

the Lords, by a majority of one, sustained the claim of the creditors ; contrary to the opinion of Lord Elchies, who thought that, the bond being revoked, the interests were also revoked as accessory to the bond, so that they must stand and fall together : but with respect to the annuity, the Lords, by a greater majority, found that even the annuities before the revocation were not due. Lord Elchies laid hold of the words *during pleasure*, and said they were equal to the stipulations mentioned in the Roman law, *si voluero*, which are void and null from the beginning, never creating any obligation ; but Lord Kaimes thought that the meaning of these words, *during pleasure*, only meant revocable, and so he said they were explained by the clause of revocation that followed ; and therefore he thought the annuities preceding the revocation were due, in the same manner as the rents of lands assigned, with a power of revocation, would be due for the years preceding the revocation, even by Lord Elchies' own confession.

The first part of the interlocutor, concerning the annualrents, not reclaimed against ; and the second part, concerning the annuity, altered by a great majority. *Dissent.* Elchies.

*N. B.* If the Duke had died without revoking this annuity, would not the obligation be good against the heir ? And if so, was it not a valid obligation from the beginning, only liable to be resolved by an after revocation. As to Lord Elchies' opinion concerning the annualrents, it goes upon this principle, That the obligation for annualrents is not a separate obligation from that of the principal sum, which is not true when annualrents are due by a particular paction, and not *ex officio judicis*, for then, according to the principles of the common law, there are two separate obligations, one for the principal sum, and one for the interest, separately constituted, subsisting separately, and separately dissolved, whether by payment, discharge, prescription, or whatever habile way known in law. (See Bynkersh. *Quæst. Juris Privat.*, lib. ii., cap. 15.)

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1753. *January 22.* ——— *against* ———.

A PARTY having alleged certain facts of which he was allowed a proof by witnesses, and having examined the witnesses to these facts, and they knowing nothing of them, the Lords, after having advised the proof and pronounced an interlocutor on it, did, on a reclaiming petition, before answer, allow a proof of the same facts by oath of party. *Actor*, Sir David Dalrymple.

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1753. *February 2.* RANKING of the CREDITORS of SKELBO.

[*Fac. Coll.* No. 27.]

IN this ranking there occurred some questions worthy to be taken notice of,