

was affirmed by the Divisional Court (23 O. R. 182), but reversed by the Court of Appeal (21 Ont. App. R. 66).

Held, affirming the decision of the Court of Appeal, that the circumstances disclosed in the proceedings showed that S. did not purchase the property as trustee for the company, but could have dealt with it as he chose, and having conveyed it to the company as consideration for the shares allotted to him, such shares must be regarded as being fully paid up, the master having no authority to enquire into the adequacy of the consideration.

Held, also, that S. was a promoter and as such occupied a fiduciary relation to the company, and having sold his property to the company through the medium of a board of directors, who were not independent of him, the contract might have been rescinded if an action had been brought for that purpose.

Where a promoter buys property for his company from a vendor who is to be paid by the company when formed, and by a secret arrangement with the vendor, part of the price comes, when the agreement is carried out, into the promoter's hands, that is a secret profit which the latter cannot retain; and if any part of such secret profit consists of paid up shares issued as consideration for the property so purchased, they may be treated while held by the promoter, as unpaid shares for which the promoter is liable as a contributory.

Appeal dismissed with costs.

S. H. Blake, Q. C., and Raney, for the appellant.

Moss, Q. C., and Haverson, for the respondent.

CONFLICTING EVIDENCE—FUNCTIONS OF THE JURY.

We have been asked to publish the following opinion delivered by the late Mr. Justice Henry, of the Supreme Court of Canada, in *Grand Trunk Ry. Co. v. Wilson*, an unreported case. Mr. Justice Henry's opinion expressed the judgment of the Court.

This is an action brought by the respondent to recover damages for injuries sustained by him by being struck by a locomotive engine of the appellants, at the station of the Vermont Central Railway Company at Saint Johns, in the Province of Quebec. His left arm was lacerated and the bone of it fractured, and it had to be amputated. The defence is in substance