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the company through the medium of a board of directors, who were not independent of him, the contract might have been rescinded if an action had been brought for that purpose.

A promoter who 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.

Ontario.] [Oct. ,

ALEXANDER *v.* WATSON.

Construction of agreement—Guarantee.

A., a wholesale merchant, had been supplying goods to C. & Co., when, becoming doubtful as to their credit, he insisted on their account being reduced to $5,000 and security for further credit. W. was offered as security, and gave A. a guarantee in the form of a letter as follows:

"I understand that you are prepared to furnish C. & Co. with stock to the extent of $5,000 as a current account, but want a guarantee for any amount beyond that sum. In order not to impede their operation, I have consented to become responsible to you for any loss you may sustain in any amount upon your current account in excess of the said sum of $5,000, including your own credit of $5,000, unless sanctioned by a further guarantee."

A. then continued to supply C. & Co. with goods, and in an action by him on this guarantee,

Held, affirming the decision of the Court of Appeal, GWYNNE, J., dissenting, that there could be no liability on this guarantee unless the indebtedness of C. & Co. to. A. should exceed the sum of $5,000; and, at the time of action brought, such indebtedness having been reduced by payments from C. & Co. and dividends from their insolvent estate to less than such sum, A. had no cause of action.

Appeal dismissed with costs.

Christopher Robinson, Q.C., and *Clarke*, Q.C., for the appellant.

Delamere, Q.C., and *English* for the respondent.