could be no new pans bigged, seeing that way they will do more than exhaust the whole coal within the foresaid lands; and so the property should be altogether useless to the heritor, for *non aliter licet uti servitute nisi secundum modum a domino fundi concessum;* next the heritable licence of winning coal is given to them, their heirs, and assignees.

Bogie also ALLEGED,—That Dalhousie's accepting the discharge 1646, was a clear concession he had no right to that coal himself, and a homologation of Bogie's new acquired right. But this did not deserve an answer. Sir G. Lockhart was of opinion that Bogie's renunciation, (though it renounce only all right he can lay to the coal of Abbotshall by virtue of that signature,) yet that it would have defended against any new right he should acquire to that coal thereafter, because he being Dalhousie's author in that renunciation, he could do no deed in prejudice thereof, and he behoved to warrant it; of this I am not so clear. The Lords of Exchequer refused to remit the discussing of the competition of rights to the Judge Ordinary, and in the mean time to pass the signature, which is their ordinary practice in the like cases, (as was desired by us,) but delayed to give any answer till Sir Andrew should produce the pan-owners, (who be authors to the E. of Dalhousie,) their rights. They should have considered the 51st act of the Parl. 1661.

Advocates' MS. No. 164, *folio* 95.

1671. *June* 10. LORD DRUMLANRICK *against* SCOT.

THIS Scot having adjudged the lands of one of my Lord Drumlanrick's vassals, upon the renunciation of the apparent heir; and having charged my Lord to infeft him thereon, he suspends upon this reason, that being superior, it is leasum to him upon payment made to the creditor of all his just sums, to take the lands to himself; which he is content to do; and, therefore, craves the adjudger may assign him to his diligence. And though this be an adjudication led before the act of Parliament 1669, which equiparates *in omnibus* adjudications to comprisings, (and so by it there can be no doubt of adjudications after the act,) yet the *ratio* being *eadem*, and no imaginary disparity assignable why the superior should have right more to use that method with the appriser, than an adjudger, we must say the same law obtains in both.

The Lords found a superior might redeem a creditor adjudger; but if he did he should have no year's rent. Neither when the debtor comes to redeem the lands from him within the legal shall he get deduction or retention of a year's rent; so that the debtor is bettered by the superior taking the right of the said diligence, than if it had stayed in the person of his creditor.

Advocates' MS. No. 165, *folio* 97.