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,

which were finally determined in the beginning of this session. The first case was this: The debtor was both apparent heir of the investiture of an estate, and he had right by a general service to a procuratory of resignation of the same estate, contained in his father's contract of marriage. One creditor adjudged the lands from him on a special charge; another creditor, without a special charge, led an adjudication, which therefore could only carry the right to the procuratory: the question was, Whether this last adjudication could come in *pari passu* with the first, upon the Act of Parliament 1661? And the Lord Murkle, Ordinary in the ranking, upon the opinion of Mr Henry Home, the sub-auditor in the ranking, by his interlocutor found that it could not; and a reclaiming bill against this interlocutor was refused by the Lords, without answers. The *ratio decidendi* was, that the Act of Parliament 1661 relates only to adjudications of the same kind, affecting the same subject, which by the act are appointed to be ranked *pari passu*, as if they were led in the same summons; but these two adjudications are of different kinds, as different as an adjudication in implement from an adjudication for payment of a debt, which, it is established by the Lords' decisions, the statute does not concern; for, 1*mo*, The one is an adjudication of the lands themselves, the other is an adjudication only of the personal right to the lands: 2*do*, Upon the one adjudication the superior could be immediately charged to enter the adjudger; but upon the other adjudication, which carried only the procuratory, there could not be a charge against the superior at the instance of the adjudger, any more than at the instance of the debtor; and a further step of diligence is necessary in such a case, namely an adjudication in implement, upon which only the superior can be charged; and for these reasons the Lords preferred the first adjudication.

Another question was, Whether a summons of adjudication upon a special charge, executed within the days of the charge, was effectual in competition with other creditors whose adjudications were unexceptionable? And the Lord Ordinary found, That though this adjudication was led before the act of sederunt, prohibiting, under the pain of nullity, adjudications to be raised within the days of the charge, and though therefore it might be sustained in a question with the debtor himself, as a security for the principal sum and annualrents, yet it could not be sustained in a question with creditors: and against this interlocutor also a bill was refused, without answers. Nor was this found to be a parallel case to the case of a summons of constitution raised within the days of the general charge; because a general charge was the invention of the Court, whereas the special charge was appointed by Act of Parliament, which expressly directs that the days shall be run out before any diligence be done against the debtor.

The *third* question was concerning a summons of adjudication, which was raised upon two diets, but was executed only to one, by which means it was brought within year and day of the first effectual adjudication; and it was found that this adjudication was null *in totum*, as being led contrary to the warrant of the summons.