titled to the goods themselves; or the bills sent forward might be for the protection of the defendants in that, the bills being in their hands, no one could legally obtain possession of the goods without the defendants' consent. Both banks, the plaintiffs and defendants, understood that such a protection should be afforded by the bills of lading, and that anything, even though called a bill of lading, which did not afford that protection to the defendants, would cause "such a failure of consideration as could not have been within the contemplation of either side:" The Moorcock (1889), 14 P.R. 64, 68; and the bills of lading sent were not such as the defendants had a right to receive before being bound by their guaranty.

The evidence did not establish as a fact that the form of the bills of lading was the usual form.

The conduct of the defendants and McCabe did not affect the legal right of the bank to insist on the strict performance of the condition precedent to their guaranty attaching.

> *Appeal allowed with costs, and*
> *action dismissed with costs.*

HODGINS, J.A.   OCTOBER 19TH, 1915.

*RE INDEPENDENT ORDER OF FORESTERS AND TOWN OF OAKVILLE.

Assessment and Taxes—Exemption—Orphan Asylum—Assessment Act, R.S.O. 1914 ch. 195, sec. 5(9).

Case stated by the Judge of the County Court of the County of Halton for the opinion of a Judge of a Divisional Court of the Appellate Division, pursuant to sec. 81 of the Assessment Act, R.S.O. 1914 ch. 195, as follows:—

The Independent Order of Foresters are the owners of a tract of land in the town of Oakville, comprising about 23 acres, and on this is erected a large building—the land being assessed at $9,200 and the building at $48,000.

These premises are for the purpose of affording a home, maintenance, etc., for the orphan children of deceased members of the Order—and in some cases for the child or children of a deceased member, the surviving parent being unable or unfit to care for such child or children.

This home is maintained altogether by the Order, and its