hesitation in adding any words of my own. But I will make reference only to sec. 13 of the statute. Sec. 13 applies to the case of goods sold by sample plus description. In the present case the goods were sold by sample, but the sample was not considered sufficient, and a description had to be added. When the bargain was made samples were shown and relied upon, but the description of the goods was not embraced in the contract when it was put in writing. Thereupon the vendee insisted that the description of the goods should be entered upon the contract, and this was done, the goods being described as "common English sainfoin." That description could by no circumstance have been more clearly certiorated as entering into the very essence of this contract and being one of its conditions. What has been delivered has been "giant sainfoin"—a thing as distinct in agricultural knowledge from common English sainfoin as in ordinary commerce a silver watch would be distinct from a gold watch. It is now said, however, that these two merchants, contracting with each other, when they used the word "warranty," used it in ambulatory sense. "Warranty" was, according to the argument so ably presented to us by counsel for the respondents, to mean one thing in certain events and another thing in other contingencies. I do not think that these two English commercial men meant "warranty" in a sense of any greater refinement than the breadth of the definition in the Sale of Goods Act; and under the Sale of Goods Act it is as plain as language can make it that there are two things that are dealt with under different categories. The one is "warranty" and the other is "condition"; and it is only when you have to approach the question of finding the remedy which the statute prescribes that in the option of the person injured a condition may be converted into, or rather for remedial purposes be regarded as equivalent to, a warranty. The only other observation which I desire to make is that I view with some suspicion, if not with repugnance, any system of construing a contract *ex post facto*. In the case of *Ellen* v. *Topp* (6 Ex. 424) that very learned Judge, Pollock, C.B., observed—"It is remarkable" (and indeed it would be most remarkable) "that according to this rule the construction of the instrument may be varied by matter *ex post facto*." Whoever heard in a commercial contract of construing the meaning of two business men by a principle of that kind? I cannot agree with the opinion in *Ellen* v. *Topp;* that opinion, in my judgment, is no part of English law. I think it a safer thing to construe this document as it was originally meant to be construed —that is to say, according to the evident intention of the contracting parties at the time when the bargain was made. I find that the language of the statute equates with that intention; and the judgment pronounced by Fletcher Moulton, L.J., is, in my opinion, in accord not only with the justice of the matter but with the actual meaning of seller and of buyer.

Judgment appealed from reversed.

Counsel for Appellants—Shearman, K.C. —Herbert Smith. Agents—Rooke & Sons, Solicitors.

Counsel for Respondents—Atkin, K.C.— Cecil Walsh. Agents—Andrew Walsh, Gray, & Rose, Solicitors.

HOUSE OF LORDS.

Friday, May 12, 1911.

(Before the Lord Chancellor (Loreburn), Lords Ashbourne, Alverstone, C.J., Atkinson, and Shaw.)

MURPHY *v.* THE KING.

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

Local Government—Old Age Pension—Old Age Pensions Act 1908 (8 *Edw. VII., cap.* 40), *sec.* 7 (2)—*Decision of Local Pension Committee—"Final and Conclusive"—Jurisdiction—Question Reopened.*

A person who was in fact below seventy years of age was awarded an old age pension by a local pension committee; no appeal against the award was brought in the manner prescribed by the Act. The pension officer afterwards obtained new information as to the pensioner's age, and he then raised a "question," in the manner provided by the Act, to the effect that the pensioner was not of the statutory age and was therefore not entitled to a pension. The local pension committee decided to continue the pension. The pension officer appealed in terms of the Act to the Local Government Board (the central pension authority), which deprived the pensioner of the pension.

Held that the Local Government Board had jurisdiction to declare the pensioner disentitled to the pension notwithstanding section 7 (2) which provides that "the decision of the local pension committee on any claim or question which is not referred to the central pension authority . . . shall be final and conclusive."

In the circumstances stated *supra* in rubric, a person who had been found entitled to an old age pension by a local pension committee was deprived of it by the Local Government Board and ordered to refund the amount already paid. Upon a petition of right by the pensioner it was held by the King's Bench Division in Ireland that the Board had jurisdiction so to do. This was affirmed by the Court of Appeal (SIR S. WALKER, L.-C., HOLMES and CHERRY, L.JJ.).

The pensioner's personal representative appealed.

At the conclusion of the argument for the appellant their Lordships gave judgment as follows:—

LORD CHANCELLOR (LOREBURN)—I think that this appeal must fail. The facts are short, and not disputed. Certain conditions are laid down in the Act which must be fulfilled in order that a person may be entitled to a pension. If any question is raised as to whether the conditions continue to be fulfilled, then under section 7 (1) the question goes first to the local pension committee, who are to give their decision, and the pension officer may appeal to the central pension authority. If there is not an appeal, then the local committee's decision is final. But if there is an appeal, then the central committee's decision is final and conclusive. In this particular case, after the local committee had decided, and no appeal followed, the question was raised whether one of the conditions—namely, that relating to age—continued to be fulfilled. The point was taken to the local committee, who thought that the condition was fulfilled, or at all events that they were not entitled to reverse the previous decision. Then the case went on appeal to the central committee, who decided that the applicant was not entitled to any pension. Now it is clear that the decision of the central committee was final and conclusive so far as that question went, if they had jurisdiction. The real argument put forward by counsel, whose brevity added force to his argument, was that the words in section 7, "whether those conditions continued to be fulfilled" could not apply to the condition of age, because when a person is once seventy he must be always seventy, and there is no part of the United Kingdom so fortunate that people grow younger in it. In my opinion that is not an accurate view. Section 9 evidently contemplates the possibility of error, and the claimant being obliged to recoup the Treasury for what has been paid in error, it would be very unlikely indeed that there should be no machinery in an Act like this to provide for a case like that. If the argument of the appellant is right this strange result might ensue, that an applicant would be continually entitled to be paid, and the Crown continually entitled to be repaid. That is a conclusion at which I cannot arrive unless I find no other way of construing the Act. I think that the true view is that if any of the statutory conditions are not fulfilled then the machinery can be put in motion and the question brought before the local committee, and then there may be an appeal to the central committee. It is true that the result of so holding is to allow the question of age to be raised repeatedly by the Crown. The same is also true of the claimant, who can repeatedly renew his or her application. I cannot see that there is any injustice in that. I can imagine no other way in which we can prevent the perpetuation of wrong payments or of wrong exclusions. I think that this is the way which the Act of Parliament has provided. It is impossible to prevent by Act of Parliament unreasonable process or litigation. All we can do is to provide means for redressing errors which may be made under those circumstances. I think that the decision of the Court of Appeal was right and ought to be upheld and this appeal dismissed.

LORD ASHBOURNE—I am of the same opinion. The case has been argued with force, ability, and ingenuity, but the task set before appellant's counsel was extremely difficult. It would really require the Act of Parliament to be drafted differently to give force to many of their contentions. I do not think that the Act is drawn in the most satisfactory way. Some things might have been stated more clearly. But Acts of Parliament must be interpreted as they stand, and no real force can be given to the contentions addressed to the House by the appellant. The governing condition of the whole statute is age. The contention put forward was that once age has been found by the local or central pension authority, that was final and conclusive, and it could never be interfered with. Would it not be an element of absurdity, if it were found that a wrong decision had been arrived at, that the pensioner should go on receiving on the one hand and disgorging on the other?

LORD ALVERSTONE and LORD ATKINSON concurred.

LORD SHAW—I am of the same opinion, and if it had not been for the ingenious argument addressed to the House by the learned counsel for the appellant I should have thought the point incapable of argument.

Appeal dismissed.

Counsel for Appellant—James O'Connor K.C.—Edmond Lupton. Agent—George Gavan Duffy, Solicitor.

Counsel for Respondent—Attorney-General for Ireland (Barry, K.C.)—Ronan, K.C.—W. E. Wylie. Agents—Beveridge, Greig, & Co., Solicitors.

HOUSE OF LORDS.

Wednesday, May 30, 1911.

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

WALTERS *v.* STAVELEY COAL AND IRON COMPANY.

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

Master and Servant—Workmen's Compensation Act 1906 (6 *Edw. VII, c.* 58), *sec.* 1—"*Accident Arising Out of and in the Course of the Employment*"—*Workman on Way to Work—Short-Cut through Employers' Lands.*

The appellant's employers made a pathway over lands belonging to them by which their workmen obtained access to their work by a route shorter