gal, containing a conclusion of count and reckoning, pursued by a debtor against his creditor apprising, be equivalent to an order of redemption for keeping the legal open. Some alleged, That a premonition, by way of instrument, with a consignation, and a summons of declarator raised thereon, was the only habile legal way to stop the expiration of a legal of a comprising or adjudication; and such solemnities must be observed *in terminis specificis*, and cannot be done *per equipollens*. Others thought any thing that intimated the debtor's intention to redeem and satisfy his creditor, was sufficient, *in materia odiosa*, to carry away lands by apprisings; and that his pursuing a count and reckoning was a *provocatio in judicium* sufficient to stop the currency of the legal. A third said, if, by the event, his intromission extended to his debt, then there was no doubt but the diligence was extinct; but if there was any part yet remaining unpaid, the apprising now expired stood good for it, and was now irredeemable, unless an order had been used within the legal. Stair, *tit. Wadsets*, inclines to the *second*, that such a summons is equivalent to a formal order, and cites Dury, *2d July* 1625, *Kincaid* against *Haliburton*; but the Lords did not at this time decide the point. *Vol. II. Page* 112.

1701. *June* 19. DEWAR of LASSODY *against* SCOTT of SPENCERFIELD'S FACTOR and CREDITORS.

DEWAR of Lassody, as a real creditor infeft in the estate of Scot of Spencerfield, applies to the Lords by bill, craving that the factor may be decerned to pay him some bygone annualrents during the dependence of the ranking of the creditors, he being preferable, and yet willing to find caution to refund, if in the event other preferable creditors should be found to exhaust the subject. The Lords hitherto had granted their bills on caution: But now, considering that so long as creditors found they got their annualrents, they neglected to bring the ranking to a close, to the general prejudice of creditors, the estates not being now exposed to roup till the ranking was finished and extracted; and to deny their annualrents (which was only hitherto allowed them *ex gratia*,) was the only spur to cause them insist in discussing the ranking; therefore, the Lords resolved to stop the giving any more on bills till their place and preference was known. Some argued, This would be beneficial to none but the factors, who would keep the rents in their hands, and would apply them to their own use, or cause the creditors give them considerable eases and compositions ere they paid them; and that creditors seemed to be much sibber to these annualrents than the factors. It was ANSWERED,—That factors, by Act of Sederunt 1691, were liable for annualrent; and though this was not exacted, yet the reason was, because, by the frequent precepts drawn on them, and their partial payments, it was not known when the rents came into their hands, and how much; and therefore the Lords resolved to stop such summary applications in time coming. Some proposed it might be done by an Act of Sederunt.

Vol. II. Page 114.