

IN THE SUPREME COURT OF VICTORIA  
AT MELBOURNE  
COMMON LAW DIVISION  
PRACTICE COURT

Not Restricted

No. 5350 of 2002

BRIAN WILLIAM SHAW

Plaintiff

v

C. GILSENAN

Defendant

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JUDGE: ASHLEY J  
WHERE HELD: Melbourne  
DATE OF HEARING: 7 May 2002  
DATE OF JUDGMENT: 7 May 2002  
CASE MAY BE CITED AS: Shaw v Gilsenan  
MEDIUM NEUTRAL CITATION: [2002] VSC 169

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Appeal - Appeal from order refusing application under Rule 58.09 of Chapter I of the Rules - Alleged invalidity of *Constitution Act 1975* - Alleged subversion of legislation and the judiciary by Freemasonry.

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APPEARANCES:

For the Appellant

In person

For the Respondent

No appearance

HIS HONOUR:

- 1 The appellant, Brian William Shaw, was charged with a traffic offence, specifically, speeding. It came before the Magistrates' Court at Werribee, first on 5 December 2001 and then, apparently because of some problem in it being heard that day, on 3 April this year. Mr Shaw was, it appears, convicted and fined in connection with the offence.
- 2 In the Magistrates' Court, he told me today, he unsuccessfully raised two defences. First, that the *Constitution Act* 1975 of this State was unlawful, in consequence of which the *Road Safety Act* 1986, under a provision of which he was charged, must itself be unlawful or invalid. Second, that the judicial process in Victoria was subverted by the involvement of Freemasonry, that involvement affecting also the *Constitution Act* itself - perhaps because Sir Henry Winneke, Governor of this State at a pertinent time, was a Freemason.
- 3 Subsequent to his conviction, Mr Shaw applied for an order under Rule 58.09 of Chapter I of the Rules - that is, in connection with a proposed appeal on a question of law under s.92 of the *Magistrates' Court Act* 1989. He did so by affidavit sworn 29 April 2002. To that affidavit he exhibited a number of documents. They pertained not only to the proceedings in the Magistrates' Court at Werribee, but also other proceedings - in the County Court, in this Court and in the Court of Appeal of this Court. The affidavit, by paragraph 10, claimed "the return of all fines and moneys paid by myself, since 1975, concerning any and all fines and penalties applied against myself by any court in the State of Victoria. All demerits wiped clean". It also claimed entitlement to "compensation concerning costs and expenses under the Litigant in Person rule, applicable under Imperial law". The relief sought could not be granted in an appeal such as the appellant commenced.
- 4 The application for an order under Rule 58.09 came on for hearing before Master Evans on 1 May. It was rejected. Under Rule 58.09(2), if an appellant does not show a prima facie case for relief, the Master shall refuse the application. By Rule 58.10, if an application for an order under Rule 58.09 is refused, then, subject to

appeal against refusal, the appeal shall stand dismissed. There is, then, a right of appeal from the refusal of a Master to make an order under Rule 58.09, and it is that appeal which is before me today. I will treat it as I would any appeal from an order made by a Master, that is, as a re-hearing de novo, looking at all the material that was before the Master.

5 Today, Mr Shaw sought to pursue the propositions which he advanced in the Magistrates' Court in April this year. I am sorry to say that he did so in a way which, despite my close consideration of his affidavit and his oral exposition, I found unintelligible.

6 Given the admittedly incomplete understanding that I have of his submissions, I think that Mr Shaw's contention that the *Constitution Act* 1975 is invalid had no force. I suspect, without being entirely certain, that it is an argument that has previously been unsuccessfully raised not only in the Magistrates' Court, but also before Masters of this Court and in the Court of Appeal, if not by Mr Shaw then in proceedings with which Mr Shaw is well familiar. I refer to paragraph 13 of Mr Shaw's affidavit in the present matter, and to observations by the Court of Appeal in an Application by Shaw and Anor [2001] VSCA 175 at paragraph 17 concerning a Ms McKinnon.

7 So far as the involvement of Freemasonry was said to bear upon the validity of the *Road Safety Act* 1986, I think that Mr Shaw's submission reiterated matters raised and rejected in substance in the proceeding to which I have just referred; see in particular paragraphs 17, 23 and 25.

8 I think that there is absolutely nothing to this appeal. The Master was right to refuse to grant an order under Rule 58.09. I should add that the material before me is, though on a smaller scale, material of the kind which the Court of Appeal criticised in the matter which it determined in October 2001. See particularly paragraph 24.

9 The appeal is dismissed.

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**CERTIFICATE**

I certify that this and the 2 preceding pages are a true copy of the reasons for judgment of Ashley J of the Supreme Court of Victoria delivered on 7 May 2002.

DATED this 7<sup>th</sup> day of May 2002.

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Associate to Mr Justice Ashley