JUS RELICTÆ.

FROM the 1682 downwards there are no decisions to be found applicable to the question of bonds bearing annualrent falling under the *jus relictæ*, till the case of *Ann Meuse* against *Executors of Craig*, *22d November* 1748, reported by Lord Kaimes, Rem. Dec. No. 96; Kilkerran, p. 242; and by Falconer. In this case the Ordinary found,—"In respect, that neither the principal sum nor the first term's annualrent became payable at the time of Captain Craig's death, that the bond fell under the *jus relictæ*." And the Lords adhered.

See another decision, and to the same purpose, 4 *New Coll.*, p. 35.

1776. *February* 17. CAMPBELL *against* CAMPBELL.

THE point again occurred, in a question betwixt the Widow of John Campbell of New Campbelton and his heir Gabriel Campbell. The Lords, in December 1775, ordered first a hearing on it, in presence; and afterwards memorials; but, at advising, 17th February 1776, it went off upon another point.

See also TERCE.

LAWBURROWS.

1777. *February* 21. WILSON *against* MACDONALD.

WHERE a person is charged with lawburrows—his remedy is, to find caution that the complainer shall be harmless, or to suspend: this last, if the days are elapsed, is his only remedy. This suspension cannot be discussed as a suspension; it fulfils the charge, which is to find caution that the other party shall be

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.