No 63.

preserve the estate, was repudiated, whereby the order of redemption became unnecessary; or if it can be still looked upon as valid, which the defender might have taken up, and upon that account ought to be made liable, then the Doctor, who never redeemed, was *mala fide* possessor of the rents, which he must account for to Robert's representatives; and the pursuers are his executors, and as such liable, and have got more by that succession than will answer their present claim.

For the pursuers, The Doctor was liable, for he could only have redeemed under the burden of the provisions; but whether he was or not, these burdens are laid on the estate in the persons of any of the other sons.

He can never be considered as *mala fide* possessor, so as to make him accountable for the rents, when Robert delivered up to him the possession, accounting for his intromissions; and he had it in his power to redeem when he pleased.

For the defender, If the Doctor was liable, then his executors are bound to relieve the estate in the person of his heir, for this was plainly a moveable debt.

Observed on the Bench, That the Doctor would have been liable, for he might have not redeemed till after the portions were paid; but he was not liable on the passive titles, as the disponer had not bound himself; and his possessions without titles made up, which might have been only for a term, ought not to subject him, when no decreet was taken against him in his life.

THE LORDS, 28th November 1747, "found that the lands of Suther-Glasmonth, and others contained in the disposition granted by the deceased James Beatson to his second son Robert, were affectable at the instance of the pursuers, for payment of their provisions contained in the said disposition; and repelled the defence founded on the pursuers, their being executors to the deceased William Beatson."

On bill and answers,

They adhered to their former interlocutor as to the principal sums provided to the pursuers by the disposition libelled on, but found the annualrents thereof acclaimable only from and after the decease of Dr William Beatson.

Reporter, *Murkle*. Act. *Ferguson* et *A. Murray*. Alt. *R. Craigie* et *H. Home*. Clerk, *Gibson*.

Fol. Dic. v. 3. *p.* 131. *D. Falconer, v.* 1. *No* 250. *p.* 334.

1757. *August* 11. DR GREGORY *against* HELEN BURNET.

No 64.
A person was bound to renounce a life-rent secured on land, on obtaining a

AN inhibition was executed against Dr Gregory, upon an obligation granted by him in favour of Helen Burnet, his brother's relict, by which he was bound to infeft her in his third of the lands of Blairtoun and Hopshill, for security of her annuity of 600 merks; but under a condition, That if he should happen

No 64.
new *sufficient security*. She executed inhibition. It was not recalled, tho' security in a salmon fishing, and the *best personal security*, were offered.

to sell these lands, she should be obliged to renounce her liferent upon his granting her a new sufficient security.

Dr Gregory applied to have the inhibition recalled upon these reasons: That he had an intention to sell the lands, in order to buy others; and therefore her infeftment would only occasion an embarrassment and additional expence: That he had offered to infeft her in a fishing let at L. 85 *per annum*; or to give her the best personal security in Scotland; and the situation of his affairs was not such, as to expose her to any hazard by the delay.

Answered, The intention to sell the lands was too vague a reason for delaying the security. The infeftment in a precarious subject, the fishing, was not equivalent; in which subject the Doctor was, besides, bound to infeft his mother for her annuity; and as the fishing was a fee limited to males, her infeftment in it would require the embarrassment of trustees. She was not bound to accept of the best personal security, which was not equal to the security of land. The Doctor was in good circumstances; but he was bound to make such large provisions to his wife and children, that, in the event of his death, a competition of creditors might arise.

'THE LORDS refused to recal the inhibition; and found the Doctor liable in expenses.'——*See* INHIBITION.

For the Doctor, *And. Pringle*. Alt. *Garden*. Clerk, *Home*.

W. J. *Fol. Dic. v.* 3. *p.* 130. *Fac. Col. No* 53. *p.* 86.

1772. *February* 13.

The SYNOD of ARGYLE *against* DANIEL CAMPBELL of Shawfield.

No 65.
A clause in a statute abrogating particular laws, along with a general abrogatory clause, must not be interpreted to be rescissory of any other particular statute.

THE Synod of Argyle, and their collector, brought an action against Shawfield for payment of certain vacant stipends of the united parishes of Killarew and Kilchoman in Islay, in consequence of the act 1690, cap. 24. which statutes and ordains, that all the vacant benefices and stipends belonging to the several kirks lying within the bounds of the synod of Argyle, that either now, or shall hereafter vaick, within the bounds of the said synod in all time coming, shall be applied for training up of youths at schools and colleges, as a necessary mean for planting and propagating the gospel in those places, and for introducing civility, and bringing that country to good order, and for other pious uses that shall occur within the bounds of the said synod: And, further, statutes and ordains, that the foresaid vacant stipends shall be uplifted from the respective heritors and tenants, liable in payment of the same, by a collector, or collectors, to be nominated by the said synod: And which sums of money so to be uplifted and received, are thereby appointed to be applied for the uses aforesaid, at the sight, and by the direction of the said synod, without consent of the heritors.