

We then come to the dealings with the plaintiffs in the other actions — Foley, Locke, & Larsen. They are incorporated as a joint stock company, having their chief place of business at Winnipeg, engaged in the grocery and fruit trade.

In August, 1905, Mulholland and Carpenter went to Winnipeg to make arrangements for sales of fruit there. After several interviews with T. H. Locke and other officers of Foley, Locke, & Larsen, an arrangement was come to which resulted in an agreement under the seals of the two companies dated the 19th August, 1905, and an application of the same date by Foley, Locke, & Larsen to the Distributors Co. for 150 shares, on the terms of the prospectus, to be paid for, \$5,000 on 1st November, 1905, \$2,500 on 1st January, 1906, and balance on call, no call to exceed 33 1-3 per cent. in any one year. This application was accepted by the Distributors Co., and the shares allotted. Foley, Locke, & Larsen, concurrently with the application, gave their notes for the first two payments, and those notes were duly paid at maturity, but the remaining \$7,500 has not been paid. They here seek to be relieved from liability therefor. Two grounds are put forward: (1) that the application was obtained by misrepresentation; and (2) that the transaction was not one which Thomas H. Locke, who signed the application, or the board of directors, had authority to enter into for the company, and which was beyond the powers of the company, in the absence of a proper by-law confirmed at a general meeting expressly authorising it.

By the agreement of 19th August, 1905, the Distributors Co. appointed Foley, Locke, & Larsen its exclusive agents in Manitoba, Saskatchewan, and Alberta for sale of all fresh fruits, &c., coming from Ontario, and agreed to pay them a commission of 18 per cent. on sales, and to deliver to them 50 fully paid shares in the Distributors Co., the consideration for which was the rebate of 3 per cent. which thereby Foley, Locke, & Larsen, in consideration of the appointment and the 50 shares, agreed to make to the Distributors Co., on the gross sales of all fruit coming from Ontario originally or from any one in Ontario. Although the 50 shares were thus stated to be given in consideration of the rebate on sales for other customers, as well as on those from the Distributors Co., T. H. Locke speaks of them as a bonus. He is an experienced business man. His company had been incorporated to take over, and had taken over, the business of his own previous firm of Locke Bros. He does not even pretend that he supposed that the paid-up shares in the Distributors Co. all represented tangible assets. He does say that he was within 48 hours sorry for and ashamed of this transaction, and that he took steps to conceal it from his co-owners and