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.

No 65.

Pleaded for Shawfield: The statute 10th of Queen Anne, cap. 11, after setting forth that the ancient powers of patrons had been greatly curtailed by several acts of William and Mary, particularly their powers of presentation, and of applying the vacant stipends within their parishes; and which restrictions having been now found highly inconvenient and unjust, it therefore abrogates, *nominatim*, the act 1690, cap. 23.; act 1695, cap. 15.; and the act 1696, cap. 13.: And then follows this clause, 'And that, in all time coming, the right of 'all and every patron, or patrons, to the presentation of ministers to churches 'and benefices, and the disposing of vacant stipends for pious uses within the 'parish, be restored, settled, and confirmed to them; the foresaid acts, or any 'other act, statute, or custom, to the contrary, in any ways, notwithstanding:' Which, he contended, did also repeal the statute in question, and cited the authority of Bankton, B. 2. tit. 8. § 79. that such was its effect.

Answered: The defender seems to have taken the hint of this objection to the synod's title from the inaccurate observation in the passage of Bankton referred to, which is not founded on the just construction of the statutes. The act of Queen Anne repeals three several acts of parliament (and no more) which had been made in the reign of King William, to the prejudice of patrons in general, and restores them to the rights which had been taken from them by these acts, viz. 1690, cap. 23.; 1695, cap. 15.; and 1696, cap. 13. These three acts it was thought proper, in the reign of Queen Anne, to abrogate, in order to restore patrons in general to their ancient rights of presenting ministers, and employing vacant stipends, which was acccordingly done, under certain regulations, by the statute now founded on. And, from the whole tenor of the statute, it is plain, that nothing more was meant than to repeal these three former acts, with a view to the restoration of patrons, in general, to their ancient rights. The title of the statute, the preamble of it, reciting and specifying the three acts already mentioned, and the enacting words, expressly repealing these three acts by name, all concur in showing what was understood. Had it been intended that the act 1690, cap. 24. in favour of the synod of Argyle, should also have fallen under the repeal of this statute, no reason whatever can be assigned why it was not therein expressly mentioned, as well as the three others, and declared to be at an end, in like manner with them.—It cannot be supposed that this act escaped observation; for it is the very next in the statute-book to the 23d act 1690, concerning patronages in general, and is even mentioned and excepted in that act. And the right thereby granted to the synod of Argyle was somewhat of the same nature with that conferred by the other two acts, 1695 and 1696, upon the presbyteries to the north of the Forth, yet no mention whatever is made of the act in question, while the other three acts are *nominatim* repealed in the statute of Queen Anne.

The general words of the statute, on which the defender raises the objection, ought to receive an explanation agreeable to the context, and in conformity with

No 65. the other parts and clauses of the act itself. The right of patrons was no doubt restored to its ancient footing, as if the act 23d, 1690, and the acts concerning vacant benefices to the north of Forth never had been made; but still this was without prejudice to the particular law which had taken place with respect to the synod of Argyle, and which was coeval with, and excepted in the aforesaid act 1690, cap. 23. This law was purposely omitted, and left entire by the statute of Queen Anne, as already explained; but certain acts to the prejudice of patrons were taken away; and so far as the repeal of these acts went, the interest of patrons was restored, any law, statute, or custom, to the contrary, notwithstanding. These general words of stile must be limited to the particulars which were under view, and which were the object of the statute. To carry them any farther would be doing manifest violence to the intention of the legislature. And the Court are not only entitled, but in justice bound, to give a reasonable construction to the statute, and to limit the general words, so as to include only the particulars which the statute itself shows to have been under the view of the legislature.

The same reasons why the legislature found it necessary to make a particular enactment, with respect to the synod of Argyle, at the beginning, still subsisted when the statute of Queen Anne was made, restoring the rights of patrons in general. So far was her majesty from thinking that the powers and revenues of the synod of Argyle ought to suffer any diminution, that she was pleased, in the year 1705, to make an addition to them by a grant of certain revenues of the bishoprick of Argyle and the Isles, which grant does expressly take notice of the right already vested in them to the vacant stipends, and approves of their management with respect to said stipends. And what plainly shows the sense of the country, and of all concerned, that the synod's right to these stipends never was meant to be abolished is, that they have gone on in the uniform practice, notwithstanding of the act of Queen Anne, of uplifting and applying these vacant stipends, in terms of the act 1690, down to this present day.

Replied: The general clause in that statute does effectually abrogate, rescind, and repeal, every act whatever, prior to the date thereof, which is any way contradictory to, or inconsistent with its meaning. The well known maxim is, *posteriora derogant prioribus;* and the legislature having, in the preamble, testified, in the strongest terms, a disapprobation of, and the inconveniences arising from patrons, all over Scotland, having been deprived of their just right of administration of the vacant stipends; and being therefore resolved to rectify this grievance, hath, in pursuance of these resolutions, taken a most compleat and effectual method of accomplishing the same, viz. by the above recited general clause, which is as express and comprehensive as words can make it; thereby testifying a determined resolution to repeal not only the three acts expressly narrated, but every other act whatever that in the smallest degree impinged upon

the original right, competent to patrons, of disposing of the vacant stipends within their parishes. No. 65.

The intent and effect of such general clauses is well known, and thoroughly understood, viz. that the legislator having once set forth his resolution and intention, he, in order to avoid prolixity, and to secure against neglect, does throw in a general clause to comprehend every other similar act that has not been expressly repealed. And that general clauses have the effect to abrogate prior contradictory statutes, though these statutes are not *nominatim* repealed, the defender needs only appeal to the general clause now under review; for the statute, 10th Queen Anne, *cap.* 11. which contains this clause, does only repeal, *nominatim*, act 1690, *cap.* 23.; act 1695, *cap.* 15.; and act 1696, *cap.* 13. Yet the pursuer will not deny, that, prior to the enactment of this statute, the act 1695, *cap.* 27. was in full force; but that, since that time, it has been universally understood to be repealed by the above mentioned general clause, as coming under the spirit and intendment of that statute, though not under the express words. Accordingly, in the late abridgement of the statute law, it is narrated as one of those acts that were repealed by the statute 10th Queen Anne, *cap.* 11. whence the defender is entitled to plead a *res judicata* in his favour; for, if the general clause above mentioned shall once be found to repeal prior acts, as coming under the spirit of that clause, though not *nominatim* mentioned in that statute, then the defender does with confidence maintain, that the act now sued upon does fall under the spirit of that general clause, and must accordingly be found to be repealed thereby.

This question having been taken to report, as between the Synod and Shawfield, the Court sisted process till Shawfield, who acknowledged he was not patron, made the Crown a party to this action. The Crown was accordingly called. But, at resuming the consideration of the cause, there was no compearance made for the Crown, and Shawfield's interest was stated to be a gift of the vacant stipends in question.

'The Lords repelled the defence, and found Shawfield liable for the vacant stipend, and for the expense of the extract.'

Reporter, *Auchinleck.* Act. *Ilay Campbell.* Alt. *Walter Campbell.* Clerk, *Campbell.*

Fol. Dic. v. 3. *p.* 129. *Fac. Col. No* 5. *p.* 7.

1773. *January* 23.

James Bruce-Carstairs of Kinross, *against* Robert Greig and Others, his Vassals, in the Parish of Kinross. No 66.

A clause in a feu-right, relieving from public burdens, found

The estate of Kinross, situated in the parishes of Kinross, Portmoag, and Orwell, had been mostly feued out many years ago; and, in particular, parts