

poration and an individual or individuals may be the only entity known to the common law who can sue or be sued, it is competent to the Legislature to give to an association of individuals which is neither a corporation nor a partnership nor an individual, a capacity for owning property and acting by agents, and such capacity, in the absence of express enactment to the contrary, involves the necessary correlative of liability to the extent of such property for the acts and defaults of such agents." Further on he says, "The real question is whether, on the true construction of the Trades Union Act, the Legislature has legalized an association which can own property and can act by agents by intervening in labour disputes between employers and employees, but which cannot be sued in tort in respect of such acts." And he goes on to say that, "The Legislature in giving a trades union the capacity to do these things has given it two of the essential qualities of a corporation."

Now, are these defendants, the Army, within the purview of the Act respecting the Property of Religious Institutions? That is, R. S. O. ch. 307, which provides (sec. 1 (1) that "where any religious society or congregation of Christians in Ontario desires to take a conveyance of land for the site of a church, etc., or for any other religious or congregational purposes whatever, such society or congregation may appoint trustees to whom, and their successors, to be appointed in such manner as may be specified in the deed of conveyance, the land requisite for all or any of the purposes aforesaid may be conveyed; and such trustees and their successors in perpetual succession, by the name expressed in the deed, may take, hold, and possess the land, and maintain and defend actions for the protection thereof, and of their property therein."

I have grave doubts whether this community is within the meaning of that Act; but, if it were so, I should find it difficult to hold the whole society or organization liable, as they are sought to be held here. The trustees are the corporation under that Act, not the congregation nor the church at large. It has been argued that the expression of the capacity to do something, namely, to hold and possess land and maintain and defend actions for the protection thereof, means the exclusion of the capacity to sue or be sued for wrongs or torts. However that may be, I do not think that the Act is applicable so as to hold the whole society answerable in tort.

Now, there have been various decisions in our own Courts which, I think, point in the same direction. I refer more particularly to the case of the Metallic Roofing Co. of Canada