

REGINA

v.

DENNIS STANLEY MARSHALL

[SUPREME COURT, 1973 (Grant, Ag. C.J.), 1st November]

Criminal Jurisdiction

Criminal law—criminal intimidation—Penal Code (Cap. 11) s. 366(a)—threats contained in letters and telephone calls sent and made from abroad—whether such threats fall within jurisdiction of the courts of Fiji—Penal Code (Cap. 11) s. 5 & 6.

Courts—jurisdiction—criminal intimidation—Penal Code (Cap. 11) s. 366(a)—threats contained in letters and telephone calls sent and made from abroad—whether such threats fall within jurisdiction of the courts of Fiji—Penal Code (Cap. 11) s. 5 & 6.

The defendant was charged with three counts of criminal intimidation. The threats in two counts related to those contained in letters sent from New Zealand and in the other count to a telephone call also made from New Zealand.

It was contended that once the letters had been posted and the telephone call made, the offences were complete and no criminal act had been committed within the jurisdiction of the courts of Fiji.

Held: 1. Section 6 of the Penal Code (Cap. 11) covered a person regardless of his whereabouts if he did or made any part of such act within the jurisdiction.

2. The threats in this case were of a continuing nature. The threats were designed to be made in Fiji and were, in fact, made there by the accused's use of the post and telephone.

3. In these circumstances the offences were triable in Fiji.

Case referred to:

R. v. Baxter [1971] 2 All E.R. 359; [1971] 2 W.L.R. 1138.

Trial in the Supreme Court.

GRANT, Ag. C.J. [1st November 1973]—

The accused stands charged before the Supreme Court of Fiji with the following offences:

FIRST COUNT

STATEMENT OF OFFENCES

CRIMINAL INTIMIDATION: Contrary to section 366 (a) of the Penal Code.

PARTICULARS OF OFFENCES

DENNIS STANLEY MARSHALL on the 20th day of November 1972 at Suva in the Central Division without lawful excuse threatened to cause the death of *MARY KEN* with intent to cause alarm to the said *MARY KEN* or to cause the said *MARY KEN* to omit to do an act which she was legally entitled to do as a means of avoiding the execution of such threat namely to associate with one *RONALD THOMAS RICKMAN*.

SECOND COUNT

A

STATEMENT OF OFFENCES

CRIMINAL INTIMIDATION: Contrary to section 366(a) of the Penal Code.

PARTICULARS OF OFFENCES

B

DENNIS STANLEY MARSHALL on the 21st day of November, 1972 at Suva in the Central Division without lawful excuse threatened to cause the death of *MARY KEN* with intent to cause alarm to the said *MARY KEN* or to cause the said *MARY KEN* to omit to do an act which she was legally entitled to do as a means of avoiding the execution of such threat namely to associate with one *RONALD THOMAS RICKMAN*.

THIRD COUNT

C

STATEMENT OF OFFENCES

CRIMINAL INTIMIDATION: Contrary to section 366(a) of the Penal Code.

PARTICULARS OF OFFENCES

D

DENNIS STANLEY MARSHALL, on the 20th day of November, 1972 at Suva in the Central Division, without lawful excuse threatened to cause bodily injury to *RONALD THOMAS RICKMAN* with intent to cause alarm to the said *RONALD THOMAS RICKMAN* or to cause the said *RONALD THOMAS RICKMAN* to omit to do an act which he was legally entitled to do, as the means of avoiding the execution of such threat, namely to associate with one *MARY KEN*.

E

It is common ground that the threats to which the first count and the third count relate were contained in letters sent from New Zealand to Fiji and that the threat to which the second count relates was made in the course of a telephone call from New Zealand to Fiji.

F

The point has been taken, in short, that when the relevant letters were posted in New Zealand and the telephone call made from New Zealand the offences, if accompanied by the requisite intent, were complete and that no criminal act had been committed within the jurisdiction of the courts of this country.

Section 5 and Section 6 of the Penal Code which define the jurisdiction of the courts of Fiji over criminal offences created by the Penal Code provide that:

G

" 5. The jurisdiction of the courts of Fiji for the purposes of this Code extends to every place within Fiji or within three nautical miles of the coast thereof measured from low water mark.

6. When an act which, if wholly done within the jurisdiction of the court, would be offence against this Code, is done partly within and partly beyond the jurisdiction, every person who within the jurisdiction does or makes any part of such act may be tried and punished under this Code in the same manner as if such act had been done wholly within the jurisdiction."

H

By virtue of Section 366(a) of the Penal Code which creates the offence of criminal intimidation, any person who without lawful excuse threatens another person with any injury to his person with intent to cause alarm to that person or to cause that person to omit to do any act which that person is legally entitled to do as the means of avoiding the execution of such threat is guilty of a misdemeanour.

As to the meaning of Section 6 of the Penal Code two constructions have been suggested, the first being that the section is limited to a person who is within the jurisdiction at the time he does or makes any part of such act, the second being that a person is covered by the section regardless of his whereabouts if he does or makes any part of such act within the jurisdiction.

I am satisfied that the proper meaning of the section, applying the ordinary rules of syntax and the normal canons of construction is the second, and that the section may be paraphrased as follows: Every person who does or makes any part of an act within the jurisdiction of the court which is done partly beyond the jurisdiction and which if wholly done within the jurisdiction would be an offence against this Code may be tried and punished under this Code in the same manner as if such act had been done wholly within the jurisdiction.

The questions that then fall to be determined are firstly, if a person writes and posts in New Zealand a letter addressed to a person in Fiji to whom it is delivered, the contents of which letter threaten bodily injury to the person to whom it is addressed, does the maker of the threat fall within the jurisdiction of the courts of Fiji, that is to say has he done any part of an act within the jurisdiction which if wholly done within the jurisdiction would be an offence against the Penal Code; and secondly, if a person in New Zealand speaks by telephone to a person in Fiji in the course of which he verbally threatens bodily injury to that person, does the maker of the threat fall within the jurisdiction of the courts of Fiji, that is to say has he done any part of an act within the jurisdiction which if wholly done within the jurisdiction would be an offence against the Penal Code.

To my mind it matters not which of the intentions required by Section 366(a) of the Penal Code was the operative one, as I am not here concerned with consequences, terminatory theories, or comity of nations, but with a strict construction of Section 6 of the Penal Code which vests jurisdiction only in so far as acts are concerned, not effects; which is not to say that an effect may not, in certain circumstances, form part of an act.

Having given full consideration so far as they are relevant, to the various authorities which were referred to in argument, I would answer both questions in the affirmative. The reasons for my decision cannot be expressed better than by the adoption, *mutatis mutandis*, of a statement made by the trial court and approved by the English Court of Criminal Appeal in *R. v. Baxter* [1971] 2 All E.R. 359 (at 361 para. h), to wit: The conclusion to which I have come is that the threats in this case were of a continuing nature. Whenever the accused posted one of his threatening letters in New Zealand he set in motion a train of events for which he was solely responsible, the transportation of the letter to Suva and its delivery to and reading by the addressee. The reality of the situation is that the threats were designed to be made in Fiji and were made there by the accused's use of the post, and by his use of the telephone. Whether or not these offences are triable in New Zealand, I am of the opinion they are triable here.

The accused is accordingly required to plead to the information.

Accused required to plead to the information.