

## GENERAL ASSIGNATION.

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### SECT. I.

#### What understood a General Assigation.

1717. July 23. LADY GRANT *against* MRS BRODIE.

No 1.

**T**HE Laird of Grant having made a disposition *omnium bonorum* to his Lady, in case of her survivance, *rents, mails, casualties, &c.* with a special clause, 'together with what shall be due and resting, at my decease, of the yearly annuity of L. 200 Sterling money payable to me by Brigadier Grant;' it was *contended* for the Lady, That, as to the remains of the L. 200 annuity resting at her husband's death, her assigation was special.—THE LORDS found, that even as to this clause, the disposition was general, in terms of the act 26th Parliament 1690, and therefore needed confirmation. See APPENDIX.

*Fol. Dic. v. 1. p. 338.*

1723. January. SIR JAMES GRAY *against* EDWARD CALLENDAR.

No 2.

THE Duke of Hamilton, executor confirmed as nearest of kin to his father, raised a process of multiplepointing against his father's creditors, wherein comparance was made for Sir James Gray and Edward Callendar, whose respective interests stood thus: Edward Callendar was creditor to the late Duke in L. 900 Sterling, for which he had obtained a decret against the present Duke, as executor confirmed before the Commissaries of Edinburgh. Sir James Gray was creditor to the late Duke in L. 1400 Sterling, and, for his further security, obtained an assigation from him, 'Of as much of the first, best, and readiest of the rests of the rents of his lands and estate in Scotland, that should happen to be due to him the time of his decease; and in and to as much of the first

Assigation to a creditor of as much of the first and readiest of the rents of the cedent's lands, that should happen to be due to him at the time of his decease, as would satisfy and pay the

No 2.  
sum of L. 1400  
Sterling, was  
found to be a  
general assign-  
nation, and  
as such would  
give no prefer-  
ence without  
a confirma-  
tion.

‘ and readiest of his hail moveables, goods, gear, debts, sums of money, and  
‘ others whatsoever, that should happen to pertain and belong to him the time  
‘ foresaid, as would completely satisfy and pay the said sum.’ This general  
assignment was intimated to Mr Crawford, then factor on the Duke’s estate, in  
March 1714, some time after the Duke’s death, but long prior to this Duke’s  
confirmation.

Sir James craved preference upon his assignment, which being the first com-  
pleted right, took the subject out *e medio*.

It was *objected* for Mr Callendar; That this being a general assignment, by  
the act 26th, Parl. 1690, expressly needs confirmation. It was *answered*, That  
as to the rents of the Duke’s estate in Scotland, due at the time of his decease,  
the assignment was special, Sir James being assigned to the special sum of  
L. 1400, out of the first and readiest of these rents; and therefore, as to these,  
he ought to be preferred. And it was *contended*, that there is the same reason  
why this assignment should be sustained without confirmation, as any other  
special assignment whatever. It seems, indeed, the great care of our legislature,  
that the goods of defuncts be not embezzled; and matters have been ordered so  
distinctly, that defunct’s goods cannot be intromitted with, but that there shall  
be a clear charge against the intromitter. This, if it did not introduce, has  
occasioned the continuance of confirmation in general dispositions and assigna-  
tions, which otherwise might be completed in the disponee or assignee’s person,  
by possession in moveables and intimation in debts, the same way as an adjudi-  
cation or disposition of heritage is completed by infeftment after the debtor or  
disponer’s death. In this view there can be no necessity of confirming this  
assignment, in so far as it relates to the bygone rents; because the assignee  
cannot possibly intromit with any parcel of these rents, without, at the same  
time, making up a distinct charge against himself, by his receipts of payments  
made to him by the factor, which the factor must keep for his own exoneration,  
and which always will remain a standing charge against the assignee.

It was *replied*, That whatever may be argued, this is certainly a general  
clause; there is no particular debtor mentioned, nor special sum due, it being  
even uncertain, whether any should happen to be due or not; and so falls both  
under the meaning and words of the act of Parliament.

‘ THE LORDS found Sir James could have no preference upon his assignment.’

*Fol. Dic. v. I. p. 338. Rem. Dec. v. I. No 38. p. 77.*