the ground, they will be preferred Cæteris paribus one after another according to the dates of the Registration of their respective Infeftments act 13 Sess. 4 Par. W. & M. But none will be taken to the Decreet whose rights of annual rent acclaimed exposition to the Date of the summons, without prejudice to such Infeftments in another action. Stair lib. 4 Tit. 23 § 20. Fees and mensalities Duties and avails of Marriage are preferable to all annualrents or other real burdens constituted by the vassal on and out of the lands ibid § 5 & 20. Because the former are due to the superior from the date of the Infeftment of the first author of the annualrent and the latter affect only the vassals right and not the superior.

If by reason of other Devastation by War or the like the Vassal get no benefit by the rent of the land, neither can the superior claim his feu duties for those years of publick calamity But no such case of Devastation will free the Debtors lands from poinding for annual rents of Wast, when he was debarred from reaping the fruits thereof 26 June 1662 Adamson contra Lord Balmerino. In a Decreet of poinding the ground, the Lords use to ordain there is a Composition of Creditors, for benefit and ease of poor Labourers of the ground, that they might not be harassed and oppressed by different pretenders poinding at the same time, and the Lands and Vassal liable to assign to each Creditor a portion Localitly conform to his sum and preference, out of which he may take payment termly, or to allow some time to every one of them according to his preference, for poinding the Moveables upon the ground. Which method hath also this good effect, that a preference annualrenter cannot like the dog in the Manger, hinder others to uplift their annualrents, or pound the ground for the same, while he himself lets lie in the hands of the Common Debtor or his tenants in Æmulationem Vicini; or perhaps till his apprizing or adjudication be for the expire. Thus in one case (15 feb. 1662 Lady Monswal Elder contra Lady Monswal Younger) the first annualrenter was ordained to do Diligence within twenty days after each term, and the second. In another Case (26 July 1662 Aiton of the Hill contra Wal.) The first annual renter was allowed 40 days after each term to poind the ground, and it was Declared lawful to the second annualrenter after clapsing thereof to poind without regard to the first annualrenter if he neglected to do Diligence within 40 days after each term.

Letters of poinding ~~the ground~~ the ground are issued for

on decreets of poinding the ground, directed to Messengers at Arms Sheriffs in that part, to seize arrest compell poind and distrenzie the readiest goods and gear on the Lands in the terms of the Decreet, and yearly and termly in time comming for satisfying thereof. The oath of a pretender to the property of goods will stop poinding as well as personal poinding of them for another debt. Therefore the Messenger who executed the poinding must take the oath of men as compear and offer to make Oath, that the goods arrested to be poinded belong to them, and not to the poinded debtor or his friends. Stair lib. 4 Tit. 23 § 6. If the owner of the goods make Oath or offer it, and the Messenger notwithstanding proceed and poind them, it infers a spulzie, 6 feb. 1679 Collet contra M. of Balmerino. But a Messenger going to poind the ground, cannot be stopped by any upon pretext that they have prior Infeftments of Annualrent. For he cannot Judge in such a Competition their rights. Stair lib. 4 Tit. 23 § 20. And also Impotent who fine themselves and declared, that they were not at fault, nor in Diligence at others.

Poinding for real Debts Differs from personal poinding, in that 1st the Debtor's tenants cannot be distressed as the latter, but may be Distressed by the former Currente termino Stair lib. 4 Tit. 23 § 14. For the value of a Year's rent when they pay their master once in the Year, or for a terms rent when they pay it termly Stair ibid § 16. For so the statute Act 37 Par. 5 J. 3 Dallon's tenants to be poinded for their Lord's Debt in general without Distinction of personal from real Debts. But Custom hath restricted it to poinding for the Master's hereditable or real debts due by Infeftment Stair ibid. § 13 lib. 4 Tit. 23 § 4. Tit. 47 § 24 M'Kenzie observ. on Act 37. The Reason why real poinding lies against tenants currente termino, and not after clapsing of the term of payment of the Rent, is because it is presumed that tenants after the term have paid their Master, and they are secure by Retaining out of their Farm the value of what is so poinded before. Poinding of the ground is effectual also against the proper goods of tenants and Inhabitants Dilhinburgh (as inveata & illata) only for a terms Mail, ~~that~~ the goods of Merchants or others brought into such tenants houses cannot be affected by the poinding, which would marrall Commerce if allowed 6 feb. 1679 Collet contra the Master