

No 330. 1735. *January.* Captain CHALMERS *against* Sir JAMES CUNNINGHAM.

A FRIEND of a family, which was reduced to low circumstances, having undertaken to lay out his money and pains in compounding the family debts, and having accordingly compounded a great number; in a compt and reckoning betwixt the heir of the family and the trustee's heir, a proof was led, which fixed the eases that were got upon several of the debts; and the question was, What rule should be followed as to the debts about which the proof was silent? It was *argued* for the trustee's heir, That his charge was the total debt acquired, unless where a direct proof was made out of the ease. It was *pleaded* on the other hand, That seeing the trustee failed to do his duty by expressing the transacted sum in the conveyance, mentioning only a certain sum in general, in order to avoid discovery, every thing ought to be presumed against him, and he ought to have no claim upon account of any debt purchased in by him, further than he can instruct he paid. The LORDS found it presumed, That eases were obtained of all the debts purchased in, and because these debts were of several sorts, some heritable, and some moveable, some better, some worse secured, they found, That the rule for fixing the eases must be to take a medium of what is proved to have been got upon debts of the same kind. See APPENDIX.

Fol. Dic. v. 2. p. 164.

1737. *February 18.*

Dr ALEXANDER CUNNINGHAM *against* JAMES LIVINGSTON.

No 331.
Import of a deed, appointing all a testator's furniture and moveables in a certain house, &c. to belong wholly to a particular person. Found not to include money and bonds.

THE deceased William Livingston, *anno* 1723, made a settlement of his affairs, wherein, for the love and favour he bore the Doctor, he assigned to him a bond of L. 125 Sterling, and some bank-stock, which comprehended all his estate, except the moveables he then had, under the burden of his just and lawful debts; and, about three weeks thereafter, he made another deed by way of codicil; wherein he appointed, "That, after his decease, all his furniture and moveables, contained in the house of Cameron, or elsewhere, should wholly and solely become the property of the Doctor, his heirs and donatars, with the burden of his funeral expenses."

William survived these deeds several years; and, after his decease, there was found, in his repositories in the said house, about L. 30 Sterling, in gold, silver, and bank-notes, together with some moveable bonds due to him; all which the Doctor claimed a right to, in virtue of the above clause in the second deed; because,

imo, With regard to the money, it behoved to fall under the denomination of moveables, seeing, both in the sense of law, and in common language, every thing is moveable which is not heritable. For it is only in the view of its