

plaintiffs would not have been able to sue upon it. An attempt was made to found the claim upon patent rights, but the court pointed out that such a claim could only arise if the limits of the license at the time when the patentee parted with his goods were in question, which was not this case. It must, of course, be remembered that it is open to a patentee to make a sale of a patented article subject to restrictive conditions, which would not apply in the case of the sale of ordinary chattels, and the purchaser will be bound by such conditions if knowledge of them at the time of the sale is brought home to him: (cp. *National Phonograph Company of Australia v. Menck*, 104 L.T. Rep. 5; (1911), A.C. 336). In *McGruther v. Pitcher* (*ubi sup.*) the determining question was whether the retailer had in fact entered into a contract with the manufacturers.

The importance of establishing a contractual relationship in order to found a cause of action having therefore been clearly laid down, the next case raised the question in a somewhat different form. In *Dunlop Pneumatic Tyre Company Limited v. Selfridge and Co. Limited* (reported *ante*, pp. 428-429), Mr. Justice Phillimore gave judgment for the plaintiffs, but the judgment was reversed in the Court of Appeal as being based upon an erroneous view of the facts. The manufacturers entered into a contract with certain wholesale dealers to sell them motor tyres, covers, and tubes subject to certain discounts and to an undertaking not to sell such goods below specified fixed prices. The wholesale dealers also agreed, acting as agents for the manufacturers, in case of the sale of such articles, to obtain from purchasers written undertakings to observe the manufacturers' list prices and conditions of sale, and to refuse them any discounts unless such undertakings were given. A sum of £5 was to be payable by the wholesale dealers for every breach of this agreement. Similar terms were embodied by the wholesale dealers in their agreement with a certain fixed firm of retail dealers. The fixed minimum retail prices were to be observed, and it was provided that any breach of these terms should in-