

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.

 MANSE.

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 advocation 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

some further internal reparations suggested by Mr Paterson: still, however, Mr Greenlaw stuck by the decret of Presbytery, insisting not only for a slate roof, but for a blue slate roof,—to have the walls heightened, and garrets made, &c. On report of Lord Hailes, of date 31st July 1778, Lord Hailes, Lord Monboddo, and Lord Covington, thought that the Presbytery had power to order a manse to be repaired, but not to be enlarged: they had power, no doubt, to see that every minister was provided in a competent manse; but after this was once done, to their satisfaction, by a formal declaration, that the manse was sufficient, or by tacit acquiescence, they could demand no after enlargement of it. Lord Gardenstone and Lord Westhall thought this construction too strict, and that, in every event, every minister ought to have a competent manse. Upon the question, “The Lords, in place of the reparations on the manse and offices in question, specified in the Presbytery’s decret, approved of the reparations made and agreed to be made thereon, in terms of Mr Paterson’s report, and remitted to the Ordinary to proceed accordingly,” &c.

MASTER AND SERVANT.

1779. *January 16.* MARGARET BAIRD, Widow of John Brown, *against* LADY DON and SIR ALEXANDER DON.

THIS day, in a question betwixt Lady Don and Mrs Brown, whom my Lady had hired as housekeeper to her son Sir Alexander, to enter at Whitsunday 1777; the Lords were of opinion, *1mo*, That although, in hiring servants, it is usual, in Scotland, to compute their wages at so much *per annum*, yet it is understood that servants are not hired for the year, but for the half year, unless it is otherways bargained. *2do*, That it is necessary for master or servant, where they mean to give the other over, to give previous intimation thereof.—A *modicum tempus* was mentioned, but no particular number of days was mentioned. *3tio*, That, notwithstanding the necessity of this previous intimation, where a servant at a term receives his or her wages, without complaint, gives up the charge committed, and departs,—this is a sufficient acquiescence, and they cannot afterwards object the want of intimation. *4to*, The Lords were of opinion, that, where servants are hired to go to the country, it is usual for the master to be at the expense of bringing them to their place of service; but then it is usual for them to be at the expense of carrying themselves back again.

In this case, Lord Monboddo pronounced this interlocutor:—“As it is not denied that the respondent went away peaceably, gave up the things under her