

M'KAY *against* SUTHERLAND and FORBES.

IN this case, severe and unjust judgments had been pronounced by Forbes the Sheriff-substitute, in an action at Sutherland's instance against M'Kay. The Lords found both judge and party liable in damages; for it was proved that there was a strong *animus injuriandi* on the part of Sutherland, and that Forbes, the Sheriff-substitute, was entirely under his influence, and did as he prompted him.

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MANSE.

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1778. July 31. MR MICHAEL GREENLAW at Creich *against* HIS HERITORS.

THE repairing of manses is committed to the presbytery of the bounds, and, if any dispute shall happen between them and the heritors, it is competent to apply to the Court of Session for redress, either by advocacy or suspension. Disputes have occurred, what is meant by the reparation of a manse? It seems too strict an interpretation of this, to maintain, that if a manse has once had a thatched roof, and that this proves insufficient, that the heritors can never be obliged to give it a slate one; or if it is built of brick, and part of it fails, that the part which fails should not be rebuilt with stone. This interpretation is too narrow: the point in view is, to give the incumbent a competent and sufficient manse, at the sight of the presbytery. But, on the other hand, it does not appear that a presbytery has any power to oblige the heritors to make a manse larger, or to build a wing to it, when formerly it had none; nor even to decorate a manse, or make it more convenient in the inside, while at the same time it is sufficient without. These points occurred this day, 11th July 1776.

Mr Greenlaw wished to have the walls of his manse raised 18 inches,—to have a slate roof instead of a thatched one,—and to have garrets. The Presbytery gave decret accordingly; but, in a suspension, the Lord Hailes, Ordinary, suspended the letters, and, on advising petition and answers, the Lords demurred, and remitted to the Ordinary, who had suspended the letters *simpliciter*, to hear parties further.

Accordingly his Lordship did hear parties further,—ordered a visitation of the manse, by Mr Paterson, a man of skill and of character, and an architect: Meantime the heritors, of their own accord, made several reparations upon the manse, particularly on the roof, which they thatched of new, and agreed to