his patent. In such an action it is open to the defendant to plead a licence by the plaintiff. That licence may be express or it may be implied from the sale by the patentee of the patented article, but if the defendant pleads a licence, then it is competent for the plaintiff to reply — 'The licence which I granted is a limited licence, and you, the person who has now got the patented article, were aware that it was only a limited licence, and you cannot therefore defend yourself against my claim for an infringement of my patent, because you are going outside the licence which to your knowledge I gave with reference to this article.' Such a case would not depend upon any condition running with or attaching to the article. It would depend only upon the limits of the licence which the patentee had granted when he first parted with the goods." In their Lordships' opinion it is thus demonstrated by a clear course of authority, first, that it is open to a licensee, by virtue of his statutory monopoly, to make a sale *sub modo*, or accompanied by restrictive conditions which would not apply in the case of ordinary chattels; secondly, that the imposition of these conditions in the case of a sale is not presumed, but, on the contrary, a sale having occurred, the presumption is that the full right of ownership was meant to be vested in the purchaser; while, thirdly, the owner's rights in a patented chattel will be limited if there is brought home to him the knowledge of conditions imposed by the patentee or those representing the patentee upon him at the time of sale. It will be observed that these propositions do not support the principles relied upon in their absolute sense by any of the Judges in the Court below. On the one hand, the patented goods are not, simply because of their nature as chattels, sold free from restriction. Whether that restriction affects the purchaser is in most cases assumed in the negative from the fact of sale, but depends upon whether it entered the conditions upon which the owner acquired the goods. On the other hand, restrictive conditions do not, in the extreme sense put, run with the goods because the goods are patented. Applying these principles to the present case, the result is this—the respondent Mr Menck has been acquitted of every charge of violation of contract which was laid against him by the appellants. He has also succeeded in showing that the claim made by the appellants as patentees was in its nature extreme and unsound in law. But he made this mistake—he assumed that, being guiltless of a violation of the contract, he was as free as an ordinary member of the public who had acquired possession of articles embodying the appellants' patent. His misfortune, however, consists in this, that by the very fact that he entered into contractual relations with the appellants he has become seized with the knowledge of the conditions on which they dispose of their goods, and he is not free to put forward the plea that such conditions have not been brought home to him. When he therefore announced his intention of dealing in these articles as ordinary articles of commerce, he must be held to have pursued a mistaken course—the course of treating himself as an unrestricted instead of a restricted trader. In this particular case the result may involve some hardship to him, but their Lordships cannot see their way to a departure from the principle that a restriction rests upon a purchaser of goods which are covered by a grant of a patent and have come into the possession of a purchaser in the full knowledge of the restrictions imposed by the patentee upon their disposal. Notwithstanding the most able presentment of his case by his counsel, their Lordships are of opinion that effect cannot be given to it in the one particular referred to. Their Lordships do not examine the attitude and action of the appellants further, but they are of opinion that the award of costs in favour of the respondent in the Court below should stand, and that, having regard to the condition upon which special leave to appeal was granted, the respondent is entitled to his costs as between solicitor and client in this appeal. Their Lordships will humbly advise His Majesty that the judgment of the High Court of Australia be reversed, and that in lieu thereof an injunction in the limited sense before mentioned do issue against the respondent, namely, to restrain him, his servants or agents, from infringing the letters-patent, and that *quoad ultra* the appellants' claims in the action be dismissed, with an order as above indicated as to costs.

Judgment appealed from reversed.

Counsel for Appellants—A. J. Walter, K.C.—J. H. Gray. Agent—R. O. Read, Solicitor.

Counsel for Respondent—B. A. Levinson. Agents—Bartlett & Gluckstein, Solicitors.

HOUSE OF LORDS.

Friday, February 10, 1911.

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

SHRIMPTON *v.* HERTFORDSHIRE COUNTY COUNCIL.

(On Appeal from the Court of Appeal in England.)

Reparation—Negligence—Carriage of Child in Vehicle Provided by Education Authority—No Duty to Carry Child.

A vehicle was provided by an education authority for the carriage of children to school from a certain distance. A child living nearer the school was carried in the vehicle with the consent of an offical. The child was injured, and the jury found that the injuries were caused through the negligence of the

education authority. The education authority was under no obligation to carry the child in any vehicle.

Held that the education authority was liable for negligence.

A child was injured while being driven to a public school under circumstances which are fully stated in the judgment of the Lord Chancellor, and obtained judgment for £277 damages before Channell, J., and a special jury. This judgment was reversed by the Court of Appeal (VAUGHAN WILLIAMS, FLETCHER MOULTON, and BUCKLEY, L.J.J.,)

The child appealed.

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

LORD CHANCELLOR (LOREBURN)—I think that the House is very much indebted to all the learned counsel who have assisted us in this difficult case. I am anxious myself not to allow the sympathy which everyone must feel with the parents of this child and with the child herself to affect the opinion to which I come. I believe that I have arrived at a conclusion simply according to my view of the facts and of the law applicable to them without allowing any such feeling to affect me. Now what are the facts? Adopting as I do the findings of the jury, which were I think founded upon sufficient evidence, it is not our right nor our duty to convert ourselves into a jury to find the facts in a case of this kind. If there is sufficient evidence to support the actual conclusion of the jury, your Lordships are bound to adopt and apply it. In this case, then, there was a child living within a mile of the school. The County Council authorised the sub-committee to provide a conveyance for children living upwards of two miles from the school. The attendance officer made the necessary arrangements. It was also his duty to communicate with the parents as to the carriage of the children, and no one else seems to have acted in any way in that capacity. With or without the authority of the County Council he did in fact give leave to this child to ride in the conveyance, and she did so for a considerable period of time. In March 1909 she was injured by reason of the negligence of the driver, coupled with the fact that there was no conductor or adult person to accompany the vehicle. The jury thought that it was negligence not to provide such a person under the circumstances. The jury say nothing about the vehicle or its condition, but its condition was most probably one of the circumstances which led them to the conclusion that there ought to have been a conductor or adult person accompanying and taking care of the children on their journey. Really two questions are raised upon this state of facts. The first is, Whether the child was driven on the occasion in question in this conveyance by the consent or licence of the County Council. It was the business of the attendance officer to communicate with the parents as to what children should ride. He did authorise this child to ride. He did not tell the child's parents that there was any difference between the position of this child in the conveyance and that of any of the other children, and it was reasonable that the parents should suppose, as I have no doubt that they did suppose, that the only education officer whom they saw was acting by the authority of the education committee, who were themselves acting by the authority of the County Council. I think, therefore, that when he sanctioned or permitted the conveyance of this child in this vehicle he thereby bound the County Council. The next question was, Did the child enter and was she conveyed in this vehicle on the terms of using it *tale quale*, such as it was, and was the only duty of the County Council a negative duty, not to lay what is called a trap for the children who used the vehicle? It was argued that their only duty was not to lay a trap, because there was no obligation on them to take this child, she living within one mile of the school and not being able to be excused from attendance by reason of the distance of her home from the school. Let us see how this vehicle came to be provided. There is a duty on the part of the County Council to carry out the Education Act, including as one object, at all events, the procuring of children to come to school. There may be an excuse on the part of those children arising from the distance of their homes from the school, and accordingly the County Council have the power of providing, if they think fit, a vehicle for children living more than two miles away from the school, and also of providing out of the rates a vehicle for the service of children living not more than two miles away but within a mile, if they do so within the fair discretion given to them under this statute. I agree with the learned counsel for the respondents that here there was no duty or obligation whatever on the County Council to provide for the carriage of this child, but if they did agree to do so, and did provide a vehicle, then it is clear to my mind that their duty was also to provide a reasonably safe mode of conveyance. This was not done according to the findings of the jury. They have found that it was not a reasonable and proper way for the County Council to convey children to school in this vehicle without a conductor or some adult person to take care of them. It is said that there is no evidence in support of this finding. To my mind it is a question which any man of the world can answer by the exercise of his own common sense and his knowledge of life. It appeared to the learned counsel for the respondents a very perverse view to take of things. I am sorry to say that I take the same view myself. When you have little children, five, six, or seven years of age, up to ten or twelve, and send them in a conveyance such as has been described without anyone to look after them, I must say that I should be very much disposed, if I were on the jury myself, to say that it was not a reasonable or proper way of conveying them to school. However, that does not matter. The jury said so. They are the judges, and my

opinion on the subject is of no importance. I am content to place upon that ground the advice which I would respectfully offer to your Lordships—upon the ground that if the County Council did through their representative agree to provide a vehicle for this child, it was their duty to provide a reasonably safe mode of conveyance, and in the opinion of the jury they did not do so. I do not think that it is necessary to enter upon the larger question whether the County Council would or would not be responsible for the negligence of the driver. I shall therefore respectfully advise your Lordships to allow this appeal.

EARL OF HALSBURY—I am entirely of the same opinion. There is only one thing that I wish to add to what the Lord Chancellor has said. Some question appears to have been suggested about the obligation towards this particular child. In the first place, I wish to say that no such question appears to have been raised at the trial or ever suggested by anybody, and the question whether the liability existed in respect of any one of the persons in this vehicle was not treated separately from the liability in respect of any of the others. No such question was ever suggested or raised. Then with reference to the question itself, I think that it was very good sense on the part of the learned counsel not to raise such a question, because in fact you could not possibly in reason and good sense distinguish in the contract that was existing between the children and the County Council, if there was such a contract, between one child and another. Conceive the mode in which it would have been received by the jury if the question had been fought in that way. If it were a child of five, the contract in respect to that child would be such and such; if the child next to it were six, it would be another contract; and so on with them all up to the one to whom the accident happened, namely, a child of twelve. The truth is that the whole question of the mode in which these children, speaking of them generally as children, were carried was treated as one, and that was the question which the jury were to decide, namely, Was that a reasonable mode in which to carry the children, in the plural, without distinction of whether they were six or seven or twelve years of age? I think that it was good sense on the part of the learned counsel not to raise that question, because this particular accident which happened might happen in fact to an adult. A person who knows what it is to step into or out of an omnibus, for instance, without any notice whether or not the horses are going to stop, or if they do stop whether they will suddenly go on again, will know what the difference may be as regards the power of helping oneself between a child of twelve and even an adult. Under these circumstances I think that the learned counsel were quite justified in the course which they took. The result is that as the question has been treated before so we must treat it now. The negligence of the County Council was established by the fact of their having sent this vehicle with these children under these circumstances; and as to whether they were negligent in that it is clear that there was evidence for the jury on which they were entitled to act. Under these circumstances I am entirely satisfied with the verdict at which the jury arrived, and I think that this appeal ought to be allowed.

LORD ASHBOURNE concurred.

LORD ATKINSON—I concur. I do not wish to add anything except this—During the course of the argument it was said that if a statutory duty to do a particular thing is imposed upon a public body, they cannot protect themselves by contracting with a contractor to do that thing if there is negligence in course of doing it, and it was sought to draw a distinction between that case and the case in which a public body are given statutory powers, and it is optional with them whether they put those statutory powers into force or not; and it was suggested that in this latter case there is nothing to prevent them from protecting themselves from liability for accident by subcontracting, even though they have elected to exercise their statutory powers to do the very thing which they are empowered to do. I only wish to say that I do not at all desire to be taken as accepting that distinction, or as thinking that it is well-founded, and that I hold myself entirely free to reconsider it on a future occasion.

LORD SHAW concurred.

Judgment appealed from reversed.

Counsel for Appellant—Sir F. Low, K.C. —Henlé — W. V. Ball. Agents — Church, Adams, & Prior, Solicitors.

Counsel for Respondents—Lord R. Cecil, K.C.—Danckwerts, K.C.—B. Lailey. Agents —J. N. Manson & Company, Solicitors.