ATTORNEY-GENERAL v. HARRIS

COURT OF APPEAL (Fieldsend, P., Huggins and O'Connor, JJ.A.): June 1st, 1995

Criminal Law—drugs—possession with intent to supply—intended act of supply to be within Gibraltar, whether to person in or outside jurisdiction—no offence under Drugs (Misuse) Ordinance, s.7(3) of possession with intent to supply controlled drug outside Gibraltar

The respondent was charged in the Supreme Court with possession of a controlled drug with intent to supply.

The respondent entered Gibraltar from Spain, carrying 737g. of cannabis in packages which he had swallowed. He then flew to England, where the drugs were detected and he was arrested. When released on bail he returned to Gibraltar and surrendered to the police, admitting possession, importation and exportation of the cannabis, but denying any intent to supply it to others within Gibraltar.

In the Supreme Court the charge under s.7(3) of the Drugs (Misuse) Ordinance, of possession of a controlled drug with intent to supply it to another contrary to s.6(1), was quashed on the basis that no offence had been committed. Possession with intent to supply in England was not unlawful in Gibraltar since the offence of supplying required the point of supply to be within the jurisdiction.

On appeal, the Crown submitted that the respondent had committed an offence under s.7(3) since (a) the intention to supply a controlled drug in contravention of s.6(1)(b) was to be interpreted in accordance with s.2(4), which provided that supplying was an offence whether or not the person supplied was in Gibraltar; (b) the effect of s.2(4) was to criminalize an intent to supply abroad as the respondent had intended, but did not breach the presumption against the creation of extra-territorial offences, since possession in Gibraltar was a fundamental element of the offence; alternatively (c) s.2(4) should be construed in relation to s.6(1)(b), so as to criminalize only supplying a drug to a person in or outside the jurisdiction from within Gibraltar, or so as to apply only to s.7(3) and not to s.6 at all; and (d) in any event, the Crown would not charge a person with supplying drugs outside Gibraltar, since unlike the s.7(3) offence, it had no connection with the jurisdiction.

The respondent submitted in reply that (a) neither s.6 nor s.7(3) had been amended by s.2(4) so as to criminalize supplying or intending to supply drugs outside Gibraltar to a person outside, since this would create an extra-territorial offence; (b) accordingly, s.7(3) still required that the intended supply, if carried out, be in Gibraltar, though possibly to a

person outside, and he had therefore committed no offence; alternatively (c) s.2(4) did purport to have the effect contended for by the Crown, but was *ultra vires* the legislature for exceeding its jurisdiction; and (d) in any event, the court was obliged to construe the legislation strictly in his favour to resolve any ambiguity.

Held, dismissing the appeal:

(1) The respondent had committed no offence under s.7(3) by possessing cannabis with the sole intention of supplying it in England to others. Though the charge had been properly framed, there was no evidence to support it, since the requirement remained that the intended act of supply should, if carried out, take place in Gibraltar. By s.2(4) the legislature had intended to close a perceived loophole in the Drugs (Misuse) Ordinance permitting possession with intent to supply drugs to a person located abroad. Its wording focused on the location of the recipient rather than the act of supply and had therefore failed to have the effect alleged by the Crown, of criminalizing the supply of controlled drugs entirely outside the jurisdiction (page 14, lines 34–40; page 15, line 43 – page 16, line 3; page 16, lines 12–16; page 16, line 40 – page 17, line 5; page 17, lines 14–17; lines 27–39; page 21, lines 14–21; page 23, lines 9–20).

(2) Moreover, there was no clear statement in the deliberations of the legislature indicating an intention to create extra-territorial offences, which would be the result of a literal interpretation of s.2(4) when applied to the offence of actually supplying a controlled drug under s.6. Indeed, in the absence of such clear words, such a construction was precluded by the presumption against extra-territoriality and the court's obligation to construe a penal statute strictly in favour of the accused. There was no reason to interpret the effect of s.2(4) in different ways in relation to ss. 6 and 7 and since there were other indications within s.6(1)(b) that the Ordinance dealt only with supply within Gibraltar, whether to persons in or outside the jurisdiction, the respondent had properly been acquitted (page 16, lines 30–36; page 17, line 39 – page 18, line 4; page 19, lines 12–44; page 20, line 29 – page 21, line 6; page 22, lines 23–32).

Cases cited:

(1) *Liangsiriprasert* v. *United States Govt.*, [1991] 1 A.C. 225; [1990] 2 All E.R. 866, *dicta* of Lord Griffiths applied.

(2) *Macleod* v. *Att.-Gen. (N.S.W.)*, [1891] A.C. 455; (1890), 60 L.J.P.C. 55, followed.

(3) *Pepper (Inspector of Taxes)* v. *Hart*, [1993] A.C. 593; [1993] 1 All E.R. 42, applied.

(4) *R.* v. *Gil de Rebolenos de Pulgar*, Supreme Ct., Crim. Case No. 9 of 1991, unreported, considered.

(5) *R.* v. *Olivero*, Supreme Ct., Crim. Case No. 4 of 1982, unreported, considered.

(6) *Stanley* v. *R.*, [1985] LRC (Crim) 52, applied.

Legislation construed:

Drugs (Misuse) Ordinance (1984 Edition), s.2(4), as added by the Drugs (Misuse) Ordinance, 1985: The relevant terms of this sub-section are set out at page 15, lines 10–13.

s.6(1)(b): The relevant terms of this paragraph are set out at page 13, lines 38–41.

s.6(3): The relevant terms of this sub-section are set out at page 14, lines 36–37.

s.7(3): The relevant terms of this sub-section are set out at page 13, lines 43–45.

s.9(3): "Subject to subsection (4) the Governor shall so exercise his power to make regulations under subsection (1) as to secure—

(*a*) that it is not unlawful under section 6(1) for a doctor, dentist . . . acting in his capacity as such, to . . . supply a controlled drug . . . ."

D.J.V. Dumas for the Crown;
K. Azopardi for the respondent.

FIELDSEND, P.: This appeal by the Attorney-General involves a short point of law relating to ss. 6 and 7 of the Drugs (Misuse) Ordinance, 1972, as amended by the Drugs (Misuse) (Amendment) Ordinance of 1985.

The facts can be stated very shortly. The respondent entered Gibraltar from Spain with 737g. of cannabis resin in 140 small packages which he had swallowed. This was undetected in Gibraltar and he left by air the next day for England. On arrival, the cannabis was detected and he was arrested but released on bail. He fled to Spain, eventually returning to Gibraltar, where he surrendered to the police. He admitted possession of and importation and exportation of the cannabis, but he denied that he intended to supply anyone with it other than in England.

It was contended in the Supreme Court that the count of possession of a controlled drug with intent to supply it to another contrary to ss. 6(1)(b) and 7(3) of the Drugs (Misuse) Ordinance did not, on the facts, disclose an offence. The learned judge accepted this argument and quashed that count in the indictment. It is against that decision that the Attorney-General now appeals.

Section 6(1)(b) reads:

"Subject to any regulation made under section 9 for the time being in force it shall not be lawful for a person—

. . .

(b) to supply or offer to supply a controlled drug to another."

Section 7(3) reads:

"Subject to section 21 it is an offence for a person to have a controlled drug in his possession, whether lawfully or not, with intent to supply it to another in contravention of section 6(1)."

It is clear that before an offence is committed under s.7(3) there must be established an intent to contravene the provisions of s.6(1)(b). This was decided by the Court of Appeal in *Stanley* v. *R.* (6). In that case the appellant was arrested in the Airport departure lounge in Gibraltar, some 5 kg. of cannabis resin having been found in the suitcase he had checked in on a flight to London. It was accepted that he intended to supply the drug to some person in England. He was convicted of contravening s.7(3) as read with s.6(1)(b).

The court considering the conviction on the count based on ss. 6(1)(b) and 7(3) for possessing a drug with intent to supply it to another set out the issue in the following terms:

> "The words 'in contravention of section 6(1)(b)' in s.7(3) qualify and limit the operation of the preceding phrase 'with intent to supply it to another.' It is only such supplying as is covered by s.6(1)(b) which is frowned upon by s.7(3). Therefore the question for decision in this appeal is how the words 'supply . . . a controlled drug to another' in s.6(1)(b) should be interpreted. If the word 'another' in s.6(1)(b) includes any person anywhere in the world the intent referred to in s.7(3) is at large. On the other hand, if the word 'another' means 'another in Gibraltar' then it is only intent to supply a controlled drug to another in Gibraltar which is frowned upon by s.7(3)."

It concluded by saying:

> "There is nothing in the Drugs (Misuse) Ordinance to suggest that the intention of the Legislature was that the word 'another' in s.6(1)(b) should be read as including all persons in any part of the world and, in our view, the word should be interpreted as meaning 'another in Gibraltar.' Consequently the phrase 'intent to supply another' in s.7(3) must be read as 'intent to supply another in Gibraltar.'"

The court quashed the conviction.

It does seem strange that the court in *Stanley* v. *R.* (6) confined its consideration to the location of the person intended to be supplied without any mention of the location of the point of supply. Identical words to those in s.7(3), namely "in contravention of section 6(1)," are used in s.6(3), which makes it an offence "to supply or offer to supply a controlled drug to another in contravention of section 6(1)." Where a positive act such as supplying or offering to supply is required, the decisive factor must be the location of those acts and not the location of the person supplied or offered. Be that as it may, the court decided that case on the basis of the location of the person to be supplied, though, of course, on the facts of the case, the intended supply was to be in the same place.

It may be that the court was not intending to limit its decision to the location of the person, but found that a convenient way of treating what is

the composite phrase "supplying another in Gibraltar," which can be expanded to "supply in Gibraltar another in Gibraltar," and then concentrated on the location of the person to be supplied. I cannot believe that if the court had been dealing with s.6(3) it would have found it necessary to consider the meaning of "another." It would surely have held simply that supply or offer meant supply or offer in Gibraltar.

This decision gave the Attorney-General cause for concern and he sought to rectify what was seen as the unfortunate result of that case. In 1985 the law was amended by the Ordinance of 1985 by the addition to the interpretation section of s.2(4) which reads: "References in this Ordinance to the supply by any person of a controlled drug to another are references to the supply of such a drug to any other person, whether or not such person is in Gibraltar." The Crown contends that the effect of this amendment is to make it unlawful, at least for the purpose of s.7(3), to possess drugs with intent to supply them to another whether the supply is to be in Gibraltar or abroad. This, it is argued, is not to create an extra-territorial offence because there remains the local essential of possession in Gibraltar coupled with intent to supply.

The respondent contends that the amendment has not achieved that object because s.6(1)(b) has not been amended so as to make the supply of the drug outside Gibraltar unlawful. Doing this, it is said, would be to create an offence which could be committed without any territorial connection with Gibraltar, and for that reason, the amended section should not be interpreted in this way if there is any other reasonable interpretation to be put upon it. Alternatively, he argues that if an offence contended for by the Attorney-General is the result of the amendment, then it is an extra-territorial offence and is *ultra vires* the legislature of Gibraltar.

Mr. Dumas for the Attorney-General referred us at some length to Bennion, *Statutory Interpretation*, 2nd ed. (1992). That work considers the general principles of statutory interpretation and deals with the various guidelines that are to be applied to the various problems and circumstances that arise. Such matters as the importance of ascertaining the intention behind the legislation, the presumption against the extra-territorial effect of legislation, whether an offence-creating section should be strictly interpreted and the weight to be attached to such matters in the light of the nature of the legislation and the relevant legislative and judicial history are all to be taken into account. And since *Pepper (Inspector of Taxes)* v. *Hart* (3), the courts can have regard to parliamentary material as a guide to interpretation. We have applied these principles in considering the effect of the amendment by s.2(4) on ss. 6(1)(b) and 7(3).

The form of the amendment effected by s.2(4) of the 1985 Ordinance is undoubtedly due to the form of the judgment in *Stanley* v. *R.* (6) where the stress was placed upon the location of the person to be supplied,

without specific reference to the location of the actual supply as essential to unlawful conduct under s.6(1)(b) or to the proposed offence under s.7(3). *Stanley* did not deal specifically with a situation which could have arisen under the unamended sections in which there could be supply in Gibraltar to a person in England by, for example, intended transfer to a place of safe-keeping in Gibraltar controlled solely by a person in England. That would clearly have been a contravention of s.7(3), the act of supply being intended to be in Gibraltar.

We were referred to the report of proceedings in the House of Assembly for December 5th, 1985 (put before us by consent) on the introduction of the Bill to amend the Drugs (Misuse) Ordinance by adding s.2(4). It is clear that the purpose of the amendment was to undo what was considered to be the effect of the decision in *Stanley*, but what was said in the House of Assembly really sheds little light on the wording of the new s.2(4). There is nothing which shows clearly that what was intended was to penalize an intent to supply drugs abroad.

One is thrown back in the end to a consideration of the actual wording of the amendment considered in the context of the Ordinance as a whole. The logical result of the Crown's contention would be that the effect of the amendment on s.6(3) as read with s.6(1) would be to penalize the supply of drugs outside Gibraltar to a person outside Gibraltar without any connection with Gibraltar. Mr. Dumas argued that this would be avoided by a court interpreting the section as requiring supply in Gibraltar but it is difficult to see how this could be legitimately done. Alternatively, he argued that the amendment should be applied only so far as s.7(3) is concerned, as definitions apply only so far as they are consistent with the context. Alternatively, he argued that no prosecutor would charge a supply offence that had no real connection with Gibraltar.

In my view, none of these arguments destroys the logical result of the effect of the amendment on s.6(3). Such a result cannot have been intended. It would run counter to the two important canons of construction that criminal statutes must be restrictively interpreted and that purely extra-territorial offences are not normally created, particularly by a colonial legislature, and would be outside the general scheme of the Drugs (Misuse) Ordinance. It is only s.16 which penalizes an act of assisting *in Gibraltar* a person doing abroad what is termed a "corresponding" offence which is carefully defined, and not in terms of a criminal act in Gibraltar (see s.3).

Against the background of the Drugs (Misuse) Ordinance, s.2(4) does not provide for a new *actus reus* in s.6(3) of supplying abroad a drug to another, nor in s.7(3) of possession of a drug with intent to supply it abroad. There are a variety of ways in which this could have been achieved, but it would be foolhardy of this court to suggest what they might be. But by concentrating on the location of the person to be

supplied and not on the location of the act of supply, the legislation has not made criminal possession with intent to supply drugs abroad.

In the result, for there to be an offence under s.7(3) there must still be possession of drugs with intent to supply them in Gibraltar, though to a person who need not be in Gibraltar. In my view, the appeal must be dismissed.

HUGGINS, J.A.: The respondent was charged upon an indictment, one of the counts in which alleged an offence under s.7(3) of the Drugs (Misuse) Ordinance. He was discharged on that count on the ground that, on the agreed facts, no offence known to the law of Gibraltar was disclosed. The judge said that the appellant must be treated as having applied to quash this count of the indictment, and the count was quashed. With respect, I think there was no ground for quashing the charge, which was a perfectly good charge (see *Stanley* v. *R.* (6)). The appellant's case had been that there was no evidence to support the charge and the proper order was therefore one of acquittal.

The respondent surrendered to the police in Gibraltar after having failed to answer to his bail on charges laid against him in England in respect of the same drugs. He had originally come from Spain with 737g. of cannabis resin in order to fly to England, where he intended to dispose of the drugs to another. He had been arrested by H.M. Customs on his arrival at Gatwick Airport.

The difficulty in the case stemmed mainly from the wording of s.7(3), which reads: "Subject to section 21 it is an offence for a person to have a controlled drug in his possession, whether lawfully or not, with intent to supply it to another in contravention of section 6(1)." It is, of course, clear that in a case brought under that sub-section the *actus reus* (the possession of the drugs) and the intent must exist in Gibraltar. It is the nature of the intent, not the place where it is formed, which is in issue: Unless there would be a contravention of s.6(1) if the intention were carried out, the intent required by s.7(3) is not established.

Section 6(1) is in these terms:

> "Subject to any regulation made under section 9 for the time being in force it shall not be lawful for a person—
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> (a) to produce a controlled drug; or
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> (b) to supply or offer to supply a controlled drug to another."

A "contravention" of para. (b) would require an act of supplying or offering to supply to another. It is not to be supposed than in enacting s.6(1) the legislature intended to make it unlawful in Gibraltar to supply drugs in England to another: that would be a matter for Parliament in England (see *Macleod* v. *Att.-Gen. (N.S.W.)* (2) ([1891] A.C. at 458)). Therefore, on a proper construction of s.6(1)(b), only acts of supply in Gibraltar were made unlawful. That paragraph does not itself create an offence, for that is done by s.6(3), but the intent which had to be proved

under s.6(3) was an intent to do what s.6(1)(b) said it was not lawful to do. However, nothing turns upon this because it is to be assumed in the absence of clear words to the contrary that the legislature did not intend to declare unlawful an act done outside Gibraltar.

In *Stanley* v. *R.* (6) the appellant was arrested in Gibraltar as he was about to board an aircraft bound for London. He was then in possession of a controlled drug, which he intended to supply to another after his arrival there. At his trial on a charge under s.7(3) it was submitted as a preliminary point that, if all the prosecution proved was that the appellant intended to supply the drug to a person unknown in the United Kingdom, that would not constitute an offence known to the law in Gibraltar—the supply would not be unlawful under s.6(1). The trial judge ruled against that submission, whereupon the appellant pleaded guilty. On appeal the Court of Appeal said:

> "The words 'in contravention of section 6(1)(b)' in s.7(3) qualify and limit the operation of the preceding phrase 'with intent to supply it to another.' It is only such supplying as is covered by s.6(1)(b) which is frowned upon by s.7(3). Therefore the question for decision in this appeal is how the words 'supply . . . a controlled drug to another' in s.6(1)(b) should be interpreted."

From that it is clear that the court had in mind that the material factor was whether "the supplying" would be unlawful, However, it went on:

> "If the word 'another' in s.6(1)(b) includes any person anywhere in the world the intent referred to in s.7(3) is at large. On the other hand, if the word 'another' means 'another in Gibraltar' then it is only intent to supply a controlled drug to another in Gibraltar which is frowned upon by s.7(3)."

On the face of it, the court is there turning its attention from the place of the supplying (the unlawful act under s.6(1)(b)) to the location of the recipient, and, indeed, in the remainder of the judgment it seems to concentrate on the location of the recipient. Thus it concluded:

> "There is nothing in the Drugs (Misuse) Ordinance to suggest that the intention of the Legislature was that the word 'another' in s.6(1)(b) should be read as including all persons in any part of the world and, in our view, the word should be interpreted as meaning 'another in Gibraltar.' Consequently the phrase 'intent to supply another' in s.7(3) must be read as 'intent to supply another in Gibraltar.'"

The appeal was allowed. As it seems to me, this conclusion must have been arrived at on the basis that the place of "the supplying" would be governed by the location of the recipient, which would not necessarily be so, although there can be no doubt that the appellant in that case did intend that the supplying should be outside Gibraltar.

Whatever was the real *ratio decidendi* in *Stanley* v. *R.*, the concentration in the judgment on the location of the intended recipient led to it

being understood that the location of the recipient was the main factor in deciding the lawfulness or unlawfulness of an act of supply. The Government wished to nullify the effect of the decision and an amending Bill was introduced into the House of Assembly for that purpose. It is not surprising, therefore, that the proposed amendment was concerned with the location of the intended recipient of the drugs: "References in this Ordinance to the supply by any person of a controlled drug to another are references to the supply of such a drug to any other person whether or not such person is in Gibraltar." If the lawfulness or unlawfulness of the act of supply was in truth governed by the location of the recipient that was undoubtedly sufficient to reverse the effect of *Stanley* v. *R.* (6).

Unfortunately, the amendment was not limited to an intention to supply (contrary to s.7(3)) but governed all references in the Ordinance to supply and offer to supply, which included those in s.6(1). If, therefore, s.7(3) was now to permit the conviction of a person in Gibraltar whose intention was to sell his drugs in England, it necessarily followed, by reason of the reference to s.6(1) in s.7(3), that on a literal interpretation, s.6(3) must also permit the conviction of a person in Gibraltar who supplied drugs in England to a person in England.

In introducing the Bill in the House of Assembly, the Attorney-General explained the situation understood to arise from the decision in *Stanley* v. *R.* He then said:

> "Mr. Speaker, this decision has caused a problem in dealing not so much with charges of supplying a controlled drug to another person but with charges of being in possession of a controlled drug with intent to supply it to another."

In other words, the Government was principally concerned with s.7(3) offences but, having regard to the manner in which that sub-section had originally been drafted, it was proposed to make an amendment which would affect charges under s.6 also. The Attorney-General continued:

> ". . . [T]he object of this Bill, Mr. Speaker, is to remedy that situation and make it clear that any person who supplies or offers to supply or intends to supply drugs to any person outside Gibraltar commits a criminal offence in Gibraltar."

It appears from this that, although the Government was principally concerned with s.7(3) offences ("intent to supply"), the Attorney-General also had in mind s.6 offences ("supply" and "offer to supply"). However, there is an ambiguity in his closing words when they appear in print. An "offer to supply drugs to any person outside Gibraltar" can be read to mean either an offer to supply (whether inside or outside Gibraltar) drugs to any person who is outside Gibraltar or an offer to supply outside Gibraltar to any person whether that person is inside or outside Gibraltar: It depends on whether the words "outside Gibraltar" modify "supply" or limit "person." It was possibly this ambiguity which led Mr. Bossano to ask the Speaker whether it was intended to make an act punishable in

Gibraltar which would not be an offence in the place where it was committed.

As I understand it, Mr. Dumas for the Crown argues that on a proper construction of s.2(4) it provides that a person commits an unlawful act in Gibraltar in contravention of s.6(1)(b) not only where the intended recipient is outside Gibraltar (as the words suggest) but also where the act of supply is outside Gibraltar. He concedes that prior to the amendment s.6 could apply only "to suppliers who were in Gibraltar" and that not to accept this would be to attempt to exercise an extra-territorial jurisdiction. He says:

> "Both [ss. 6 and 7 'as amended'] are concerned with the occurrence of criminal activity entirely within the jurisdiction of Gibraltar alone; the criminal activity being the possession combined with the present criminal state of mind of the defendant."

No doubt that is true in respect of s.7 but it cannot be right in respect of s.6. In this case the intended criminal activity (the unlawful act) under s.6(1)(b) is the supply of drugs in England, whilst I take it that "the present criminal state of mind of the defendant" refers to the state of mind present at the time of the alleged offence under s.7(3) and not that at the time of the intended unlawful act in contravention of s.6(1)(b).

The unlawfulness of the intended act in England cannot depend upon the prior intent in Gibraltar (admitted by the appellant) to commit that act. I do not accept the suggestion that there would be a "local *actus reus*," to wit "the preparation to supply" or that the act of supply would be a continuing enterprise which began in Gibraltar. If, as is probable, the particular intent in Gibraltar was to sell the drugs in England, the sale would not be initiated until there was an offer to buy or sell, and the supply to the purchaser would not begin before the offer had been made.

If Mr. Dumas is right we would be left with the position that the amendment had made it an offence to supply a controlled drug outside Gibraltar where neither party was in Gibraltar or had any connection with Gibraltar at the time, but there was a presumption against the creation of such an extra-territorial offence. Nevertheless, Mr. Dumas submits that whilst having full application to s.7(3), the amending s.2(4) could be given a limited interpretation in relation to s.6(3), so that supplying in Gibraltar to another who was outside Gibraltar would be punishable in Gibraltar (as it always has been) but that supplying outside Gibraltar to a person outside Gibraltar would not be so punishable.

The objection to that is that it would involve holding that an act was "lawful" under s.6(1)(b) for the purposes of s.6(3) and at the same time "unlawful" under s.6(1)(b) for the purposes of s.7(3). Mr. Dumas suggested that the Crown would not in fact prosecute under s.6(1)(b) in a case where the whole transaction took place outside Gibraltar even if it were justiciable in Gibraltar, but that is not an argument which I find convincing. Alternatively, he argued that the amendment should (in spite

of the breadth of the wording) be interpreted as not applying at all to an offence under s.6(3) but only to an offence under s.7(3). That argument at least had the merit that it would cover only the particular mischief which may have been created by *Stanley* v. *R.* (6) but it would do such violence to the language used by the draftsmen that I cannot believe it to be right.

The contention of the respondent is that the location of the recipient was not and still is not conclusive in deciding whether "a supplying" is unlawful under s.6(1)(b), and that the amending statute did not have the effect of altering the requirement that the supply must be in Gibraltar or indeed, effect any material change in the law. It was misguidedly concerned with an aspect of the intended transaction which was never decisive of the unlawfulness of that transaction.

However anxious one may be to construe a statute so as to defeat the mischief it was designed to defeat and, for that purpose, to give its provisions a liberal interpretation, there is a limit to the permissible manipulation of the language used. Here the amending statute set out to do something by targeting a matter (the location of the recipient) which was not material. It was the wrong target and although it was destroyed, the real obstruction (the necessity for an act of supply in Gibraltar) was not removed. We cannot rewrite the statute simply because (if it be so) the Gibraltar Government has treaty obligations which made it desirable to hinder the supplying of controlled drugs abroad.

In fact, no difficulty would be presented by a case like *R.* v. *Gil de Rebolenos de Pulgar* (4) where the defendant was in a vessel en route from Rio de Janeiro to Genoa and said that the drugs were intended for Spain, if the reference in s.7(3) to s.6(1) had been replaced by a provision on the lines of s.2(4) but directed to the place of supply and not the location of the recipient. In so saying, I do not overlook the fact that (as was indicated in *R.* v. *Olivero* (5)) the reference to s.6(1) was included "because of the introductory words of s.6(1) and its reference to the sub-section being subject to the regulations made under s.9."

I think the judge came to the right conclusion and I would dismiss this appeal.

O'CONNOR, J.A.: The facts have been set out in the judgment of my Lord President and it is unnecessary for me to repeat them.

In *Stanley* v. *R.* (6) the supply and the recipient would be in the United Kingdom, were the defendant to carry out the intention he had when in possession of the drugs in Gibraltar. No doubt, due to the fact that the point of supply and the recipient would both be in the United Kingdom, the court concentrated on the location of the recipient and nowhere referred to the point of supply. What the court actually decided was that the recipient would have to be in Gibraltar for the offence to be committed.

Prior to *Stanley* v. *R.* one might have thought that the location of the recipient was irrelevant, that the essential matter was the location of the intended point of supply—for there could be a supply within Gibraltar to a person who was elsewhere. For example, a person in Spain could phone a dealer in Gibraltar and ask him to leave drugs in the caller's locker, in his club in Gibraltar. Once that request was carried into effect, the supply would have taken place in Gibraltar, to a person in Spain. From the tenor of the judgment in *Stanley* v. *R.*, I am of the opinion that had the court directed its mind to the proposed point of supply, it would have held that it had to be in Gibraltar.

As to s.6(1)(b), prior to the amendment, the presumption would be that the unlawful act, the supply of a controlled drug to another, had to be within Gibraltar. In *Liangsiriprasert* v. *United States Govt.* (1) Lord Griffiths said ([1991] 1 A.C. at 252):

> "When approaching the construction of a statute, particularly a criminal statute there is a strong presumption that it is not intended to have extraterritorial effect and clear and specific words are required to show the contrary: see *Air-India* v. *Wiggins* . . . and *Holmes* v. *Bangladesh Biman Corporation* . . . . This presumption arises from the assumption that the legislature does not intend to intrude upon the affairs of other countries which should be left to order affairs within their own boundaries by their own laws."

There are other indications that s.6(1)(b) is only directed at supply within the jurisdiction. The section, in so far as is relevant, reads as follows:

> "Subject to any regulation made under section 9 for the time being in force it shall not be lawful for a person—
>
> . . .
>
> (b) to supply or offer to supply a controlled drug to another."

Section 9 is concerned with the power of His Excellency the Governor to grant exemptions for supply to doctors and dentists, and with other matters which indicate that the section is only concerned with supply in Gibraltar. In *Liangsiriprasert* v. *United States Govt.* Lord Griffiths said (*ibid.*, at 253) in relation to a section in the Hong Kong legislation:

> "If this section is intended to have extraterritorial effect it would mean that the Hong Kong legislature has taken it upon itself to make the supply of a drug such as barbitone, (a dangerous drug within the meaning of Schedule 1) by a dentist to a patient in Bangkok a criminal act unless the dentist is registered under the Hong Kong Dentists Registration Ordinance . . . . Such an absurd example merely shows that it cannot have been the intention to take a power to treat, as criminal, activity taking place in its entirety in another country."

For my part I am satisfied that, prior to the amendment, for the supply of drugs to be an unlawful act contrary to s.6(1)(b), the point of supply had to be in Gibraltar. What was required, prior to the amendment, for the

commission of an offence contrary to s.7(3) (of having a controlled drug in one's possession, whether lawfully or not, with intent to supply it to another in contravention of s.6(1)) was the *actus reus* of being in possession in Gibraltar of a controlled drug, with the *mens rea* of an intent to supply another, who according to *Stanley* v. *R.* (6) had to be in Gibraltar. In addition, the intended supply would, if it were carried into effect, have to be in contravention of s.6(1), and therefore would have to be in Gibraltar.

After the decision in *Stanley* v. *R.* the Crown decided to legislate to reverse the decision in that case by providing that the supplier would be guilty even if the recipient was not in Gibraltar. No doubt misled by the court in that case having concentrated on the location of the recipient, the Crown did not consider the essential matter of the location of the point of supply. The amending legislation therefore simply provided that the recipient did not have to be in Gibraltar. That amending legislation effects the interpretation of the Crown as revealed in Hansard. As Mr. Azopardi put it, the amendment hit the target that the Crown had identified but it was the wrong target. I consider the amendment to be in clear terms with no ambiguity. It does not expressly or by implication affect the previous law as to the point of supply.

It is unnecessary to consider issues of extra-territoriality as they do not arise. I would dismiss this appeal.

Appeal dismissed.