

a new transaction for the retirement of the bonds by a process not provided for and not contemplated by the instrument.

The defendants undoubtedly acted in good faith, but, in my opinion, they did not comply with or follow the plain directions of the trust instrument, with the result that the plaintiff was deprived of the position that the defendants should have recognised.

And I am unable to agree with the learned Judge that either the provisions of the trust instrument or the Trustee Act, 62 Vict. (2) ch. 15, sec. 1, shield them from the consequences of their default.

It is plain that sec. 13 of art. IV. of the instrument upon which the defendants rely is designed for the protection of the Dominion Copper Company from actions by bondholders, and is not intended or directed to the protection of the defendants from proceedings against them in the nature of the present action.

Nor do I think that the provisions of sec. 1 of the Trustee Act ought to be given effect to in order to protect the defendants from the enforcement of a remedy for the default of which the plaintiff complains.

In order to avail himself of the benefit of this provision, it is incumbent upon a trustee to make it appear to the Court not only that he has acted honestly, but that he has acted reasonably, and ought fairly to be excused for the breach of trust and for omitting to obtain the directions of the Court in the matter. Here the defendants had no intention to act otherwise than honestly, but can it be said that their action in deciding to deal with and in effect make a bargain not contemplated by the trust instrument, giving to one of the bondholders a position and status different from that to which he was entitled upon his first offer, and seriously affecting the position of the other bondholders who had offered their bonds, without consultation or communication with them, and without taking any other step to ascertain their duty in the circumstances, was reasonable. They were alive to the doubts and difficulties of the position, and seem to have decided to take upon themselves the risk of acting without reference to the other interested parties.

But, as pointed out by their Lordships of the Privy Council in *National Trustees Co. of Australia v. General Finance Co. of Australia*, [1905] A.C. 373, at p. 381, it is not sufficient to entitle trustees to relief under the Act to establish that they acted honestly and reasonably. They must go further and satisfy the Court that, under all the circumstances, they ought fairly to be