reasonable tocher. A conveyance *omnium bonorum* that the party then has or may succeed to cannot be onerous, and therefore is constructed to be with the burden of all debts. Yet the Lords found the subjects effectually conveyed to Mr Drummond notwithstanding the prohibition, and preferred him, *renit. tantum* Kames, *et me*; and 28th November adhered. (See No. 16, and No. 24, *voce* MUTUAL CONTRACT.)

## No. 18. 1742, Dec. 1, 15. GRIZEL, &c. MARJORIBANKS, *against* THEIR BROTHER.

THE Note relative to this case is subjoined to the text.

## No. 19. 1753, Feb. 2. CAPTAIN W. DOUGLAS *against* MRS DOUGLAS.

CAPTAIN DOUGLAS, as heir-male of Kirkness, pursues reduction of a settlement in 1722, made by the deceased Sir Robert Douglas in favours of heirs of line, and by the Major-General in 1741 in favours *nominatim* of this defender, founded on the original grant by the Earl of Morton to his second son, and heirs-male of his body, which failing, to return to the family; and another charter in 1638 by the next Earl of Morton, to the grandson of the first granter, and heirs-male of his body, with the like clause of return, and an express prohibition not to do any thing in prejudice of the return, which proceeded on an onerous transaction, and a conveyance by the Earl of certain apprisings acquired by the Earl on Kirkness's predecessors debts. The principal defences were, that the original clause of return was discharged and altered by another charter by the next Earl of Morton to the original granter, his heirs and assignees; and as to the charter 1638, the limitation is only in favours of the family of Morton, not of the intermediate heirs-male, who have not thereby any *jus quæsitum*, and none but the family of Morton, when those heirs-male fail, can quarrel alterations of the succession, as in the common case of contracts of marriage to the heirs-male of the marriage, which failing, the heirs-male of any other marriage, which failing, the heirs-female of the marriage, there is a *jus quæsitum* to those heirs-female, but no *jus quæsitum* to the heirs-male of any other marriage, though preferred before them. 2dly, Prescription both negative and positive upon a charter to heirs and assignees in 1687, and infeftment on it, and quoted the case of M'Kerston and William Gray's case, where the negative prescription was repelled, because the deed contained no limitations, and though only a personal deed, yet not being altered, carried the succession. The Lords sustained both these defences.—We agreed that the charter 1595 was effectually altered, and the clause of return discharged by the charter 1607, and that the limitations 1638 were only in favours of the family of Morton, and not of the intermediate heirs-male. Mr Craigie, who was counsel for the pursuer, admitted that the charter 1607 did effectually discharge the clause of return in the charter 1595, and seemed also to think, that if the charter 1638 had been the only charter that contained a clause of return, the limitations could only have been understood in favours of the family of Morton; but insisted, that in this case the charter 1638 was only a revival of the original clause of return, when the estate was given as an appanage to a second son of the family, and he thought in such returns the implied limitation was not only in