harmless. If, however,the suspender contravenes, the charger's remedy is by a process of contravention, which falls to be discussed like any other ordinary action. This seems to be Dallas's opinion, Stiles, p. 450; for which this additional reason may be given,—That contravention of lawburrows must be pursued with concurrence of his Majesty's advocate. This point occurred, 21st February 1777, before Lord Justice-Clerk as Ordinary, *Wilson* against *Macdonald.* It is still *sub judice.*

The above doctrine applies well as to the charger; but, if the suspender wants to get his cautioner liberated, and the suspension at an end, what method can he follow other than this, to get the suspension discussed and the letters suspended *simpliciter?*

LEGACY.

1777. *July* 10. ARCHIBALD SCOT and MARGARET MILL *against* SIR ALEXANDER RAMSAY and OTHERS, Trustees of Richard Oswald, Residuary Legatee of John Mill.

IT is a general rule in law, that a legacy becomes lapsed by the death of the legatee during the life of the testator, unless it be also given to the legatee's heirs. It proceeds upon this principle, That in the first case the testator prefers himself to the legatee's heirs, but prefers the legatee to his the testator's heirs; and, in the second case, that he prefers the legatee's heirs to his own heirs. This principle is fixed; and yet this principle notwithstanding,—where it appears that the testator intended that the legacy should go to the legatee's heirs, even where the legatee died before the testator, and where the obligation to heirs is not expressed,—it will go accordingly; for it is purely a *questio voluntatis,* and falls to be ruled accordingly.

John Mill of Old Montrose, 2d December 1765, settled his affairs, by way of trust-right, upon certain trustees; to take place after his death, granting certain annuities and legacies to different persons. Among others he granted £500 to Charles Mill, and, in case he should die before him, to his lawful issue, payable first Whitsunday or Martinmas after his death. And by a codicil, 30th May 1767, he bequeathed to him £500 more,—and declared that any sum he had, or should advance to him, should go in compensation of said legacies.

In August 1767 John Mill lent to Charles, upon his bond, £1000, but never exacted any interest.

It so happened that Charles, having gone abroad, in returning from Carolina predeceased John Mill, the testator, by a few days. The question therefore came to be, whether his legacy, on the general principle, had fallen, or if, in consequence of the defunct's codicil, and intention appearing therefrom, compensation took place in settling the legacy against the bond,—or if, in other words, the bond was exigible?

The Lords, 10th July 1777, found it was not exigible. It was allowed to be a *questio voluntatis;* and they were of opinion that John Mill had done no more than pay the legacy before it was due; and, although he took a bond for it, never intended to exact payment of that bond, but only meant to keep the legatee in decent dependance upon him, lest he should alter.

LEX MERCATORIA.

1776. *November* 26. The ASSIGNEES of JAMES HOGG *against* The TRUSTEES of JAMES INGLIS.

IN a process, the Assignees of James Hogg against the Trustees of the Children of James Inglis, merchant in Edinburgh; the Judge-Admiral, 24th June 1774, "found it proven that the ship Batchelor libelled, was, at the commencement of the voyage libelled, so disabled, by stress of weather, as not to be fit to proceed in the destined voyage to North Carolina; and that, in all such cases, where a ship is so disabled as not to be fit to perform the voyage, no freight is due to the master or owner."

In a suspension of this decree, the Lords, 26th November 1776, found, That, in respect the vessel was not totally disabled, and that James Inglis declined to perform his contract after his return from Zetland to Leith, the representatives of James Inglis are bound to repeat the freight.

Upon considering these interlocutors, it is evident that, although both of them terminated in one conclusion finding Mr Inglis's representatives liable in repetition of the freight; yet the reasons assigned for this conclusion are different. Recourse was had therefore to the opinion of merchants, and the query was put: "If a vessel is stranded, or any misfortune happens during the voyage, whether the shippers of the goods and passengers are entitled to the repetition of freight from the owners or master of the vessel?" The answer was, "If the vessel is stranded and not repairable, or condemned as unfit to proceed on the voyage, the proprietors of the goods and passengers must convey them to the place of their destination at their own expense, and they are