

1752. *December 7.* ——— *against* ———.

[*Fac. Col. No. 43.*]

THE Lords found the subscription of a marginal note not attested : nevertheless they sustained the rest of the deed, and found that the user of the deed could not except against the marginal note ; and so could not approbate the deed in part and reprobate it in part. *Dissent.* Drummore, who thought the deed should have been wholly annulled.

1752. *December 22.* SIR PATRICK MURRAY *against* ———.

[*Fac. Col. No. 52.*]

A MAN having granted a bond of provision of L.300 to his niece, payable at the first term after her marriage, and after his death, did afterwards, when his niece was married, make a settlement upon her and her children of L.1200, but without revoking the former provision of L.300 :—The question was, Whether both were due? And the Lords found that only the last was due. *Dissent.* Kaimes and Justice-Clerk. Lord Elchies thought that the niece had no claim in strict law to the first L.300, as it was payable only in the event of her marriage, being after the death of the granter ; and he thought she had no claim in equity, in respect of the last provision of L.1200 ; but the other Lords founded their opinion on the circumstances of the case, from whence they inferred a presumption that the granter did not intend she should have both provisions.

1752. *December 23.* DUKE of DOUGLASS *against* CREDITORS of LADY JEAN DOUGLASS.

[*Fac. Col. No. 66.*]

THE said Duke, in the year 1736, bound himself and his heirs to pay to his sister, Lady Jean, at a certain term, the sum of 30,000 merks, with interest yearly, but with an express power of revocation whenever he should think fit : he also granted her a yearly annuity of L.161 during his pleasure, and this grant also is declared revocable : thereafter Lady Jean contracted sundry debts and assigned to her creditors for their security the annuity and bond foresaid. The Duke having revoked both the bond and annuity, the question came betwixt him and the foresaid creditors concerning the bygone interests of the bond, and also the bygone annuities before the revocation. And with respect to the first,

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.)

---

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.

---

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,