upon a charge to enter heir to the last Lord Salton; wherein compearance was made for Arthur Forbes, as having right by adjudication to the estate of Salton, for whom it was *alleged*, That all parties having interest were not called, viz. ——— Lindsay, who was apparent heir portioner with the Lord Salton, defender, they being both descended of two sisters. It was *answered*, That there was no necessity to call her, because she had already subscribed a renunciation to be heir. It was *replied*, That the effect of this action being to adjudge the estate of Salton from the apparent heirs portioners, she ought to have been called, that decreet might have been gotten against her as well as the Lord Salton; without which, the voluntary renunciation can be no ground of adjudging the whole estate. THE LORDS did repell the allegeance *hoc loco*, and found that the pursuer might insist against one of the heirs portioners, as he pleased; but reserved to Arthur Forbes to be heard upon that allegeance in any real action against the estate, why the adjudication to be obtained could give no right nor interest, but, to that part of the estate which did belong to my Lord Salton, who was cited; which decision is against former practiques, and may occasion an irregular procedure. No 4.

But thereafter, it being *alleged* for Arthur Forbes, That all parties having interest were not called, viz. a third heir portioner who had granted no renunciation; and if they were cited, they might propone a defence to elide the debt, it was *replied*, That the pursuer declared he insisted only against his father, who was apparent heir and cited, and ——— Lindsay, who had renounced, and that their two parts of the estate might be adjudged. THE LORDS did find the allegeance relevant, and found no process, until all heirs portioners who had not renounced, should be cited, as being requisite by custom and practique.

Gosford, MS. p. 229.

1696. *November* 12. HAWTHORN *against* GORDON.

No 5.
An ordinary country house, (no tower or fortalice,) was found divisible among the heirs portioners of a small estate.

IN the action Margaret Hawthorn against Gordon of Cairnfield, her eldest sister's husband, for a portion of the value of the dwelling-house, in the lands whereof her sister and she were co-heiresses, *alleged*, That in the division among co-heirs, the manor-place *tanquam indivisibile quid* appertained solely to the eldest daughter, as a prerogative of primogeniture. *Answered*, That held only in towers and fortalices, such as Craig calls *turres pinnatæ*, and where the interest was considerable; but here it was proven the property did not exceed 200 merks yearly, and it was but such a house as a tenant might dwell in; and though it held of the King, and the manor-place was excepted in the wife's liferent sasine, yet this could not make it any more than an ordinary country-house. THE LORDS found it had no privilege, but was divisible between the two heirs portioners.

Fol. Dic. v. 1. *p.* 364. *Fountainhall, v.* 1. *p.* 733.