up to the commencement of this action, 1883, L. was in continuous occupation of the above-mentioned lands.

On a reference to the Master, he held L. had obtained title by possession against the heirs of G., on the ground that the marriage with G. was uncanonical, and, therefore, L. was not in as tenant by the courtesy, and 45 Vict. c. 42, D. did not come into force until after the heirs were barred.

Held now, on appeal, that the occupation of L. was not to be attributed to his rightful character, which was that of tenant by the courtesy, so as not to work tortiously against the heirs-at-law of his wife.

The marriage of a man with his deceased wife's sister was not *ipso facto* void by English law, which was adopted in 1792 as the law of this country by 32 Geo. III. c. 1. Such a marriage was esteemed valid for all civil purposes, unless a sentence of nullity was obtained from the ecclesiastical courts during the life-time of the parties. This state of the law was not affected in this country, as is pointed out in *Hodgins* v. *McNeil*, 9 Gr. 305. This continued the law here until 45 Vict. c. 42, D. was passed in 1882, by the first section of which all laws prohibiting marriage between a man and the sister of his deceased wife are repealed, both as to past and future marriages, and as regards past marriages, as if such laws had never existed.

It is incorrect to say, with Blackstone, Vol. II. p. 127, that it is essential to a tenancy by the courtesy, that the marriage must be canonical and legal. The requisition of a canonical marriage is not essential; and when G. died, in the present case, L. was in possession as life tenant by the courtesy, and the Statute of Limitations did not run in his favour.

In a so-called will, executed a few days before her death, G. assumed to devise the land in question to L. At the date of this will G. was only eighteen years of age.

Held, that the will was invalid. C. S. U. C. c. 73, s. 16 (R. S. O. c. 106, s. 6), with respect to devises and bequests of the separate property of married women only removed the disability of coverture, not of infancy.

C. Moss, Q.C., for the appeal.

W. R. Riddell, contra.

Master in Chambers,] [April, 28.

FEDERAL BANK v. HARRISON.

Counter claim—Surety—Indemnity.

An action against the defendant on his bond as surety for H. & McT., for the amount due the plaintiff by H. & McT. on their banking account with the plaintiff.

Counter claim by the defendant against the plaintiff and H. & McT. alleging that the defendant is liable only as such surety, and that the plaintiff ought to resort to H. & McT. to enforce payment from them, and that H. & McT. should be ordered to pay the amount and indemnify the defendant.

The counter claim was not rested upon any particular agreement, but was set up as arising from the position of the parties as creditors, principal and surety.

The Master held the counter claim bad and struck it out.

Holman, for the plaintiff, and defendant by counter claim.

Aylesworth, for the defendant.

Rose, J.] [May 12.

SAME CASE.

Upon appeal argued by the same counsel, ROSE, J., upheld the order of the Master, and dismissed the appeal with costs.

Master in Chambers.] [May 3.

NEW YORK PIANO CO. v. STEVENSON.

Notice of trial—Revivor.

The original defendant dying *pendente lite*, the plaintiffs issued an order of revivor on the 22nd April, and served it on the defendants by order on the same day, and along with it a notice of trial for the 5th May at Cornwall.

The defendant moved to set aside the notice of trial as irregular.

Held, that as the order of revivor would be confirmed by the lapse of twelve days upon the 4th of May, the notice of trial for the 5th of May was regular.

Holman, for the motion.

Hoyles, contra.
