

and took down that ceiling and loft which was within the roof, the ceiling being fixed to the lowest baulks of the couples, and gave the house a split new roof. Laing again proved to the satisfaction of the Court the rottenness and insufficiency of the roof, both lath and couples, though the heart of the wood of many of the couples was so fresh they were employed in repairing the roof of another office-house. And Lord Chief Baron proved that the roof might have been repaired without taking down all the couples, at least without taking down that ceiling, by putting in new couples and joining them to the old ones, or by joining them to the old baulks to which the ceiling was fixed. Some of us were for repelling the defence *simpliciter*, but others of us, particularly Justice-Clerk, Kilkerran, and I, thought that Laing had acted contrary to orders, and therefore in strict law had no action, (which is agreeable to L. 24. C. *De Negotiis*, and L. 40. D. *Mandati*.) But yet we thought that he had action in equity so far as the defender was profited by the work, (which also Mr Craigie for the defender yielded) and therefore I moved that his counsel should give in a special condescendence what articles they objected to; and 2dly, a condescendence attested by some tradesmen of character in this place, what would have been the expense of repairing in the manner the defender proposed by supporting that ceiling and interlining the old joists and couples with new ones, and imagined that the expense would have been at least as great that way, because the operation was much more difficult. However the majority would not agree to the motion, but upon a vote sustained the account as it was, reserving to the Lord Chief Baron to object to any particular articles that either they were not furnished or were overrated; and repelled the defence.

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MANSE.

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NO. 1. 1734, NOV. 28. MR MAUL *against* THE CHILDREN OF CHARTERS.

NOTHING appears in the Notes in relation to this case. Lord Elchies has preserved the printed papers which are in vol. vi. fol. 154. The counsel were Graham and Craigie.

By the act 21, Parl. 1663, it is declared, that manses being once built and repaired and the building or repairing satisfied and paid by the heritors, the said manses shall thereafter be upholden by the incumbent ministers during their possession. The Court on report of Lord Coupar had found in substance, that certain repairs which had been made, (followed by a visitation of the Presbytery, and a declaration by them that the manse was free,) had proceeded upon an erroneous report of the state of the buildings, and consequently that the heritors continued liable.

It was contended on the part of the heritors, that in terms of the act of Parliament the declaration of freedom conclusively relieved them. It was however found that it was still incumbent on them to prove, that the repairs had been sufficiently made.—ED.