two parish kirks called Kinnaird, that the summons should have been executed at both of them, but was only executed at one of them, and it was uncertain which, and therefore prayed for our warrant for letters of incident diligence for citing the Company and the creditors at these two parish kirks on 21 and 6 days; which the Lords granted, and ordered the executions to be recorded in terms of that act; *me solummodo, sed maxime, renitente*, because that was a method of citing edictally all persons having or pretending to have interest, established by proper authority, and that had been observed above 40 years; and though we might alter it and make a new and different regulation, yet till that was done it was binding even upon us, and we had no dispensing power to dispense with it *via facti*, especially since the persons concerned neither were nor could be in the field, the question being only in what manner they should be summoned. *Vide contra*, 26th June 1752, (No. 24 *infra*.)

No. 23. 1752, June 3. ANDERSON, *Supplicant.*

A PETITION of Anderson's complaining of the Magistrates of Canongate's interlocutor in modifying his aliment on the act of grace, was found incompetent without an advocation.

No. 24. 1752, June 26. HAMILTON *against* DALGLEISH.

THE heir of the common debtor was minor, and the pursuers had neglected to call his tutors and curators at the market cross, and Justice-Clerk, Ordinary, gave them a diligence to call them. The defenders reclaimed. The President was clear, that no person necessary to be called originally in a process could be called by a diligence. And on advising bill and answers, we found without a vote that the tutors and curators could not be called on a diligence. *Vide contra*, 26th February 1752, Duke of Norfolk and Creditors of York Buildings Company, No. 22, *supra.*

No. 25. 1752, Dec. 12. MR JOHN GOULDIE *against* THE HEIR AND TRUSTEES OF MURRAY OF CHERRIETREES.

MR GOULDIE, as having a gift of *ultimus hæres* to the last heir of Maison-dieu, pursued declarator with reduction of a disposition to Murray of Cherrietrees, which came before me, and was fully litigated, and after some no-processes, determined both by me and the whole Court. I took the principal cause to report; and informations on both sides were drawn; but before report Cherrietrees died, and the process was transferred against his son. And when I came to make my report, a lawyer for the son appeared, and declared he did not represent, and was ready to renounce; upon which the Lords gave decreet for the pursuer, which bore in common form to be on my report,—it also mentioned the said compearance. On this decreet he pursued maills and duties against the tenants; and Cherrietrees having executed a trust deed, the cause was by them advocated, and the question was, Whether they could be heard after that decreet *in foro*, or whether it was a decreet *in foro?* I thought it was not, nor could not be so against the defunct, because there never was any decreet in his life, and not against the son, who was willing to re-