

No 7.
 friends, one
 being *fine*
qua non. This
 person having
 died, the pro-
 vision suf-
 fained *in toto*.

ther's decease, the brothers creditors insisting for a mitigation *secundum arbitrium boni viri*, it was answered, That the condition of the mitigation had failed, the mother being now dead ; and therefore the bond must subsist *in toto*, as if this power of restricting had never been.—THE LORDS found there was no arbitrimen in this case, and that the bond subsisted *in toto*.

Fol. Dic. v. 1. p. 53.

No 8.
 Certain per-
 sons having
 been named
 to fix provi-
 sions to chil-
 dren in a cer-
 tain event,
 would not ac-
 cept. The
 Court would
 not hold the
 office as de-
 volved on
 them *tanquam*
boni viri.

1739. December 22. CAMPBELL against CAMPBELLS.

COLONEL CAMPBELL being bound in his contract of marriage, to secure the sum of 40,000 merks, and the conquest during the marriage, to himself and spouse in conjunct-fee and liferent, and to the bairns to be procreate of the marriage in fee, did, by a death-bed deed, settle all upon his eldest son, burdened with the sum of 30,000 merks to his younger children, to take place in case their mother should give up her claim to the liferent of the conquest, and restrict herself to a lesser jointure, otherwise these provisions to be void ; in which event it was left upon the Duke of Argyle and Earl of Ilay to name such provisions to the children, as they should see convenient. The referees having declined to accept of the trust reposed in them, the question occurred betwixt the heir and younger children, Whether their powers were devolved upon the Court of Session to determine provisions to the younger children *secundum arbitrium boni viri* ; or if the younger children were to be left to the extraordinary remedy of reducing the testament upon the claim they had by the contract of marriage.—THE LORDS found, That the Duke of Argyle and Earl of Ilay having declined to execute the powers vested in them by Colonel Campbell, their powers are not devolved on this Court, *tanquam boni viri*.

Fol. Dic. v. 1. p. 53.