

oranges. Hicks, a broker, bought for McCabe from the Mutual Orange Distributors, in California, two car-loads of oranges on cars P.F.E. 8304 and 11914. Hicks advised McCabe of the purchase, and asked for a "bank guaranty." McCabe saw his bankers, the defendants, and they wired to the plaintiffs, bankers in California, on the 21st November, 1913: "We guarantee payment of drafts on J. J. McCabe with bills lading attached not exceeding in all \$1,629.70 covering two cars oranges containing 396 boxes each in P.F.E. 8304 and P.F.E. 11914." The cars had already started for the east; bills of lading attached to a draft came forward, and the draft was refused. In the meantime the agent of the consignors had changed the destination of the goods or part of them; when the goods arrived at Toronto, McCabe could have got them had he wished to do so; but prices had changed, and he did not want them. In the bills of lading, the Mutual Orange Distributors were both consignors and consignees—reading "Consigned to Mutual Orange Distributors, notify J. J. McCabe" (the name being in pencil). On the face of the bills of lading appeared: "Deliver without bills lading on written order of Mutual Orange Distributors' agent."

The Chief Justice of the Common Pleas found that the plaintiffs were entitled to recover upon the guaranty; and the defendants appealed.

The appeal was heard by FALCONBRIDGE, C.J.K.B., RIDDELL, LATCHFORD, and KELLY, JJ.

R. C. H. Cassels, for the appellants.

D. W. Saunders, K.C., for the plaintiffs, respondents.

RIDDELL, J., delivering the judgment of the Court, said that he did not accede to the argument that the defendants had the right to have the bills of lading in the name of McCabe; no legal advantage would have accrued to the defendants from McCabe being the consignee rather than the Mutual Orange Distributors. But the effect of the added clause permitting delivery without bills of lading on the mere order of the agent of the Distributors was different. The bills of lading were attached to the draft, and the condition was thus literally fulfilled; but, in construing the contract, a condition might be implied: Halsbury's Laws of England, vol. 7, p. 512, para. 1035 et seq. The object of attaching the bills of lading to the draft was the security of the defendant, which might have been effected by bills of lading, properly drawn or endorsed, whereby the defendants should become en-