

NEW SOUTH WALES CLUB

V.

KERR

REASONS FOR JUDGMENT

Judgment delivered at Sydney

on Friday 11th December 1970

NEW SOUTH WALES CLUB

v.

KERR

ORDER

Application refused.

NEW SOUTH WALES CLUB

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JUDGMENT

(ORAL)

BARWICK C.J.

NEW SOUTH WALES CLUB

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The facts of this case are in themselves unusual, if not indeed unique. It is said that the Commission found as a fact that the applicant had not set off on her daily or periodic journey when she set off for the chapel. It is said that in substance it was the opinion of the Commissioner in point of fact that she would not have entered on her daily or periodic journey until she had recovered her bag. If that be the right view, it is then said that there was no matter of law on which his Honour decided, which would have grounded an appeal to the Supreme Court.

It is further said that the direction in point of law which the Supreme Court has given does not clearly appear from the several reasons for judgment given by the Supreme Court in the matter. For this view there may be substantial ground.

It is further said that the decision of the Court of Appeal will form a precedent and that it contains erroneous opinions on the provisions of the Workers' Compensation Act, 1926 (as amended). But in my opinion the decision of the Supreme Court forms no precedent for any principle of law at all. It may be said to be no more than a finding by the Court of Appeal of a question of ultimate fact, thereby displacing the finding

of fact made by the Commissioner. I am conscious of the unsatisfactory situation which may result when the Commission undertakes the further hearing of this matter, but none of these circumstances to which I have referred, even if all the criticisms be right, in my opinion warrants the grant of special leave to appeal. Accordingly, in my opinion, the application should be refused.

NEW SOUTH WALES CLUB

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JUDGMENT
(ORAL)

WINDEYER J.

NEW SOUTH WALES CLUB

v.

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I agree.

NEW SOUTH WALES CLUB

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JUDGMENT
(ORAL)

GIBBS J.

NEW SOUTH WALES CLUB

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I agree.