law, and will be checked if occasion should require by the simple process of declaring the patent invalid. I now apply myself to the question raised in this particular case. It is whether or not the patent of 1905 constitutes or rather contains improvements upon the Hopkins machine. I think that any part does constitute an improvement if it can be adapted to this machine and if it would make it cheaper and more effective or in any other way easier or more useful or valuable, or in any other way make it a preferable article in commerce. So we have to see of what the Hopkins machine consists. It is not, in my opinion, merely so much of the machine as is novel and patentable; it is the machine itself, old and new, and includes every part of it. That being so, the chief improvement patented in 1905 was the substitution of an upright cope for a horizontal cope theretofore used in the autoplate machine, with other improvements included in the 1905 patent, which were either subsidiary or auxiliary to the one which I have described, and were admittedly improvements in the Hopkins machine itself. Everything turns on the use of the upright cope—whether or not the use of an upright cope (which had previously been used in the Hopkins machine) with the addition of a rotary motion, not claimed in the 1905 patent, and the other subsidiary changes, could be called an improvement upon the Hopkins machine itself. Both courts below thought that it could, and I share that opinion. It was, taken as a whole, a great change, but it was a change adaptable to the machine, and being adapted made the machine a better machine. I would enter more at length into the mechanical details, which were most ably explained to us by the learned counsel for the appellant, if I thought that any useful purpose could be served. It is sufficient, however, to say that I regard what was done and the particulars described to us by the learned counsel for the appellant as an improvement, not only upon the autoplate but also upon the Hopkins machine itself. There is only one other point, and it is this—Is the right of exclusive user of the communicated improvement applicable only to the Hopkins machine? I think that it is not so restricted. I think that when an improvement is communicated to either party under the terms of this contract he obtains an exclusive right to use it in regard to any machine which the contract authorised him to use in his own area as described in the contract. Accordingly I am of opinion that the appeal fails.

LORDS MACNAGHTEN, ATKINSON, COLLINS, and SHAW concurred.

Appeal dismissed.

Counsel for Appellant—J. Ewart Walker—C. H. Thorpe. Agents—Foss, Bilbrough, Plaskett, Foss, & Bryant, Solicitors.

Counsel for Respondents — Bousfield, K.C.—A. J. Walter, K.C.—H. E. Wright. Agents—Hays, Schmettau, & Dunn.

HOUSE OF LORDS.

Monday, February 7, 1910.

(Before the Lord Chancellor (Loreburn), Lords Macnaghten, Atkinson, Collins, and Shaw.)

MACBETH & COMPANY *v.* CHISLETT.

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

Reparation — Master and Servant — Employers' Liability Act 1880 (43 *and* 44 *Vict. c.* 42), *sec.* 8—"*Seamen*"—*Merchant Shipping Act* 1854 (17 *and* 18 *Vict. c.* 104), *sec.* 2—*Rigger.*

In construing "seamen," who are excluded from the provisions of the Employers' Liability Act 1880, the Court is not in any way fettered by the definition of "seamen" in the Merchant Shipping Act 1854. A "seaman" is one who is by vocation a seafaring man, and who is at work connected with his duties as a seafaring man.

The respondent was a rigger who sustained personal injuries by accident while on board the appellants' steamship. He was engaged at the time in helping to work the ship from one side of the dock in which she lay to the other. The respondent obtained a verdict in his favour for damages under the Employers' Liability Act 1880 in the County Court before a jury. This was set aside by the Divisional Court, and restored by the Court of Appeal (COZENS-HARDY, M.R., FARWELL and KENNEDY, L.JJ.).

At the conclusion of the arguments their Lordships gave judgment as follows:—

LORD CHANCELLOR (LOREBURN)—I think in this case that there is no ground for disturbing the judgment of the Court of Appeal. This man suffered from an accident, and it was agreed that he was entitled to recover under the Employers' Liability Act as a workman unless it could be established that he was a seaman. Now it was argued that he was a seaman on two grounds—in the first place, upon the ground that we are bound by the interpretation given to the word "seaman" in the Merchant Shipping Act 1854. I must say that I see no reason at all for introducing the Merchant Shipping Act 1854 in the construction of the word "seaman." The statute with which we are concerned does not say that you are to apply the Act of 1854, and it would be a new terror in the construction of Acts of Parliament if we were required to attribute to familiar words an unnatural sense because in some statute, some Act which is not referred to or incorporated, such an application was given to them for the purpose of that Act alone. I therefore cannot accede to the argument of Mr Horridge on his first point. In the second place, he said that apart from the Merchant Shipping Act 1854 this man was in fact a seaman. It seems to me that that point might well have been left

to the jury. Even if the incidents or facts of the case were undisputed it does not follow that the conclusion to be drawn from them is matter of law. It may be a conclusion of fact. I think that the jury might well have been asked this question with proper direction as to what the meaning of the word was in the statute with which we are immediately concerned. We have, however, to decide the question, and I do not think that this man can be regarded as a seaman. In deciding whether or not a man is a seaman, without incorporating the definition of the Act of 1854, the Court must see whether he is by vocation a seafaring man, and secondly, if he is at work connected with his duties and avocation as a seafaring man. Both these elements are to be considered. If it were otherwise, then on the one hand a painter painting a ship in dock or a mechanic called in to mend a valve in dock or harbour would be a seaman, which he obviously is not. On the other hand, if we do not regard both these elements, a seafaring man employed on some work such as erecting a flagstaff on shore would have to be regarded as a seaman, for that is his vocation. But though a seaman might be doing work which did not belong to his calling, as, for example, painting the ship, he would still in that case be a member of the crew whose duty it was to assist in the navigation of the ship. The truth is that you have to regard all the circumstances, particularly those two to which I have referred. Under these circumstances, I think it impossible to say of this man, who was a rigger and had not been at sea for five years, that his vocation was that of a seaman, and I think therefore that this appeal must be dismissed.

LORD MACNAGHTEN—I am of the same opinion. I can see no reason for importing the definitions of the Merchant Shipping Act 1854 into the Employers' Liability Act 1880.

LORD ATKINSON and LORD COLLINS concurred.

LORD SHAW—I am of the same opinion. I desire to adopt the words of Lord Craighill in the Court of Session in *Oakes* v. *Monkland Iron Company* (1884, 21 S.L.R. 407, 11 R. 579)—"The interpretation of the word 'seaman' is not dependent upon the provisions of the Merchant Shipping Act 1854. There is no reference to that statute in the Employers' Liability Act 1880 or in the Employers and Workmen Act 1875. The Court are therefore not only at liberty, but are called upon, to adopt that which they think is the true meaning of the word to be interpreted, as used in the Act of 1875, unfettered by the provisions of the Merchant Shipping Act 1854." It is satisfactory to find that there is agreement on this point between the English and the Scottish Courts. On the other point in the case I concur with the observations of the Lord Chancellor and of Farwell, L.J.

Appeal dismissed.

Counsel for Appellants—Horridge, K.C. —Hyslop Maxwell. Agents—Walker, Son, & Field, Solicitors.

Counsel for Respondent—Leslie Scott, K.C.—Hanbury Aggs. Agents—Milner & Bickford, Solicitors.