pany, with the guarantee of the manufacturers stamped upon it. And if that be so there is no implied condition or warranty as to its fitness for any particular purpose.

Then, failing upon other points, Mr. McCullough argues that this was a contract for the sale of goods by description and that in every such case there is an implied condition that the goods shall correspond with the description.

This case cannot, I think, be fairly said to come under a contract for the sale of goods by description.

In *Wren* v. *Holt*, [1903] 1 K. B., at page 615, Vaughan, Williams, L.J., says: "Speaking candidly I do not think, taking the generally accepted view of lawyers as to the meaning to be attached to the words by description as applied to a sale, that a sale of goods over a counter, where the seller deals in the description of goods sold, is a sale of goods by description within this sub-section."

In *Varley* v. *Whipp*, [1900] 1 Q. B. 513, Channell, J., says that a sale of goods by description must apply to cases where the purchaser has not seen the goods but relies upon the description.

In this case the plaintiff saw the goods and while it would not occur to him as being necessary to open and inspect them, he had the opportunity of doing so, and if he had done so the examination would, I think, have revealed the mistake.

Counsel have referred to many authorities, but none of them are quite like the present case. The case is somewhat similar to that of a person buying from a grocer canned fruit or vegetables or fish, and there is a case in Scotland, *Gordon* v. *McHardy*, 6 Frazer 210, in which Lord Justice Clerk Macdonell gave his opinion that a grocer who gets a quantity of tins of preserved food and sells them to the public as he got them cannot be liable for the condition of the contents of the tins if he buys from a dealer of repute. In Scotland, however, the Sales of Goods Act is not in force, and Mr. Beven, in his work on Negligence, Canadian Edition, page 53, points out that had the grocer been sued in England under the Sales of Goods Act, section 14, sub-section 1, the result might have been different. But at page 54 of the same book Mr. Beven gives his reasons for thinking that in a case like this there is no liability.

The plaintiff in this case must, I think, be nonsuited. First: Because the article sold was a specific article sold under its patent or other trade name and no condition can be