

desire expressed is to be controlled by the party, and that he shall have an option to defeat it," was expressly affirmed by the House of Lords. The Court of Appeal (Williams, Stirling, and Cozens-Hardy, L.JJ.,) however, considered that on the face of the will it was plain that the daughters were to take absolutely, and that the expression of a desire that they should give a third of their incomes to the son was insufficient to cut down that absolute estate or create any trust in the son's favour.

COMPANY—DIVIDEND OUT OF CAPITAL—ULTRA VIRES—ACTION AGAINST DIRECTORS—RETENTION OF DIVIDEND IMPROPERLY PAID.

Towers v. African Tug Co. (1904) 1 Ch. 558, was an action by shareholders on behalf of themselves and all other shareholders of a limited company against the company and the directors for a declaration that a dividend declared by the directors and the payment thereof out of capital were ultra vires and illegal, and to compel the directors to refund the money so paid. Byrne, J., who tried the action, gave judgment as prayed for the plaintiffs and on the defendants' counterclaim ordered the plaintiffs to repay the dividend: but the Court of Appeal (Williams, Stirling and Cozens-Hardy, L.JJ.) reversed his decision on the plaintiff's claim, because the plaintiffs had received the dividend with knowledge of the facts and had not before action repaid it, and, though at the trial they had offered to refund it, that was held not to entitle them to bring the action, which was therefore dismissed, but the judgment on the counterclaim was left undisturbed.

CONFLICT OF LAWS—SCOTCH SETTLEMENT—HUSBAND AND WIFE—ALIMENTARY PROVISION FOR HUSBAND—MORTGAGE BY HUSBAND OF HIS INTEREST.

In re Fitzgerald, Surman v. Fitzgerald (1904) 1 Ch. 573. The Court of Appeal (Williams, Stirling and Cozens-Hardy, L.JJ.) have reversed the decision of Joyce, J. (1903) 1 Ch. 933 (noted ante, vol. 39, p. 518). The case turned upon a question of conflict between the law of Scotland and England. On the marriage of a domiciled Englishman to a Scotch lady her property, consisting of heritable bonds, which, according to Scotch law are deemed to be real estate, was settled by a settlement in Scotch form under which the husband, in the event of surviving his wife, was entitled to the income of the settled property for life, "all such payments to be strictly alimentary and not liable to assignment or arrestment by creditors;" and, according to Scotch law, if the husband failed to support the issue of the marriage they are entitled to attach the