

MARCH 4TH, 1903.

## DIVISIONAL COURT.

METALLIC ROOFING CO. OF CANADA v. LOCAL  
UNION No. 30, AMALGAMATED SHEET  
METAL WORKERS' INTERNA-  
TIONAL ASSN.

*Writ of Summons—Service—Unincorporated Foreign Voluntary Association—Service upon Person in Ontario—Incapacity of Association—Proper Time to Raise Question.*

Appeal by the Amalgamated Sheet Metal Workers' International Association from an order of MEREDITH, J., dismissing an appeal by them from an order of the Master in Chambers dismissing their motion to set aside the service of the writ of summons on them by serving one J. H. Kennedy. The appellants were added as defendants by an order not appealed against.

J. G. O'Donoghue, for appellants.

W. N. Tilley, for plaintiffs.

The judgment of the Court (MEREDITH, C.J., MACLAREN, J.A.) was delivered by

MEREDITH, C.J.—The appellants, who are not sued as individuals, are neither a corporation nor a partnership nor an individual carrying on business in a name or style other than his own name, and it has not been made to appear that they have been given by the Legislature the capacity for owning property and acting by agents such as in *Taff Vale R. W. Co. v. Amalgamated Society of Railway Servants*, [1901] A. C. 429, it was held the Legislature had conferred upon the defendants in that case. . . . In a case such as this, where it appears clearly that the association sued is not an entity which may be sued by the name which it bears, it is a more convenient course to put an end to the litigation at the threshold than to permit it to proceed, with the certainty that the ultimate result will be the dismissal of the action as against the body improperly sued. *Sloman v. Governor of New Zealand*, 1 C. P. D. 563, and *Snow's Annual Practice*, 1903, p. 56, referred to. It is not necessary to go so far as to strike out the name of appellants as defendants; they have a right to complain that service has not been properly effected upon them: *Grossman v. Granville Club*, 28 Sol. Jour. 513. The Rules do not provide for the case of a voluntary association made a defendant, being neither a corporation, individual, partnership, nor a quasi-corporate