

1678. *January 18.*PURVES *against* DEANS.

No 56.

Found in
conformity
with Veitch
against Pal-
lat, No 53.
p. 8367.

IN a competition bewixt Sir William Purves, donatar to the escheat of Francis Aird, and James Deans his creditor, who for a debt anterior to the rebellion had gotten assignation to a share of a ship from Francis, and that before any declarator, therefore he alleged preference, because creditors obtaining payment of their debtors before declarator, are secure against a donatar, as was found after long debate in the case of Veitch and Pallat, and hath been ordinarily sustained since ; it was *answered*, That by the same decision of Veitch and Pallat, it was found, that assignations by rebels for debts before the rebellion obtained before declarator, are not effectual against the donatar, unless the assignee had obtained payment before declarator ; and in this case James Deans the assignee hath not obtained payment, nor delivery of saleable goods, but an assignation to a share of a ship, the property whereof was not in the cedent, but in a trustee for the partners' behoof, nor was it delivered, but was sold by commission of the partners, and Francis Aird's part is in the mandatar's hand, who had suspended upon double-poinding.

THE LORDS preferred the donatar to the assignee, seeing the assignation had not taken effect by payment.

Fol. Dic. v. 1. p. 556. Stair, v. 2. p. 593.

S E C T. IV.

Tacks granted after denunciation.

EARL of TULLIBARDINE *against* JAMES DALZELL.

No 57.

IF one be once denounced, and remain at the horn year and day thereafter, he may not from the time of his denunciation dispone any of his lands in prejudice of the superior ; yet before expiring of year and day he may set tacks for payment of the old duty.

Fol. Dic. v. 1. p. 556. Spottiswood, (ESCHEAT and LIFERENT.) p. 98.