mentary settlements of moveables, though the first institute die before the testator, the settlement will not thereby be evacuated, but the next substitute will take.

1756. *February* 11. ——— *against* ———.

THE President and the other Lords declared their opinion, that although it was the practice in some places that bailies of burghs of barony and regality granted acts of warding upon their decreets,—yet that was an illegal practice; because such privilege was only competent to the bailies of royal burghs.

1756. *February* 13. BREBNER *against* LAW.

[*Fac. Coll.* No. 187.]

IN this case the Lords allowed the Protestant heir to serve, and found that the Popish heir had forfeited his right, although he could not take the formula precisely in terms of the statute; that is, either before the Lords of his Majesty's Privy Council, or the presbytery of the bounds where the party resided; because there was no Privy Council now in Scotland, and the Popish heir in this case resided abroad.

In this case also, the Lords found that the Protestant heir might serve to a man who had only a right of liferent in his person, having executed a procuratory of resignation, which he had right to, and taken a charter to himself in liferent, and his son, the Popish heir, in fee; so that the Protestant heir, overlooking the infeftment altogether in favour of the Popish heir, as being null and void, might, by a general service, carry the procuratory of resignation as if it had been still unexecuted, and this without any previous declarator of the nullity of the infeftment, only a declarator repeated with brieves of the disability of the Popish heir to succeed. Both these points the Lords determined unanimously.

1756. *February* 13. SIR ROBERT GORDON *against* DUNBAR of Newton.

IN this case it was debated, Whether a verdict pronounced by a jury, upon a remit by the Lords to them to set marches, in terms of the Act of James VI, concerning molestations, could be reviewed by the Court of Session?

The President said, that anciently when questions about the property of conterminous grounds were decided by brieves of perambulation, the verdict of the inquest was then final: but the method directed by the statute of James VI. only regarded the possession in which the verdict of the jury might be final: