

it was plaintiff's conduct induced that belief, which, if I read Cooke and Eshelby aright, would have entitled him to judgment.

Prest's version of the arrangement between him and Chapman is as follows: "Plaintiff and I were in partnership at this time (i.e., when the goods were sold to defendant) in store business as well as in lumbering. We entered in partnership latter part of November or first part of December, 1905. Verbal agreement. Each to receive half profits till debt I owed him was paid for. Firm name was Chapman & Prest." (It is a striking fact that in the two accounts rendered defendant this name does not appear. And in one the creditors are the Prest Lumber Co., in the other R. W. Prest). Plaintiff says of it: "I spoke to Reuben W. Prest about business. He suggested I take over business, put in goods, and receipts were to go to pay off old debts. I was to take contracts in my name. Goods were to be used in lumbering operations, not for sale to general public." In cross-examination he adds: "First began to do business with Reuben W. Prest personally fall 1905. Our business was to be in lumber on Tangier river. I was to do business down there and put in goods in store. Reuben and his wife were to be in charge of store, look after and sell and dispose of goods, and at end of season profits arising from lumber and sale of goods were to go in reduction of debt. My share of profits was in shape of commission which I was to get. Reuben's share of profits after deducting living expenses was to go to reduce debt."

It will be noticed that Prest swears there was a partnership, but that he should not have been allowed to say, and of course his statement is not conclusive. We have to read the two versions of the arrangement together, and with the aid of the well known principles decide whether there was a partnership or not. I have read and re-read the evidence many times and have reached the conclusion that there are only two reasonable views that can be taken, each of which excludes the idea of a partnership. First, either plaintiff took over and conducted the business of the Prest Lumber Co. not in any sense in partnership with Reuben W. Prest but entirely on his own account, with Reuben W. Prest as his manager, servant or agent. Or, secondly—and here we are getting very close to the leading case of *Cox v. Hickman*, 8 H. L. C. 268—Reuben W. Prest was himself to carry on