

1765. *February 15.* LORD ELIBANK *against* CREDITORS of DORNOCK.

DOUGLAS of Dornock, father and son, granted a disposition, to certain trustees, of the lands of Dornock, for behoof of themselves and their creditors contained in a list referred to, in which the particular creditors and the sums due to them are set down; and the disposition contains a plan of management for the trustees, directing them to cut the woods, to set leases for so many years, &c., and, among other things, it empowers them to give heritable security to the creditors contained in the list, or to sell lands for their payment. Upon this disposition the trustees were infeft, but all that they did upon this disposition was to feu out some lands, after which some others of the creditors of Dornock adjudged the estate from the father and son, for payment of their debts; and then some of the creditors contained in the list, likewise adjudged, and upon these adjudications the estate was brought to sale. The question occurred betwixt the creditors in the list and the Creditors afterwards adjudging, those in the list pretending to be preferable upon the trust disposition; for although they admitted that their debts were not a real burden upon the trust-disposition, not being specially enumerated in that disposition, nor the list referred to recorded in the register of sasines, yet they said their debtor was denuded by the disposition to the trustees who held the estate for their benefit. The Lords were all unanimous that the disposition gave those Creditors no preference; but upon various reasons. The true principle is this, that, by the law of Scotland, there can be no indefinite burthen upon lands, that is, no burthen, the extent of which does not appear from the proper register, *viz.* the register of sasines; and if such burthen could not be constituted directly in favour of the Creditors, neither can it be constituted indirectly by the intervention of a trustee: That the only use the Creditors could have made of this disposition, they have not made,—which was to have got heritable securities from the trustees, or to have got the lands sold for payment of their debts: That no man is denuded of his estate by a disposition to trustees with certain powers, unless so far as the trustees execute those powers; and, if they never execute them, the disposition falls as if it had never been granted.

N.B. A question still remains, what the effect would be of heritable bonds to be yet granted by the trustees to the Creditors in the list.

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1765. *February 19.* LORD BREDALBANE *against* ———.

IN this case most of the Lords declared their opinion that a warning was necessary in a tack of fishings, in order to remove the tenant, as well as in lands, because Queen Mary's statute mentions fishings, together with mills and lands. It was alleged that it was not the practice to use warnings either in fishings or mills; but this the Lords did not regard. Some of the Lords thought that