

13/10

1779

R E G I N A

v

**LOW  
PRIORITY**

OWEN  
RYAN  
SHAW  
HEAVEN  
SMITH

NO LIMIT ON PUBLICATION

Judgment                    27 September 1993

Counsel:                    T M Gresson & R Neave for Crown  
                                  P H B Hall for Owen and Shaw  
                                  S Barker and D Bunce for Ryan  
                                  R J E Brown for Heaven  
                                  J McCall for Smith

*NEAVE FOR SHAW*

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ORAL JUDGMENT OF WILLIAMSON J (No 10)

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A computer printout is the subject of this objection. The document, produced previously in this trial as exhibit 25, was located at the home of Thompson, one of the alleged conspirators with the accused Owen, Ryan, Shaw, and Heaven. The document contains a number of typed figures, some of which appear to coincide with amounts which have been the subject of banking officers'

evidence. The document also contains in its calculations reference to names or nicknames which may relate to the accused Shaw, Ryan and Owen.

Counsel for Owen has objected to the admission of this document upon the basis that it is in the nature of documentary hearsay and does not come within the co-conspirators' rule. It is submitted that for it to come within that Rule it is necessary to prove that the document was the act or statement of a co-conspirator.

Counsel for Shaw and counsel for the Crown desire the document to be admitted. The Crown claims that the evidence is such that the Jury should infer that this document found at Thompson's place was an act or statement of his.

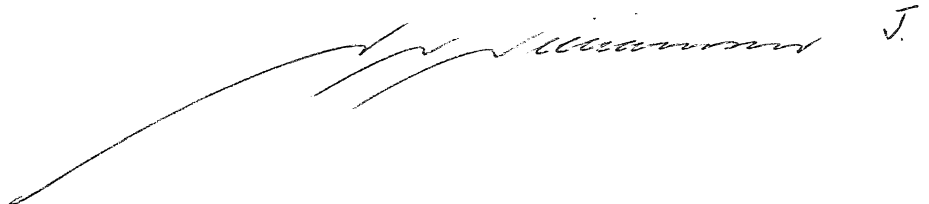
No doubt the difficulty in relation to this document stems in part from the fact that originally Thompson was one of the persons accused. It would have been evidence against him. Since, however, he is not an accused, the evidence is that a document containing figures and possibly christian names of other accused was found at Thompson's address. There is nothing in the evidence to indicate that Thompson had a computer or that he was responsible for production of this statement.

There is no basis in my view in the evidence from which a conclusion could be drawn that this document was an act or statement by him prepared in furtherance of the common design. Indeed on the inference to be drawn from the evidence, it is more likely that the document was prepared either by Shaw or by Williams and later handed to Thompson. I say likely because the evidence is not conclusive about either of those matters in a manner which would entitle the Court to draw any positive conclusion concerning it.

An unusual feature of this objection is that the document was admitted as evidence during the testimony of Detective Harvey, the exhibits officer. Not only did Detective Harvey produce it without objection but there was also some indication by him of the general content of the document. As yet the Jury have not seen it and in my view the fact of its earlier admission does not prevent the exercise of the trial Judge's discretion to exclude it. Indeed a somewhat similar process was referred to by Somers J in the case of R v Buckton [1985] 2 NZLR 257 at 264 where he indicated that in co-conspirators' trials it would not be unusual that some documents may be admitted provisionally. It is a view which has drawn some criticism from commentators.

In this case I am of the view that the document should be excluded for the reasons advanced by counsel for Owen and in particular because the document does refer to christian names or nicknames which may or may not relate to a particular accused in this trial. There is a danger that if the document were to be admitted in the form it is without any other explanations, unsafe conclusions could be drawn from it.

For those reasons I rule it inadmissible.

A handwritten signature in black ink, appearing to read 'J. Williams', with a long, sweeping underline that extends across the width of the signature.

Solicitors

The Crown Solicitor, Timaru  
The Crown Solicitor, Christchurch  
Wood Marshall, Christchurch for Owen  
Knight, Kinsman, Barker, Christchurch for Ryan  
R J E Brown, Auckland, for Heaven  
Papprill, Hadfield and Aldous, Christchurch for Smith

IN THE HIGH COURT OF NEW ZEALAND  
CHRISTCHURCH REGISTRY

T 28/93

R E G I N A

v

OWEN  
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ORAL JUDGMENT OF WILLIAMSON J

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