

PAYMENT.

1736. *February 17.*

YORK-BUILDINGS COMPANY'S ANNUITANTS *against* GARDEN of TROUP.

No. 1.

PAYMENTS made by a tenant to, or for his master, after the legal term of Martinmas, long before the conventional terms, which were not till Lammas and Christmas next year, being made *bona fide* before he was interpellated, sustained against a creditor infest, who interpellated him before the conventional terms.

See NOTES.

PENALTY.

1743. *January 25.* M'LEOD of Genzies *against* WIGHTS.

No. 1.

THE Lords were of opinion (but did not decide) that a contract of victual where the seller is bound under a small penalty (here it was ten-pence) for each undelivered boll, but not "by and attour performance," if he has the victual, and do not deliver it, but sell perhaps at a higher price, he is notwithstanding liable in damages. But if by fatality he cannot deliver, (as in 1740) that he is only liable in the conventional penalty. *Vide* OBLIGATION, No. 5.