

S E C T. IV.

University, how far Bound by the Deeds of the Masters.

1669. July 13.

The OLD COLLEGE of Aberdeen *against* The TOWN of Aberdeen.

THE principal and the remanent members of the Old College of Aberdeen, having set a tack to Dr Dun of his teinds during the principal's life, and five years thereafter, and bearing an obligation to renew the like tack from time to time for ever; the Doctor mortified the same to the Town for pious uses, after the death of that principal many years. The College now pursues the possessors of the lands upon an inhibition for the full value of the teinds; and the Town defends upon the foresaid tack. It was *answered* for the College, That the tack is only for the principal's life, and five years after, which is expired; and as for the new obligation, to renew such tacks for ever, it was *answered, imo*, Albeit a tack were conceived in these terms it would be null, as wanting an ish; *2do*, Obligements of the present incumbents in universities are not obligator, but where there is an equivalent cause onerous received for the good of the university. It was *replied* for the Town, That an obligation to grant a tack by them who can grant it, is equiparate to the tack itself, which requires no other solemnity; as an obligation to grant an assignation, is equivalent to an assignation; and that there is here a cause onerous of the university's obligation, because the tack bears expressly 300 merks of grassum, and that the former tack-duty was only ten merks, which by this tack is made 50 merks; and albeit it want a definite ish, yet it must be valid for a renovation during this principal's life, and five years after, and it is homologate by the College, who have received the same duties several years since the first tack expired. It was *duplied* for the College, That this tack is not valid for any time after the first ish, because by the act of Parliament 1617, tacks by beneficed persons under prelates are prohibited for longer time than their own life, and five years after; and these teinds are a part of the benefice mortified to the College; and they must be accounted as beneficed persons; and albeit the teinds were augmented to 50 merks, yet they are worth 200 merks; and for the receipt of the duties after the first tack, it is *per tacitam relocationem*, and no homologation of the obligation to renew the tack.

THE LORDS found, That the College was not comprehended under beneficed persons; but found that there was no sufficient cause onerous alleged for this obligation of renewing a perpetual tack, and would not sustain the same in part,

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The college of Aberdeen setting a tack of teinds, to continue during their principal's life, and five years thereafter, with an obligation to renew the life-tack from time to time for ever; the Lords found, that there being no sufficient cause onerous alleged for this obligation of renewing a perpetual tack, it could not be sustained in part, but that it was totally null.

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and found it totally null; and that the receiving of the former duties was no homologation thereof.

Fol.' Dic. v. I. p. 158. Stair, v. I. p. 635.

* * Gosford reports the same case.

IN a spuilzie of teinds, pursued at the instance of the King's College against the Town of Aberdeen, as having intromitted with the teinds after inhibition; there was a defence proponed upon a tack of the teinds set by Dr Leslie, when principal, with consent of the masters, to Dr Dun, then heritor, who had mortified both stock and teind for maintenance of a minister and master of the grammar school; in which tack there was an obligation, that after expiring thereof, the masters should renew a tack as the former was, and continue so to do without ish or end; whereupon they alleged, that that obligation would defend them against the masters of the university for ever. It was *replied*, That the bond was null, as being contrary to the act of Parliament 1617; in respect the saids teinds were a part of the sub-deanry of the cathedral kirk of Aberdeen, which was gifted to the Old College by King James in *anno* 1579, so that no longer tack could have been given for the said benefice, but for the granter's lifetime and five years thereafter; *2do*, A bond to grant a tack of teinds without any end or definite time, was *ipso jure*, null.

THE LORDS having considered this case, as being of general concernment to all the universities, did find, that the present masters might grant tacks during their own lifetime, where they were not set to the diminution of the rental; but they being usufructuary and administrators only, could not give bonds and obligations continually to renew, and that such bonds were not valid against their successors. And this was done, not upon the ground of the act of Parliament 1617, which did only prohibit beneficed persons, but because the College was *corpus universitatis*, and in the like condition with royal burghs, which could not oblige their successors to the prejudice of their patrimony and common good, as this bond was, seeing the tack-duty was only 50 merks, whereas the worth of the teinds was confessed to be 200 lib. And that, notwithstanding, it was *alleged* for the defenders, That there was a grassum of 300 merks paid by Dr Dun; and that when he required this last tack, there were tacks standing unexpired for the tack-duty of 10 merks only: and that since the expiring of the last tack, the masters of the College had homologate the obligations to renew, by accepting the tack-duty of 50 merks for several years: For, the LORDS found, that by the new tack, whereof they had enjoyed the first benefit for the whole years thereof, and many years thereafter, they had gotten far more benefit than the grassum did amount to, and that the acceptance of the tack-duty after the expiring thereof was only a tacit relocation, but did not homologate the obligation as to all years thereafter; and the ma-

gistrates having served inhibition, did interrupt the same, so that the obligation being null in law, could not stand valid for any years after the inhibition.

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Gasford, MS. No 167. p. 65.

1675. December 10. PARK against The UNIVERSITY of Glasgow.

MR JOHN PARK pursues the University of Glasgow, *alleging*, That in *anno* 1649, he being then minister of Stranraer, and the College having the bishoprick of Galloway, he came towards Edinburgh for raising summons for an augmentation against the College, his stipend being 200 merks, within the rate of the act of Parliament; but out of his respect to the College where he was educated, he offered to the masters to agree with them suitably; and they did agree for 100 merks yearly, whereupon he desisted; and now pursues for the same during his serving the cure; and for instructing of this agreement and acknowledgment of the debt, produces an act of the visitors of the College in *anno* 1664, whereby they found the College debt to be L. 34,000 and above, and therefore recommended their case to the Parliament, who gave them seven years vacant stipends; and there is produced an account of the College debts, written by umquhile Mr John Young, then one of the masters, whereby it appears, that this sum due to the pursuer was a part of the L. 34,000. It was *alleged* for the defenders, *1^{mo}*, That the masters were but administrators, and could not bind their successors; *2^{do}*, That a verbal agreement, having taken no effect, might be resiled from; *3^{tio}*, That the paper under Mr John Young's hand was not subscribed by the masters, and that it did bear, That Mr John Park craved that sum; and did not acknowledge it as due; *4^{to}*, That the sums in the account, besides Park's sum, extended to L. 34,000, so that it could be no part thereof. The pursuer *answered*, That albeit the masters be administrators, yet they may well transact to the advantage of the College, in giving 100 merks, where two would have been recovered by law; for it is notour how currently and largely augmentations proceeded in *anno* 1649. And as to the power to resile, *non est res integra*; for shortly after the commission for plantation of kirks ceased, and never revived till the pursuer was out of his charge: And as for the probation of the promise, or the acknowledgment of the debt; the claim being acknowledged by Mr John Young's hand, who was chiefly entrusted in the College affairs, and being produced by the College themselves; and quadrating exactly with the act of the visitors, there was no necessity of subscription, which is not accustomed in claims; but it proves the acknowledgement of the debt, and makes up a part of the L. 34,000 allowed by the visitors, upon which the College got the vacancies from the Parliament; and though the College gave it up but as claimed, yet the visitors did allow it; for without it the L. 34,000 cannot be made up: For, whereas the College pretends, that besides it, there is L. 34,000 made up by the Earl of Kilmarnock's sum of L. 4,000, excluding this sum; it

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Masters of a college transacting for the benefit of the college, bind their successors in office.