

of Balmerino. Tenants of lishes cannot be poinded for their Masters Debt. *McHenry ibid.* His tenants cannot be poinded for their Masters debt beyond a terms rent: neither can a Vassal be Distressed for his Superiors debt beyond the value of a term's rent. *Stair lib. 4 fol. 23 § 16.* But if tenants or Vassals pay their Masters or Superior per advance before the term, they are not secure from being put to pay over again a poinder of the ground *Stair ibid.* <sup>Stair's Digest pag. 1048 1049 1050</sup> who is not bound to restrict his claim of a term's rent against the tenants, to any exclusive term's rent duty in use to have been paid, or contained in a title deed and Clothed with possession since the constitution of his right; but may require the full rent of the lands *Stair ibid.* If the tenants have taken for a lease duty clothed with possession, or have in use to pay a lesser duty before the date of the purchase right, he can ask no more *Stair ibid.* But the landlord or his descendant could not be restricted in his pretensions by a fictitious title anterior to his right of the Superiors *Stair ibid.* Because the act of Parliament secures tenants only Against purchase of the property, and not against singular Succession in the property. The purchaser in a poinding of the ground, was not supposed to prove the quantity of the tenants rent that it might be restricted to the terms Mail: Because that being a Real Action principal against the ground, whereby it may be appraised or adjudged against the present and future tenants; and if it will proceed against the present and future tenants, it will any more be poinded from them than a term's rent, it will be a Spoilzie, if at the time of the poinding they appear and take their lishes or offer to make faith upon their Rents. But if advocates for the tenants depone, that they were employed for them, extract of the Deed will be suppressed for a while that the tenants may produce their lishes or depone upon their Rents where they want faith, and the Decree as to them may be restricted accordingly, *A Feb. 1674 Lady D. fodecht contra the L. and his tenants.* If the rent of the Lands be not proven in a Decree of poinding the ground the mespenger going to poind must refer the same to the tenants oath, which will prove, tho' he depone with the lishes to a lish not produced. Because poinding of the ground requires no antecedent charge, and tenants cannot be presumed to have all ways their lishes about them *Stair*

lib. 4 fol. 23 § 17. If the tenants rent be not paid in Money, but in forporibus in kind, the Mespenger (who is Judge and Sheriff constituter in the execution) may determine the current price thereof, the time by the oath of appraisers; and then proceed to poind and appraise the tenants' moveables to the extent of the year's rent, according as their farm is paid yearly or termly *Stair ibid.* § 17. If Personal poinding required a preceding charge to pass; which is not necessary to a poinding of the ground, where no person is deemed to pay, but only the ground and moveables thereon to be Distressed and poinded. But a poinding of the ground cannot proceed till 40 days after the Decree, which is the time of an appeal in civil Actions, tho' the Lord may take up or suspend their lib. 4 fol. 27 § 4. and concerning lishes in lishings they may be waived off in a personal poinding, if there be no other goods on the ground, but not in a real poinding, whether the lishes be taken or not, but *Stair ibid.* § 17. Because lishes belong to the present and future tenants, and are not to be taken away, neither of the present nor future tenants to be poinded, *Stair lib. 4.* Thus a poinding of the ground, the Decree and lishes are all void, if any of the tenants, or the Decree obtain- ing for poinding, shall be transferred against the Decree. *Stair lib. 4 fol. 23 § 17.* Poinding of the ground is the lishes or goods are valued as hereunto, to the persons Decreed against. But a Decree of poinding the ground, secures such possession as it shall be poinded in, to the successors and possessors, without any new Constitution against them, so long as the obligation of the Decree does not expire. *1624 Keir contra Keppin 21 November 1628 Hallon contra Reid 26 June 1630. Thompson contra Lord Brimerine Stair ibid.* Because it is founded on a Right in the ground, without respect to who is heritor, and which continues during the obtainers lifetime.

For making decreets of poinding the ground, a special letters of appraising may be obtained summarily upon a supplication to the Lord, *ut Infra pag.*

The third and last kind of poinding, viz. poinding brevi manu, is that which may be executed without a previous sentence of a Judge. Which is explained in the proper place *infra part 7 Book 1 Chap. 1.*