

the business and be himself the only person interested in it save that he has mortgaged (to borrow the language of *Cox v. Hickman*) all the profits to the plaintiff. The plaintiff supplied the goods in order to enable Prest to do this much as the defendant in *Bullen v. Sharp*, L. R. 1 C. P. 86, gave a guarantee. It might be that if it were necessary for the carrying on of the business that Reuben W. Prest should take plaintiff's goods and with them pay a private debt plaintiff could not recover. But that has not been proved, and from what we know I think it would be impossible to prove.

The plaintiff will have judgment but not for the full amount claimed. The credit he gave defendant for work should be \$17, not \$12.80. I also allow defendant for goods supplied \$21.73. Plaintiff's counsel intimated that before I could allow this last item defendant must amend his pleadings, in which case he would want leave to amend by pleading as to it the Statute of Frauds. I do not see that there is any necessity for the defendant amending, nor as I understand the evidence, would the Statute of Frauds assist the plaintiff, but if any amendments are required they are allowed. The plaintiff will have costs, but the defendant will have any costs occasioned in establishing his right to the two credits.

NOVA SCOTIA.

SUPREME COURT.

FULL COURT.

DECEMBER 3RD, 1910.

THE CUMBERLAND COAL AND RAILWAY CO. v.
MCDUGALL ET AL.

Employer and Employee — Strike — Appeal from Order of Judge Continuing an Interlocutory Injunction until Trial of Action—Balance of Convenience—Discretion—Criminal Code, sec. 501 — Parties to Action — Trade Union—Point Raised for First Time on Appeal.

Appeal from the judgment of DRYSDALE, J., continuing an injunction until the trial of the action.