

fellow-directors. His evidence is inconsistent with the fact, sworn to by Mulholland and not denied, that later on in the season, when the Distributors Co. was objecting to the course of the business, he became angry and insisted on the agreement and threatened suit to enforce it.

Messrs. Foley, two of the proprietors who reside in St. Paul, Minnesota, say they had no knowledge of the transaction till February, 1908, although this action had been commenced some months previously. It is very singular if it was not discovered by their auditor appointed by them from their own office at St. Paul.

I am not satisfied with Locke's statement that it was concealed.

As to the other question of the powers of the company and of Locke, we find that the letters patent incorporating Foley, Locke, & Larsen are dated 9th February, 1903, and issued under the Manitoba Joint Stock Companies Act, which then was ch. 30 of the Revised Statutes of Manitoba of 1902. The objects of the company petitioned for and granted are therein declared to be, *inter alia*, to buy, sell, and deal in goods, wares, and merchandise, including groceries, fruit, produce, &c., and act as agents for others therein, and to make advances on consignments, and generally carry on the business of wholesale grocers, commission and produce merchants, and agents, and to engage in packing and cold storage and manufacture and to engage in any business transaction and to do or perform any acts which may be incident or conducive to the interests of the company, to acquire, sell, and deal in real estate, and, subject to sec. 70 of the Manitoba Joint Stock Companies Act, to acquire, own, and hold shares in the capital stock of other corporations, and to use its funds in the purchase of stock in other corporations, and to lend money on mortgages, stocks, debentures, &c.

Section 70 of the Manitoba Joint Stock Companies Act then in force (now sec. 68 of the present Act, R. S. M. 1902 ch. 30) declared that "no company shall use any of its funds in the purchase of stock in any other corporation unless expressly authorised by a by-law confirmed at a general meeting." It is said this company has no such by-law, and therefore could not acquire the stock. But under sec. 4 a charter may be granted to persons who petition therefor, and now under sec. 6 the petition may ask for the embodying in the letters patent of any provision which otherwise under the provisions of the Act might be embodied in any by-law of the company when incorporated, and by sec. 19 all powers given to the company by letters patent shall be exercised subject to the provisions and restrictions in the Act contained. The effect of embodying in the letters patent the power to acquire shares seems to be that the