

livery of goods by one tradesman to another in the ordinary course of business. There is no delivery as payment, and therefore nothing which brings this within the proviso in the statute. It falls, therefore, within the prohibiting and enacting part of the statute, and is a debt barred by it." Then Cresswell, J., says: "Since Lord Tenterden's Act no delivery of goods, unless it amounts to a payment, can be admitted to bar the Statute of Limitations."

It seems to me that this decision of *Cottam v. Partridge* settles conclusively the case under consideration. There was in this case no understanding at the outset that one account should be set off against the other. There was nothing during the currency of the accounts to shew that the deceased intended that the accounts of either should operate as a payment to the other, except that Dr. Zwick testifies that casually in the street, and he cannot say when or where, the deceased Halliwell said to him incidentally, apparently in discussing the accounts, that they might jump accounts, but there is nothing whatever to corroborate this testimony, and therefore I must deal with the accounts as they appear in the books; and on the authority of this case, *Cottam v. Partridge*, it seems to me that these 3 bills of Dr. Zwick, for which he claims credit, are barred by the Statute of Limitations, and therefore the plaintiff is entitled to her full claim.

I therefore direct judgment to be entered for the plaintiff for the sum of \$157.14, which, of course, includes the \$45.49 paid into Court by the defendant, and the plaintiff is to have full costs of the action, and the counterclaim or set-off of the defendant is dismissed with costs.

DECEMBER 21ST, 1908.

DIVISIONAL COURT.

RE MCNEIL AND PLOTKE.

RE MCCULLY AND PLOTKE.

Mines and Minerals—Applications Recorded—Disputes—Dismissal by Mining Recorder—Appeal to Mining Commissioner—Status of Appellants — Discovery of Mineral — Staking — False Affidavit — Abandonment of Claim — Mines Act and Amendments—"Indicate"—Fraud—New Trial.

Appeals by John J. McNeil and C. C. McCully from a decision of the Mining Commissioner in the matter of two