A particular Legacy is or either General or Special. A general Legacy is conceived in General
=ral terms, as a Legacy of a certain sum of Money without specifying
the person by whom it is owing to the testator; as the legacy of a horse,
a suit of hangings, a Watch, or other things in General. Seeing
these sort of things may be of different qualities in the same kind
of the Legacy does not Mark the price of them, or does not Determine
in particular what the thing bequeathed ought to be, whether there
be several such things in the succession or whether there be none
at all, nor doth express to whom the Choice shall belong, whether
to the executor or to the Legatee; it has been Controverted whether
the executor may give or the Legatee claim which he pleaseth? Ju
which it is answered. That in the case of Indefinite Legacies
which mark nothing of the Intention of the testator that favou
either the executor or legatee, the Mind of the testator is to be Gover
=ned according to Circumstances. Generally the testator is
thought to have a Greater Consideration for the executor, than
for the Legatary, the former is in the place of a Debtor, and the
latter in place of the Creditor; and in doubtful cases the Condi
=tion of the debtor is always favoured Les Loix Civiles &c.
Tom. 1 part 2 Liv. 3 Tit. 1 Sect. 7 Art. 6 Liv. 4 Tit. 2 Sect. 7
Art. 3. But if any Circumstances render the Condition of
the Legatary more favourable, they will make the prefer
=rance of the Executor to cease; which cannot be well understood
but by examples, Concerning which see Les Loix Civiles &c.
Tom. 1 part 2 Liv. 3 Tit. 1 Sect. 7 Art. 7 & 8 Seqq. In case of the
Legacy of a horse, a Watch, a suit of hangings or other
thing bequeathed Indefinitely and in General, since in all
these things there are qualities all together Different good
and bad, the Executor cannot give the Worst, nor the legatary
Chuse the best L. 37 pr. ff de Legat. 1 L. 110 § Eod. But this
Legacy will be Moderated according to the quality of the Testator
and of the Legatee, and according to the goods of the Succession
and the other Circumstances which may help to discover
the Intention of the testator. The Good will which the testator
bore towards the Legatary, and the good Intention which
he had for the executor, make it Necessary to Regulate
a Legacy of this kind, by a temperament which fixes be
=tween the extremities of the best and of the Worst equally
unjust and opposite to the Intention of the testator, a
Medium which may not be Contrary either to the
Interest of the Executor, nor to the Consideration which the

the testator had for the Legatary. When a testator gives to
the Legatary the Right of Chusing out of several things, such
as the horses in his Stable any of them which he pleases, the
Legatary has the liberty to Chuse the most precious of them
L. 2 pr. ff de opt. vel Elect. Legat. And if he Made his Election
when all things out of which he was to have his choice, were
not shewed or Known to him, he may chuse a New after he
comes to the Knowledge of them L. 4 § Eod. If the testator
had left to a third person the choice of the thing bequeath
=ed, either because he did not think the Legatary capable
of Making the fair Choice, or because he was willing to make
use of that temperament between the Interest of the executor
and the Legatee, the Legacy would be fixed by that third person.
And if he should fail or refuse to Determine, the right
of Election would go to the Legatary, who might Demand of the
Executor such of the things as he should pitch upon, providing
it were not the most precious of all, but a thing of a Middle
Value between that which is most Precious and that of least
Value L. ult § 1 C. Commun. de Legat. And in case they could
not agree among themselves, the Election would be Determined
by the Arbitration of some person whom they themselves should agree on,
or who should be named by the Judge L. 13 Infin. ff de Serv.
Praed. Rust. When the testator hath given power to Chuse,
whether it be to the Executor or to the Legatary, he who ought
to make the Choice cannot put it off any Longer time than
what the Condition of the things shall make Necessary, or
what shall have been Regulated by the testator, or by Mutual
Consent of the parties, or even by the Judge if the Matter cannot
be otherways settled; and he who has the Choice in his power,
if he delay to make it, may be sued by the other who may cause
him to be summoned in order to make his option, and may
protest for his costs and Damages because of his delay L. 6
L. 8 ff de opt. vel Elect. Leg. If the Executor to whom the
Choice was left was in delay, and in the Meantime the things
of which one was to be given to the Legatary, should happen
to perish or to suffer Damage, he would be Liable to Make
good the Loss or Diminution to which his delay had given
occasion: As a Legatary to whom the Choice belongs would
be liable for the Consequences of his delay to Make his
Choice, Les Loix Civiles &c. Tom. 1 part 2 Liv. 4 Tit. 2
Sect. 7 Art. 8 & 9. But if after the death of the testator, and
before