

**ORIGINAL**

IN THE HIGH COURT OF AUSTRALIA

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WILMERS & GLADWIN PTY. LIMITED

V.

GREEN

**ORIGINAL**

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**REASONS FOR JUDGMENT**

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*Oral Judgment delivered at* SYDNEY

*on* Wednesday, 7th April 1965

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A. C. Brooks, Government Printer, Melbourne

C.7639/60

WILMERS & GLADWIN PTY. LIMITED

v.

GREEN

JUDGMENT  
(ORAL)

JUDGMENT OF THE COURT  
DELIVERED BY KITTO J.

CORAM: BARWICK C.J.  
KITTO J.  
TAYLOR J.  
MENZIES J.  
OWEN J.

WILMERS & GLADWIN PTY. LIMITED

v.

GREEN

The proceedings before the Workers' Compensation Commission in which this case was stated were conducted by the parties on the footing that it could be held that the respondent, whose skin or some part of it became sensitized to certain substances to which his work as lithographic printer exposed him so as to make him susceptible to outbreaks of dermatitis, was suffering from "a disease of such a nature as to be contracted by a gradual process" within the meaning of s. 7(4) of the Act. In a former employment as a lithographic printer and at a time when the sensitivity of his skin had become an irreversible condition he had several attacks of dermatitis which temporarily incapacitated him for work. Although in form the only question stated for decision by the Supreme Court was more widely expressed, this Court, because of the way the application had been fought by the parties before the Workers' Compensation Commission and the way the case had been argued before the Supreme Court, confined the appellant to the question whether, on the assumption that the respondent was suffering from "a disease of such a nature as to be contracted by a gradual process", there was evidence before the Commission upon which it could find that the appellant was liable under s. 7(4) of the Act to pay compensation to the respondent for partial permanent incapacity resulting from the sensitive condition of his skin. The Workers' Compensation Commission had apparently decided that this condition or the process of acquiring it was "a disease of such a nature as to be contracted by a gradual process". The propriety of this decision not being before this Court

we express no opinion upon it.

The appellant's submission was, in effect, that the respondent had suffered the relevant incapacity in an earlier employment when the "disease" had become irreversible and the respondent had first been temporarily totally incapacitated by dermatitis. The appellant said that therefore it was not the last employer of the respondent within the meaning of s. 7(4). We are of the opinion that this submission is untenable.

Although dermatitis had temporarily incapacitated the respondent in the earlier employment, there was evidence on which the Commission could find that the "disease" had not then resulted in his permanent partial incapacity which is the basis of the respondent's application to the Workers' Compensation Commission and of the Commission's award. There was evidence upon which the Commission could find that this incapacity occurred in the employment of the appellant. Accordingly, having regard to the terms of s. 7(4) and s. 7(5) of the Act there was evidence on which the award of the Commission could be made. It is for these reasons that we think that the second question in the case stated, in the sense to which we have confined the appellant, should be answered in the negative.

The appeal will be dismissed with costs.

KITTO J.:

I should have said before I read this judgment that it is the joint judgment of the five members of the court who sat on the hearing of the appeal.