engaged in building a "pack" or erection of earth and stones. The pack was built up nearly to the roof when the workman died from the cause stated *supra* in rubric. A stone weighing 2 lbs. lay at the foot of the "pack," but there was no further evidence as to the immediate cause of the seizure. The County Court Judge found that the deceased died "from apoplexy brought on by the strain while engaged in the heavy work of building the pack," and he made an award in favour of the dependants. This was set aside by the Court of Appeal (COZENS-HARDY, M.R., FLETCHER MOULTON and BUCKLEY, L.JJ.).

The dependants appealed, and at the conclusion of the argument for them their Lordships gave judgment as follows:—

LORD CHANCELLOR (LOREBURN)—In cases under this Act, in the same way as in cases under any other Act or at common law, the plaintiff must prove his case; and although he may establish a state of facts which leads one to think that his version is quite a possible version of what took place, he must do something more than show a state of facts which is consistent either with one view or with another view. I should myself greatly regret that we should come to this form of argument—that we should attempt to infer a conclusion of fact in one case from a comparison with other findings in other cases and upon other evidence; but that, I am sorry to say, is really the way in which the appellants here have been driven to eke out their contention. Findings of fact in one case are really no help in finding the facts in another, unless it be that they may illustrate the way in which learned judges are accustomed to look at evidence. Is there here any evidence in support of the finding of the learned County Court Judge? He says that the deceased man died "from apoplexy brought on by the strain while engaged in the heavy work of building the pack." Was there any evidence to support the finding that the apoplexy was brought on by the strain? The only piece of evidence that has been referred to is this, that the doctor says that "the man's arteries, especially the arteries of the brain, had degenerated, and great effort in doing anything might cause them to rupture. On the other hand, they might have ruptured while he was asleep in bed. The arteries were in such a state that they might rupture with slight exertion or with no exertion at all." It seems to me that in this state of facts, unfortunate as it may be for the deceased man and for those whom he has left behind him, we, as a court of justice, are bound to say that this state of facts is equally consistent with the one conclusion or with the other, and therefore the appellants have not made out their contention that this was a death from an accident arising out of and in the course of the employment. It is, of course, a commonplace to say that one must be very sorry for people who suffer and get no redress, but we are bound to administer the law, and I think that we should be wanting in our duty if we did not do in cases of this kind what we are compelled to do in cases of another kind.

EARL OF HALSBURY—I am of the same opinion. Propositions must be proved in a court of law by proof of evidence, and that is not satisfied by surmise, conjecture, or guess.

LORD ATKINSON concurred.

LORD SHAW—I am of opinion that this unfortunate man died of apoplexy. I do not think that it is proved in this case that there was any accident at all, or that there was any strain, ordinary or extraordinary, which caused the apoplexy to which he succumbed. I therefore say nothing with regard to the previous cases; but I hold, as the Earl of Halsbury has said, and as I expressed in the recent case of *Marshall* v. *Owners of the Wild Rose*, *supra*, p. 701, ([1910] A.C. 486), that in the region of proof it is not legitimate to hold as sufficient what is mere conjecture.

Appeal dismissed.

Counsel for Appellants—Atkin, K.C.—A. Clement Edwards. Agents—Griffiths & Roberts, Solicitors.

Counsel for Respondents—C. A. Russell, K.C.—Adshead Elliott. Agents—Rawle, Johnstone, & Company, Solicitors.

HOUSE OF LORDS.

Tuesday, December 13, 1910.

(Before the Lord Chancellor (Loreburn), the Earl of Halsbury, Lords Atkinson and Shaw.)

M'DERMOTT *v.* OWNERS OF THE "TINTORETTO."

(ON APPEAL FROM THE COURT OF APPEAL IN ENGLAND.)

Ship — Master and Servant — Workmen's Compensation Act 1906 (6 *Edw. VII, cap.* 58), *sec.* 7 (1) (*e*), *and Sched. I*, 3—*Merchant Shipping Act* 1906 (6 *Edw. VII, cap.* 48), *Part IV—Maintenance and Relief of Seaman left behind Abroad—Commencement of Liability to Pay Compensation—Diminution of Compensation by Outlay on Maintenance.*

Where employers become liable in respect of a seaman employed by them, both under the Merchant Shipping Act 1906 to pay, relieve, and maintain him while disabled abroad, and also, under the Workmen's Compensation Act 1906, to pay compensation to him, the right to compensation commences at the expiry of the duties of maintenance, and the cost of maintenance does not fall to be taken into account.

A seaman while on a foreign voyage was totally incapacitated by accidental injury. Under the Merchant Shipping Acts his

employers became liable to pay wages up to the date of discharge, hospital and surgical expenses, and his maintenance until his arrival back in England. The County Court Judge held that compensation under the Workmen's Compensation Act commenced only upon the date of arrival, and that the previous payments by the employers under the Merchant Shipping Acts should not be taken into account. The award was set aside by the Court of Appeal (COZENS-HARDY, M.R., and FARWELL, L.J., KENNEDY, L.J., dissenting).

The seaman appealed.

Their Lordships gave considered judgment as follows:—

LORD CHANCELLOR (LOREBURN)—In this case I agree with Kennedy, L.J. The only facts relevant, in my view, are as follows—M'Dermott, a seaman on board the steamship "Tintoretto," broke his thigh by an accident on the 21st December 1908. On the 29th December 1908 he was discharged and placed in hospital in New York. He recovered sufficiently to bear the journey to England, and arrived in England on the 11th March 1909, still incapable of work. The owners of the steamship "Tintoretto" paid him his wages from the 21st December till the 29th December. Also they paid his medical and surgical expenses and maintenance in hospital in New York. They were obliged to pay wages and the rest under the Merchant Shipping Acts. Further, they admit their liability to pay him compensation under the Workmen's Compensation Act in respect of his incapacity from the 11th March 1909, when he returned to England. But, say the owners, the County Court Judge in assessing that compensation ought to have had regard to the eight days' wages which this man received from his employers between the 21st and 29th December, and ought to have made some, if only a nominal, deduction accordingly. Now this contention rests upon par. 3 of the 1st Schedule to the Act of 1906, which runs as follows—"In fixing the amount of the weekly payment regard shall be had to any payment, allowance, or benefit which the workman may receive from his employers during the period of his incapacity." "Were not these eight days' wages a payment?" say the owners. "Was the payment not received from the employers, and during the period of the man's incapacity?" All this is undeniably true, and unless your Lordships are prepared to say that the literal words of the Act must suffer limitation, in accordance with precedent, in order to carry out the manifest intention of the Act, the owners will prevail. Let me, to begin with, take the literal words, and see what they would lead to in a wholly unqualified construction. The eight days' wages were undoubtedly a payment. But was not the money paid for this man's maintenance and for medical and surgical relief a "benefit" received by him from his employers? Obviously it was, and if so the County Court Judge ought to have had regard to the benefit as well as to the payment, and have made a deduction for the one as well as the other. The same also if the owners had during the period of incapacity paid to the seaman arrears of wages due long before the accident, or even a sum of money due for breach of contract on an earlier voyage, or for almost any cause which you please to name. It would be a "payment" in the literal words of the Act, and so regard must be had to it in fixing the weekly sum to be given as compensation for the incapacity caused by the accident. This last result would, of course, be so preposterous that Sir Robert Finlay was constrained to admit the need of some words to be read into the clause. The payment, allowance, or benefit must, he argued, be in respect of the incapacity. But that would still entitle the owners to deduct the money spent on maintenance, which is almost equally absurd, because in that view the longer a man had been kept away from England by the consequences of his accident the more he would have to forfeit out of the compensation which begins to become payable when he comes home. It is obvious, and was not disputed at the Bar, that some limitation must be imposed upon these wide words, and the only question is what that limitation should be. We must, in my opinion, seek for it in the scheme of the two Acts with which this case is concerned. I will present it quite summarily. When a seaman meets with an accident at sea which disables him, he must be paid his wages till he reaches a port where he can be discharged. Further, if he is discharged at a foreign port the owners must maintain him and furnish him with medical aid till he is able to travel and reaches a port in this country. That is under the Merchant Shipping Acts. Then the Workmen's Compensation Act 1906 takes up the tale. Before 1906 the seaman was not within the Act. In 1906 the right to compensation for accidental injury was extended to seamen, and begins when the injured seaman ceases to be entitled to maintenance. It is clear that compensation is to begin exactly where the right to maintenance ends. Reading the words of the Act which we have to construe in the light of what I have just said, I have no difficulty in seeing where their generality is limited. It is not every payment, allowance, or benefit which the workman may receive from the employer during the period of his incapacity which the County Court Judge must have regard to. It is only such as are received in respect of the incapacity and received in respect of that period of it which is covered by the compensation. It means, in short, that the man is not to be paid twice over by the overlapping of benefits derived from two separate Acts of Parliament. I feel no hesitation in reading such words into the statute. The same thing has been done by this House before, notably in interpreting the Succession Duty Acts in order to avoid a plain absurdity. In this

case it is necessary in order to avoid a plain frustration of the obvious intention of the Legislature.

EARL OF HALSBURY—I am of the same opinion. It seems to me that, as usual, we have slipshod phraseology put into an Act of Parliament, but I think that it may be solved by almost one sentence—the payments (I use the word in its strict sense) are not to overlap.

LORD ATKINSON—The facts of this case have been stated by the Lord Chancellor with sufficient fulness. The payments made to the appellant for his benefit were by no means gratuities. The respondents were bound to make them under the provisions of the Merchant Shipping Act of 1894, and the amending Act of 1906. By sec. 155 of the first-mentioned statute a seaman's right to his wages begins from the time when he begins work, or at the time specified in his agreement for the beginning of his work or presence on board, whichever first happens. By sec. 158, if his services terminate before the date contemplated in that agreement, either by wreck or loss of his ship, or by his being left on shore at a foreign port, under the certificate therein mentioned, by reason of his unfitness or inability to continue the voyage, he is entitled to be paid his wages up to the date of such termination. He loses his right to wages for any time during which he unlawfully refuses or neglects to work when required so to do, unless the Court having cognisance of the matter directs otherwise, or for any time during which he is in prison (sec. 159); but he is entitled to his wages while he is rendered incapable of performing his duty by illness, unless it is proved that the illness has been brought about by his own wilful act or default (sec. 160). And whether well or ill, from whatever cause, capable of performing his duty or incapable of performing it, at sea or in harbour, well-conducted or ill-conducted, in prison or free, he is entitled to his maintenance as long as he is not discharged from his ship. By the statute 6 Edw. VII, c. 48 (the Merchant Shipping Act 1906), the above-mentioned statute is amended, and the rights and privileges of seaman are extended and safeguarded. By sec. 28 elaborate provision is made in the case in which a seaman belonging to any British ship is left behind out of the British Isles for making a record of the wages due to him, and of the effects which he may have left behind, and for delivering an account of these to the proper officer on the termination of the voyage, together with an account of the expenses, if any, caused to the master or owner of the ship by reason of the absence of the seaman. In a case in which the absence is due to desertion, neglect to join his ship, or to any conduct constituting an offence under sec. 221 of the principal Act, these expenses are deducted from the wages due; so that if no expenses be caused to the master or owner by reason of the misconduct of the defaulting seaman, he is entitled *prima facie* to receive the full amount of the wages due to him. By secs. 30 and 31 the exercise by the master of his power of discharging a seaman at a foreign port is limited and subjected to the supervision of the authority there indicated, and by sec. 32 it is provided that "where the service of a seaman belonging to a British ship terminates at a port out of His Majesty's dominions, otherwise than by the consent of the seaman to be discharged during the currency of the agreement, the master of the ship shall, besides giving the certificate of discharge, and besides paying the wages to which the seaman is entitled, make provision in accordance with this Act for his maintenance and for his return to a proper return port." So that as far as wages and repatriation are concerned the appellant would be entitled to all that he has received in the present case if he had been discharged in New York otherwise than by his own consent, whatever the cause of the discharge. Section 34 provides in effect that if any master of or seaman belonging to a ship receives any hurt or injury in the service of the ship, or suffers from illness not due to his own wilful act or default, or to his own misbehaviour, the expense of providing the necessary surgical and medical advice and attendance and medicine, and also the expenses of his maintenance until he is cured or dies, or is returned to a proper return port, and of his conveyance to the same, shall be defrayed by the owner of the ship without any deduction from his wages. Similar provisions are introduced to meet the case of the temporary removal of a seaman from his ship, either to prevent the spread of infection or for the convenience of the ship. In each and every one of these cases, if the seaman be not discharged, or do not desert, or absent himself without leave, he would be entitled to receive his wages while ill or incapacitated, and medical advice and maintenance in addition. No distinction is drawn between the wages paid to him and maintenance and advice provided for him or given to him under such circumstances. If the one be treated as compensation for an injury sustained, so must the other. Up to his discharge he would be entitled to receive wages and maintenance and medical advice. After his discharge his wages would cease. These were the mutual rights of the appellant and the respondents under the Merchant Shipping Acts when he landed in England on the 21st March 1909. He then made a claim for compensation under sec. 7 of the Workmen's Compensation Act 1906 in respect of the injury by accident which he had sustained. This statute first extended to seamen the benefits of those Acts. It was admitted that his claim was good, and that he was entitled to compensation, but it was contended on behalf of the respondents that under the provisions of rule 3 of the first schedule annexed to this statute of 1906 the County Court Judge, in fixing the amount of the weekly payment payable to the appellant, should have regard, with a view to the

constitution of or deduction from that payment, to the wages paid to appellant in respect of the seven days from the 21st December to the 29th December 1908, when he was on board his ship undischarged but incapacitated from duty. Though in this case the amount in dispute is small the principle involved is of considerable importance. The main if not the sole question for decision is whether the contention so put forward is or is not well founded. The County Court Judge held that the payment of this week's wages to the appellant was wholly irrelevant to the claim made by him under sec. 7 of the statute of 1906, and was therefore not a matter to which he (the Judge) was bound to have any regard. I understand Kennedy, L.J., to have concurred in that view. In my opinion they were both right, and I think that their decision is in accordance with reason and justice. The Workmen's Compensation Act provides that where death does not ensue compensation must be given in the form of weekly payments. The mode in which those weekly payments are to be fixed, the period during which they are to be paid, and the fact that, save in the case of death, a lump sum is not to be given, would go to show that what in reality is compensated for is the loss of the power of earning rather than the pain or suffering which the workman has endured. As soon as his incapacity ceases and his power of earning is restored the weekly payments cease. It would therefore, under these circumstances, appear to be only reasonable and right that in fixing the amount of the weekly payments regard should be had with a view to their diminution to any payment, allowance, or benefit which the workman should receive from his employer in respect of the injury and the consequent incapacity to earn, else the workman would in effect be compensated twice over, in whole or in part, for the same loss of earning power. Rule 3 deals with these latter matters, but the words "in respect of the injury and the incapacity resulting from it" do not occur in that rule. Yet they must be implied, otherwise this grotesque result would follow, that money due and payable to the workman before the accident happened, for wages, money lent, work done, or even damages for breach of contract or tort, would be taken into consideration with the view admittedly of reducing the weekly payments. Sir Robert Finlay, as I understood, frankly admitted this. Now if the weekly sum, measured in the manner prescribed and payable while incapacity continues, is adequate compensation for the loss of the power of earning during that period, it is evident that a seaman who claims under section 7 does not claim compensation for his entire loss at all. He only claims payment of these weekly sums in respect of the period during which his incapacity shall continue after the liability of the owner under the Merchant Shipping Acts to defray the expenses of his maintenance shall have ceased. Though section 7, sub-section (*a*), recognised that the incapacity may commence at the moment of the accident, it confines the weekly payments to that portion of the duration of the incapacity which extends beyond the period of the liability of the owner for maintenance. On what conceivable ground can this be done, unless it be on the ground that the section has itself made a rough kind of set-off, and treated all the benefits conferred upon seamen by these Merchant Shipping Acts as equivalent to the weekly payments receivable under the Workmen's Compensation Act during that stage or period of incapacity in the course of which those benefits were received or enjoyed? Maintenance lasts the longest of these. The seaman must be maintained until he is repatriated. If he be then completely cured and able to work he gets nothing whatever under the Workmen's Compensation Act, however serious his injury or great the pain and suffering which he has endured, or prolonged the antecedent incapacity. In this case the first stage of incapacity covered nearly three months. Sir Robert Finlay admits that the loss resulting from the early stage of the incapacity must be treated as compensated for, but he insists that it is compensated for, not by all the benefits secured to the seaman by the Merchant Shipping Acts, but by one of them alone, namely, maintenance. But wages, medical attendance and advice, medicines, and the cost of repatriation, come within the words of rule 3. They are "payments, allowances, or benefits" in as true a sense as is maintenance, and there does not appear in the nature of the thing any reason why a workman who must while in health be paid wages and also be maintained should, if incapacitated by accidental injury of the kind mentioned, be held to be compensated for all loss by being maintained only. There does not appear to me to be any warrant for the distinction thus drawn. All payments, allowances, or benefits of the kind mentioned secured to the seaman by these Merchant Shipping Acts must, I think, be regarded with a view to a reduction of the weekly payments, or must all be disregarded. But if all these benefits are to be taken into consideration *bona fide* with a view to a reduction of the weekly payments covering the second period of the incapacity in the manner contended for, and the imperative directions of the Act and rules be not disregarded, then where these benefits are as substantial as they must have been in the present case the weekly payment must be very considerably reduced. For it would be a mere evasion of the statute and the rule to pretend to regard them in such a case and then make a nominal reduction in respect of them or no reduction at all. If, however, this be so, the benefits secured to seamen by the Merchant Shipping Acts prejudice them seriously. They pay a double debt. They first debar the seaman from receiving any compensation for loss sustained during the earlier period of his incapacity, however long; and secondly, if the Act be administered honestly they

must diminish somewhat, and may diminish considerably, the weekly payments to which he would be entitled during the second part of his incapacity. I cannot but think that such a result would not only be opposed to every principle of justice, but would also defeat the very purpose and object of section 7 of the statute. In my view the County Court Judge not only was not bound but was not entitled to have regard to any of the benefits mentioned, such as wages paid or maintenance given, simply because they were not received by the appellant during the particular period of his incapacity with which alone the County Court Judge had to deal, and in respect of which alone he had to fix the weekly payments. They had, I think, served the purpose assigned to them by the statute. They had satisfied the earlier liability of the employer to make weekly payments during the first stage of the incapacity, and were therefore matters irrelevant to the claim which the County Court Judge was considering and upon which he was deciding. By the admission of the respondents the words of the rule cannot be taken literally. It must be construed as if it contained words which it does not contain, limiting its reach and generality and defining to some extent its purpose and operation. In holding as I do that the cessation of the owner's liability being fixed by the statute is a new point of departure, as I think it is, "the payments, allowances, and benefits" to which regard must be had in the fixing of the weekly payments must be those received within that period of incapacity for and in respect of which alone those payments are to be fixed, I do no violence to the language of the rule comparable to that which must admittedly be done to it to avoid the grotesque results which I have already mentioned. I think, therefore, that the decision of the Court of Appeal was wrong and should be reversed, and that of the County Court Judge restored, and that this appeal should be allowed with the costs usual in such cases.

LORD SHAW—It is unnecessary for me to recapitulate the facts which have been already stated in the judgments of some of your Lordships. By the Merchant Shipping Acts a seaman who is injured on board a vessel outward bound is entitled to payment of wages until the first port of landing, and to medical expenses and maintenance until he is returned to the port at which he was shipped or to another port agreed to by him. All these payments are debts due by the employer to the seaman. By sec. 3 of the first schedule to the Workmen's Compensation Act 1906 it is provided that "in fixing the amount of the weekly payment" of compensation "regard shall be had to any payment, allowance, or benefit, which the workman may receive from his employer during the time of his incapacity." The benefits of this Act have now been extended to seamen. In ordinary circumstances the compensation to an injured workman runs from the date of the injury; but with regard to the special case of seamen, as the employers were under the obligations above mentioned, which subsist until the date of the seaman's being landed in a home port, it is provided that the weekly payment under the Workmen's Compensation Act shall not begin to run until after that date. Clashing or overlapping of the remedial provisions of the two Acts is thus avoided. Up to the date of landing, the employer must discharge the debts due under the Merchant Shipping Acts, and only for the period subsequent to that date does workmen's compensation run. When, therefore, the first schedule dealing with the scale and conditions of compensation uses the language (sec. 1, sub-sec. 6) "Where total or partial incapacity for work results from the injury, a weekly payment during the incapacity" shall be paid, that must mean during the incapacity in respect of which a payment by the employer under the Act is due. In the seaman's case such a payment is not due as stated until he is landed at a home port. Similarly, when in sec. 3 the language is used "regard shall be had to any payment, allowance, or benefit, which the workman may receive from the employer during the period of his incapacity," there is much to suggest that the very same interpretation must be made—namely, that what is meant is the period of his incapacity in respect of which a payment by the employer under the Compensation Act is due. In the present case no such payment was made. It is, however, not necessary to decide the case upon that ground, for, in my opinion, the expression "payment, allowance, or benefit, which the workman may receive from the employer during the period of his incapacity" does not cover the discharge or settlement of a debt due to the workman from his employer. The case aimed at by the statute is simply and easily figured. It is the case of a workman injured, but of an interval elapsing between the date of the injury and the award or decree in his favour. That interval may be prolonged by litigation either to settle points raised by those representing the workman, or, in the more frequent case, by insurance companies representing the employer. During that interval the injured workman's house must, so to speak, be kept over his head, and a considerate employer may not unnaturally desire to give a "payment, allowance, or benefit" to him and his household in the meantime. The object of the statute is to secure and encourage an employer so disposed by making the payment, which is truly a payment by way of allowance or benefit, a proper credit item against the compensation when it comes to be assessed ultimately. That is what the statute means. But in my opinion it does not mean to make the discharge or settlement of a debt which was due to the workman from the employer enter into the account. It could never be right to give to a debtor who was liable to payment of both and each of two debts the power of treating the payment of debt No. 1 as *pro tanto* an extinction of

debt No. 2. In the present case the employers propose to put as a debit item against compensation running from the 11th March 1909 the payment of a debt due on the 29th December 1908, namely, the payment of the workman's wages due to him by statute and contract on that date. I think that such a transaction would be illegitimate, and that the words of the Act do not justify it. Such a construction appears to me to twist what was a protection and encouragement to the considerate employer in making what may justly be treated as an advance to an injured workman into a punishment upon the workman for accepting during his disablement payment of a debt justly due to him as a creditor. If the words "payment, allowance, or benefit" are looked at by themselves they do undoubtedly cover the payment of a debt. I desire to examine this. If the employer owed to his workman a debt of say £100, and were to pay that debt after the injury but before the assessment of damage, it would, I presume, be maintained that, a payment having been made, the Judge, in assessing the compensation due to the workman in respect of his injuries, must have regard to this payment in the sense that he must make a deduction from the compensation or possibly wipe it out. The words, or rather the individual word, of the Act could be appealed to in justification of this proceeding. Upon which I observe that I reckon it to be quite unsound, and to be productive of wrong and mischief, to interpret a remedial statute in the spirit of meticulous literalism. Everyone would, I presume, agree in such an instance as I have ventured to give. But whether the debt be large or small, due for wages, for arrears, or on any ground whatever, it does not appear to me to affect the question. I do not think it legitimate to introduce this element into the construction of such a clause. The present case is a good instance of the necessity of avoiding such results, and with regard to the language employed by the Legislature I see no disloyalty to the text of the statute in a construction which treats "payment, allowance, or benefit" simply as meaning payments by way of allowance or benefit in the sense which I have explained, and as excluding the settlement of debts which were due to the workman on other grounds. The text, if properly construed, seems to be quite apt enough to meet the case aimed at. In my opinion the action of the learned County Court Judge in disregarding the payment in this case was right and proper. I agree with the course proposed.

Judgment appealed from reversed.

Counsel for Appellant—Stewart-Brown—H. H. Harding. Agents—Windybank, Samuell, & Lawrence, Solicitors.

Counsel for Respondents—Sir R. B. Finlay, K.C.—Segar. Agents—Botterell & Roche, Solicitors.

PRIVY COUNCIL.

Friday, February 3, 1911.

(*Present*—The Right Hon. Lords Macnaghten, Atkinson, Shaw, Mersey, and Robson.)

NATIONAL PHONOGRAPH COMPANY OF AUSTRALIA *v.* MENCK.

(On Appeal from the High Court of Australia.)

Patent—Sale of Patent Article—Conditions Imposed by Owner of Patent—Validity of Conditions against Purchaser—Purchaser's Knowledge at Time of Sale.

The owner of a patent may validly impose conditions upon full ownership and use of the patented article. Those conditions will bind the purchaser of such an article if he is made aware of them at the time when the article is sold to him.

The appellants were the owners of certain patent rights, and brought an action against the respondents to have them restrained from dealing with the patented articles in certain ways, including selling them at less than a standard price.

Judgment in favour of the respondents was pronounced by the High Court of Australia.

Their Lordships' considered judgment was delivered by

Lord Shaw—This is an appeal brought in an action to restrain the respondent Mr Menck from (1) acting in breach of a certain contract between the parties, and (2) from infringing the patent rights of the appellants, the National Phonograph Company of Australia. The facts were investigated by Isaacs, J., and reported by him to the High Court of Australia, which delivered a judgment dismissing the action, and finding the appellant company liable in costs. The appellants own three patents for improvements in phonographs, improvements in the production of sound records or blanks, and improvements in sound records or blanks. All of these patents were granted pursuant to the provisions of the Patents Act 1903 of the Commonwealth of Australia. Sec. 62 of the statute is to the following effect—"The effect of a patent shall be to grant to the patentee full power, sole privilege and authority, by himself, his agents, and licensees, during the term of the patent, to make, use, exercise, and vend the invention within the Commonwealth in such manner as to him seems meet, so that he shall have and enjoy the whole profit and advantage accruing by reason of the invention during the term of the patent." Substantially nothing depends upon the particular wording of this section, or of the language of the first schedule, which contains the form of a grant of patent, it being admitted by the parties that their rights are not varied by the differences (if any) between the