

in each case, is made to depend upon the construction of the contract. Sec. 11, sub-sec. (b) of that Act provides:

"Whether a stipulation in a contract of a sale is a condition, the breach of which may give rise to a right to treat the contract as repudiated, or a warranty, the breach of which may give rise to a claim for damages, but not to a right to reject the goods and treat the contract as repudiated, depends in each case on the construction of the contract. A stipulation may be a condition, though called a warranty in the contract."

(c) "When a contract of sale is not severable, and the buyer has accepted the goods, or part thereof, or when the contract is for specific goods, the property in which has passed to the buyer, the breach of any condition to be fulfilled by the seller can only be treated as a breach of warranty, and not as a ground of rejecting the goods and treating the contract as repudiated, unless there be a term of the contract, express or implied, to that effect."

The judgment of Williams, J., in *Behn v. Burness* (supra) is the most complete analysis of a condition precedent and an independent agreement extant. Blackburn, J., in delivering the judgment of the court in *Bettini v. Gye* (1876), 1 Q.B.D., p. 183, is thus reported: "Parties may think some matter, apparently of very little importance, essential; and if they sufficiently express an intention to make the literal fulfilment of such a thing a condition precedent, it will be one, or they may think that the performance of some matter apparently of essential importance and prima facie a condition precedent is not really vital, and may be compensated for in damages, and, if they sufficiently expressed such an intention, it will not be a condition precedent."

Courts of law find few subjects more difficult than exactly to define and to give the just weight and significance to the various terms of contracts of sale, such as representation, condition precedent, warranty, independent agreement, implied warranty, warranty in the nature of a condition; also, when a warranty ceases to be a condition precedent, and when a descriptive statement becomes a substantive part of the contract.

Another exception to the general maxim of caveat emptor is where goods are sold by a trader for a particular purpose of which he is aware they must be reasonably fit for the purpose, especially if the buyer necessarily trusts to the judgment or skill of the seller. This principle was very clearly laid down by Lord Ellenborough