

tion nor immediate possession such mortgage is, on grounds of public policy, void *ab initio*.

Appeal allowed with costs and
Judgment of MacMahon, J., restored.

S. H. Blake, Q.C., for the appellants.

Thompson, Q.C., for the respondents.

Manitoba.]

9 Dec., 1895.

FRANCIS V. TURNER.

Debtor and creditor—Agreement between—Conditional license to take possession of debtor's goods—Creditor's opinion of debtor's incapacity—Bona fides in forming opinion—Grounds—Replevin—Joint conversion.

F., a trader, having become insolvent, and being indebted, among others, to the firm of T. M. & Co. composed of T. and M., arranged to pay his other creditors 50 per cent of their claims, T. M. & Co. indorsing his notes for securing such payment, they to be paid in full, but payment to be postponed until a future named day. T. M. & Co. were secured for indorsing, by an agreement under seal by which it was agreed that if F. should at any time, in the opinion of T. M. & Co., or either of them, become incapable of attending to his business, the debt due T. M. & Co. should at once become due and they could take possession of the stock in trade, book debts and property of F. and sell the same for their claim, having first served on F. a notice in writing, signed by the firm name, stating that in their opinion, F. was so incapable.

This arrangement was carried out and some time after the date for payment to T. M. & Co., payment not having been made, a bank to which F. was indebted failed, and T. M. & Co., then consisting of T. and N., M. having retired, persuaded F. to assign his book debts to them, and afterwards served on him a notice as required by the agreement, and took possession of his place of business and stock. F. then agreed to act of T. M. & Co. until a certain day after and resumed possession, but when T. M. & Co. returned on said day he disputed their right and ejected them from the premises. Two days after he assigned to the official assignee for the benefit of all his creditors, and T. M. & Co. issued a writ to replevy the goods from him and the assignee.