tator had not clearly, and with certainty expressed the intention that the legacies should not vest until the times of payment, the legacies were given in the ordinary way to vest upon the death of the testator.

Moss, Q.C., and *Hoyles*, for the appellants.

Maclennan, Q.C., for the infant.

Cassels, Q.C., for the respondent.

PRACTICE.

Dalton, Q.C.] [October 13.
Galt, J.] [October 17.

GARNER v. TUNE.

Counter-claim—Close of pleadings—Notice of trial—Rule 180.

The defendants by counter-claim delivered a reply, which contained more than a mere joinder of issue, to the statement of defence and counter-claim of the original defendants. No subsequent pleading having been delivered the defendants by counter-claim after the lapse of four days, served notice of trial.

Held, that the pleadings were not closed, and the notice of trial was therefore irregular The plaintiffs by counter-claim were entitled under Rule 180 to twenty-eight days from the delivery of the defence and counter-claim in which to amend.

Beck and *German*, for the defendants by counter-claim.

Echlin, for the original defendants.

Proudfoot, J.] [October 26.

STRUTHERS v. GLENNIE.

Voluntary conveyance—Subsequent creditor—Indebtedness of grantor.

Action by a subsequent creditor to set aside a voluntary deed executed about five years before the debt to the creditor was incurred. It appeared that the deed was not impeachable on the ground of any fraud or fraudulent intent on the part of the debtor or grantee, but that there was a debt due at the date of the deed which had not been paid. It, however, also appeared that this debt had become barred under the Statutes of Limitation.

Held, that the plaintiff could not succeed.

The only reason that a subsequent creditor is allowed to maintain such an action merely on the ground of the settler's indebtedness is that if a prior creditor set aside the settlement a subsequent creditor would be entitled to participate *pro rata*, so that he has an equity to participate, and may bring his action to enforce that equity. And if the antecedent creditor cannot impeach such settlement, neither can a subsequent creditor impeach it, merely on account of a settler's indebtedness to him.

Meredith, Q.C., for the plaintiff.

S. H. Blake, Q.C., and *G. C. Gibbons*, for the defendants.

Armour, J.] [November 3.

REGINA v. MCGAULEY.

Indian Act, sec. 108—"Appeal brought"—Time.

The Indian Act, R. S. C. c. 43, s. 108, provides that no appeal shall lie from convictions under that Act, except to a judge of a Superior Court, etc., "and such appeal shall be heard, tried, and adjudicated upon by such judge, . . . without the intervention of a jury, and no such appeal shall be brought after the expiration of thirty days from the conviction."

Held, that the words "appeal brought" are satisfied by the notice of appeal having been given, and the appeal having been perfected by the giving of the security provided for by the Summary Convictions Act; and that it is not necessary for the appellant to bring his appeal to a hearing within the thirty days.

In re Hunter v. *Griffiths*, 7 P. R. 86, not followed.

Laidlaw, Q.C., for the defendant.

Kehoe, for the prosecutors.
