised impression of his *Miscellany-at-Law*, 1956.

SOME RECENT BOOKS

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Parliamentary Dictionary, 1956 (£1/10/0).

Plucknett, *Concise History of Common Law*, 5 ed., 1956 (£3/5/0).

Wynes, *Legislative Executive & Judicial Powers*, 2 ed., 1956 (£4/15/0).