

missed with costs. The money in Court should be paid out to the appellants.

MACLAREN and MAGEE, JJ.A., concurred.

HODGINS, J.A., dissented, giving reasons in writing.

*Appeal allowed; HODGINS, J.A., dissenting.*

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FIRST DIVISIONAL COURT.

JANUARY 24TH, 1916.

\*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, sec. 9.*

Appeal by the defendants from the judgment of MIDDLETON, J., 8 O.W.N. 531.

The appeal was heard by GARROW, MACLAREN, MAGEE, and HODGINS, JJ.A.

J. Jennings, for the appellants.

W. E. Raney, K.C., for the plaintiff, respondent.

The judgment of the Court was delivered by GARROW, J.A., who said that the main contention for the appellants was, that the conveyance in trust to the mortgagor was in effect an assignment for the general benefit of creditors within the meaning of sec. 9 of the Assignments and Preferences Act, R.S.O. 1914 ch. 134, and that the mortgage was, therefore, ineffectual without the consent of the creditors or of inspectors appointed by them.

The appellants also contended that it was not established that the trust estate benefited by the money of the plaintiff, the mortgagee; but they had failed to displace the finding of the trial Judge that the trust owed Mr. Lobb, the original trustee and mortgagor, at least \$25,000. With that finding standing, and fraud and bad faith entirely out of the question, it seemed idle to talk about whether or not the plaintiff's money was actually expended upon the trust property. Looked