

Upon hearing these exceptions, the Chancellor delivered the following opinion :]

THE CHANCELLOR :

Upon carefully reading the mortgage deed of the 29th of March, 1843, from the defendants, Robert H. Ayres, and Alethea, his wife, to the complainant, I am of opinion, that its legal effect is to secure to the complainant the annuity therein mentioned, of one hundred and twenty dollars, during the life of Mrs. Mary Ayres.

That such was the intention of the parties to the instrument, is too clear for dispute, and, as has been said by the Court of Appeals, in a recent case, it is the duty of courts, (the intention being ascertained,) to give the instrument such an interpretation as will effectuate that intention ; provided the terms and expressions employed will admit of such construction. The courts are first, by an inspection of the grant, to ascertain what the parties intended should be effected by it, and then they are so to expound it as to accomplish that intention, unless expressions are employed which positively forbid it. In this case, the recitals, constituting a portion of the *premises* of the deed, which word *premises* constitutes every thing which precedes the *habendum*, make it too plain for argument, that the intention was to secure the plaintiff the annual sum of one hundred and twenty dollars, during the natural life of Mrs. Mary Ayres, and, therefore, although the *habendum* contains no words of limitation, defining the duration of the estate, the grant must be construed with reference to the manifest intention of the parties, and be made to convey an interest commensurate with the object to be accomplished. *Budd vs. Brooke et al., Lessee*, 3 Gill, 198, 234, 235. I am, therefore, of opinion, that the exception of the defendant, Banks, filed on the 5th inst., to the report of the auditor, must be overruled.

The same party has also excepted to the Auditor's report, upon the ground, that the effect of the proceedings in this case, which originated in a bill filed by the mortgagee, in July, 1846, for a foreclosure and sale of the mortgaged premises, is to ex-