

STREET, J. : "I think it was the plaintiff's duty, if he wished to set off his costs against the amount due the defendant, as directed by the Supreme Court, to have taxed them. If he had applied for time, it would only have been granted as a matter of indulgence, and not of right. Here the costs have since been taxed and paid, and there is no case for any indulgence to the plaintiff shown."

Appeal allowed with costs, and order made dismissing the action with costs.
Donovan for the plaintiff.

D. T. Symons for the defendant.

MANITOBA.

COURT OF QUEEN'S BENCH.

Full Court.]

[July 27.

TURNER v. FRANCIS.

License to take possession of defendant's goods if, in plaintiffs' opinion, he should become incapable of carrying on business—If opinion formed bona fide, the court cannot review it—Appeal from findings of trial judge on conflicting evidence.

The defendant, being indebted to the plaintiffs, had given them a license or power contained in an agreement under seal, made to secure the indebtedness and to indemnify the plaintiffs against certain indorsements for defendant, which provided that upon the death of the defendant or "upon his becoming incapacitated, in the opinion of the plaintiffs or either of them, from any cause from attending to his business," the plaintiffs, or either of them, might take possession of his stock and other property, and sell the same and apply the proceeds upon defendant's liabilities to the plaintiffs.

The plaintiff Turner swore at the trial that he had formed the opinion that the defendant had become incapacitated from attending to his business, but his cross-examination tended to the conclusion that such opinion was not sufficiently founded on facts, and that other persons not in a position of interest would not, probably, have formed such an opinion upon the facts set out in evidence.

The plaintiffs acted on the license and seized the goods and placed an agent in charge, who employed the defendant as his substitute, and left the defendant for a few days in apparently sole possession.

On attempting afterwards to resume actual possession, the plaintiff were prevented by the defendant from doing so, and then replevied the goods. At the trial of the action before the learned Chief Justice, he entered a verdict in favour of the plaintiffs, finding on the evidence that they had been *bona fide* of the opinion at the time of the seizure that the defendant then was incapable of attending to his business properly, and holding that nothing more was necessary under the agreement in question to entitle the plaintiffs to seize.

Held, on appeal to the Full Court, that on the above finding the verdict was right, and that although there might have been some doubt as to whether such opinion was honestly entertained or sufficiently founded, and another judge