

non-compliance with it at any particular time would only be evidence of negligence, and would not itself create a liability.

The learned Judge accepted the evidence that a buoy was placed to mark the existence of a boulder; that the buoy was moved without any fault of the defendants; and that the defendants were about to replace the buoy by another in a reasonable time from the time they knew of its absence; and the defendants were not guilty of negligence in not replacing it before the grounding of the vessel.

Action dismissed with costs.

MIDDLETON, J.

JUNE 23RD, 1915.

FOSTER v. TRUSTS AND GUARANTEE CO.

Assignments and Preferences—Conveyance of Land in Trust for Erection of Buildings and Payment of Creditors—Expenditure by Trustee in Excess of Sums Received from Property—Mortgage by Trustee to Secure Personal Creditor—Appointment of New Trustee—Action against, for Foreclosure—Trust not within Assignments and Preferences Act—Judgment—Immediate Foreclosure—Costs.

Action to recover payment of the amount due upon a mortgage of land, and, in default of payment, for foreclosure.

One Esther Ellenson by deed conveyed land to one Lobb upon trust to complete certain houses in the course of erection, and for the purpose of borrowing upon the security of the land and selling it and certain personal property and collecting certain debts, and thereout to pay his own remuneration, all preferential claims, and the claims of ordinary creditors of the assignor, with an ultimate trust in her favour. The only conveyance in the deed was of the land, although the trust was for the realisation of personal property as well. The deed recited the financial embarrassment of the assignor and that she was assigning all her property to procure the payment of her debts in full.

According to Lobb's statement, he disbursed \$110,410, and received \$67,943.

Lobb was a solicitor; the plaintiff was one of his clients; Lobb received for the plaintiff a sum of \$5,848.88, which he used for his own purposes, and possibly to some extent for the purposes of the trust. When the plaintiff demanded his money, Lobb