

Plaintiffs, having in this action recovered possession of the scrip from defendants, are prima facie entitled to such damages as they may have sustained by reason of its detention. It was shewn that there was a great decline in the price of the shares during the period when their delivery was withheld by defendants.

Defendants, however, maintain that they should not pay any damages, and it is on them to sustain the onus of shewing that they are relieved from liability.

Their first contention is that they were acting as trustees, and that in withholding the possession of the scrip from plaintiffs they acted honestly and reasonably and are entitled to the benefit of sec. 1 of the Act 62 Vict. ch. 15. The first inquiry is, whether defendants are trustees within the scope of the Act. If so, it must be because they were constituted trustees by virtue of the instrument in writing dated 19th August, 1902, upon the terms of which they became possessors or custodians of the scrip. They were not appointed by the Court, nor can it be said that they were persons who (except in respect of that instrument) might be held to be fiduciarily responsible as trustees. In considering the description of trustees and the sort of trusts coming within the Act, regard must be had to the terms of the appointment ^{of the} nature of the duties created. But in a general sense it must be obvious that the trustees meant by the Act are trustees engaged in administrative duties with regard to property confided to them for the benefit of others, and that the breaches of trusts mentioned are such as may occur in the course of the management and administration of property held in that way. It can scarcely be meant to apply to the simple case of the person having the custody for another of indicia of property upon a mere obligation to restore it to him on demand or request, and in the meantime to take care of it for him. Such a holding partakes much more of the nature of a bailment than of a trust in the ordinary and usual sense in which the word "trust" is employed in relation to property. For, while "bailment" is defined as "a delivery of a thing in trust for some special object or purpose and upon contract express or implied to conform to the object or purpose of the trust," yet the expression "in trust" is clearly not intended to have the same meaning as when technically used in connection with real property. Thus in Blackstone's Commentaries, Lewis's ed., vol. 3, pp. 431, 432, speaking of some species of trusts, it is said: "But there are other trusts