Boyd, C.] [April 22.

TRAVIS v. TRAVIS.

Donatio mortis causa—Gift inter vivos.

The defendant's mother, not expecting to live, gave the key of a cabinet where a mortgage made by the defendant was kept, to her son J., telling him that she wanted him to give the mortgage to the defendant in case she had not the privilege of seeing him again. The defendant was then sent for and came to the house. He saw his mother alone, and deposed that she said "Robert, your mortgage is there in that drawer, when you go home you can take it with you." He went away without getting the mortgage, and she died intestate. He subsequently got possession of the mortgage.

Held, that the mandate to J. was revoked when the intestate subsequently saw the defendant, and as there was no delivery after that there was no gift of the mortgage to him.

At the time that the intestate gave the key to J. she told him to endorse a receipt on the mortgage for interest which he did; and she also gave the defendant a signed receipt for interest.

Held, a valid gift of the interest.

Muir and *Crerar*, for the plaintiff.

McClive, for the defendant.

Proudfoot, J.] [April 22.

IN RE LAKE SUPERIOR NATIVE COPPER CO.

RE PLUMMER.

Company—Creditor delaying at company's request—Winding up—Restraining action by creditor—Setting aside order made by Court—Co-ordinate jurisdiction.

A petition by a creditor to rescind a winding up order made by FERGUSON, J., under 45 Vict. cap. 23 and 47 Vict. cap. 39, on the ground that the company was incorporated in the United Kingdom, was refused (without an expression of opinion as to the power of the Parliament of Canada to provide for winding up foreign companies) on the ground that the application should have been made to a Court of appellate jurisdiction and not to a Court of co-ordinate jurisdiction.

P., a creditor of the company on a bill of exchange, accepted by the company for the balance of an account stated, was requested by the manager and secretary at various times not to take proceedings. A winding up order having been made, P., a few days afterwards, commenced an action in the State of Michigan against the company. An *ex parte* was granted restraining him from prosecuting his action. On a motion to continue this injunction,

Held, that P. having delayed at the request of the company was entitled to be preferred, and the motion was refused.

Semble, that in the absence of the request for delay P. would have been allowed to proceed with his action on an understanding to abide by any order the Court might make, there being creditors in Michigan who might have gained priority.

H. J. Scott, Q.C., for petitioner, the interim liquidator.

G. M. Rae, for the English liquidator.

G. F. Shepley, for Plummer.

Boyd, C.] [April 22.

SMITH v. SMITH.

Will—Construction of—"Heir or heirs" equivalent to "child or children."

A testator made the following demise:—"I will to my son J. S., for the term of his natural life, the farm, etc.; but if my said son J. S. should have a lawful heir or heirs, then said lands shall be equally divided among them at the death of their father. But if my said son J. S. shall die without having lawful heirs, then in that case I direct that said lands to be sold, and the proceeds divided equally among my remaining children or their heirs."

Held, that the words "heir or heirs" in the first clause, and "heirs" in the second clause, meant "child or children," and "children," respectively.

J. S. had a living son child at the time of the action, and it being sufficient for the purpose of the action to declare that J. S. was once the tenant in fee simple, nor tenant in fee tail in possession, while the child lived it was so declared,

Carscallen, for the plaintiffs.

Bruce, for the infant.