

1814.

(Sheuchan Case.)

AGNEW
v.
STEWART, & C.

JOHN VANS AGNEW, Esq. of Sheuchan, - *Appellant.*

PATRICK STEWART, Esq., of Cairnsmoor,
the surviving Trustee for the Creditors of
John Vans, Esq., of Barnbarrow; and
EBENEZER DREW, of Anchenhay, as re-
presenting the deceased Alexander Drew,
Merchant in Newton-Stewart, the other
Trustee of the said Creditors, - - } *Respondents.*

House of Lords, 29th July 1814.

(First Appeal.)

ENTAIL—CONTRACTION OF DEBT.—Question, Whether an entail was good against creditors?

The appellant's grandfather, John Vans of Barnbarrow, was married to Margaret Agnew, the only child of Robert Agnew, Esq. of Sheuchan.

Sometime after the marriage, Robert Agnew and his son-in-law, John Vans, entered into an agreement, for the purpose of securing the estates of both families by a strict entail.

They, thereupon, executed a mutual entail of the Barnbarrow estate on the one side, and of the Sheuchan estate on the other. This deed was essentially, in its form, of an onerous character, and the dispositive clause bore the words—"Gives, grants, *sells*, and alienates."

It turned out, on John Vans' death, that he was considerably in debt. It appeared, also, that he had been in debt at the time this transaction was entered into. His son, who succeeded, contracted more debt; and being anxious, in order to pay these, to break through the entail, so as to make these estates affectable by his father's debts, the creditors were induced to assign their claims to Messrs Stewart and Drew, as trustees for the creditors, who brought the present action of declarator and reduction to set aside the entail.

In this action two questions arose—1. Whether the proprietor of a fee-simple estate can make an effectual entail, and place himself under all the fetters thereof, so as to exclude creditors affecting the estate by diligence or otherwise? 2. Whether the entail contained an effectual prohibition against the contraction of debt?

In the Court of Session, it was held generally that the entail was not effectual against the creditors of Mr Vans, as to his estate of Barnbarrow.

An appeal having been taken to the House of Lords, the case was remitted for re-consideration. A full report of this case, together with the Judges' opinions, as also of the procedure which took place in the Court of Session after the remit, will be found in Mr Shaw's Report of the Second Appeal to the House of Lords, vol. i., p. 320, which see.

1814.

AGNEW
v.
DUNLOP.

For the Appellant, *John Clerk, John Greenshields, Alexander Maconochie, J. A. Murray.*

For the Respondents, *Wm. Adam, Sir Samuel Romilly.*

(Sheuchan Case.)

JOHN VANS AGNEW of Sheuchan, - - Appellant.

Mrs FRANCES DUNLOP, otherwise AGNEW,
Widow and universal Disponee and Exe-
cutrix of Robert Agnew, Esq., last of
Sheuchan, - - - - - } Respondent.

House of Lords, 29th July 1814.

(Second Appeal.)

It has been seen by the previous appeal, that the creditors had been successful before the Court of Session in obtaining a judgment, finding that the entailed estate of Barnbarrow was liable for John Vans' debts.

It was also mentioned that his son, Robert Vans Agnew, had also contracted considerable debts; and he in his turn raised an action of reduction against the heirs of entail, on the grounds, *inter alia*—1st, That the entail did not protect the estates against the contraction of debts. 2d, That he was entitled to set aside the contract of mutual entail because the counterpart of it had not been implemented on the part of John Vans, one of the contracting parties, but the same had been defeated by his contracting debts. 3d, That he ought to be allowed to relieve and disengage from the said entail as much of the estate of Sheuchan as would be equal in value to the extent of the debts contracted by John Vans. 4th, To sell and dispose of so much of the said lands and estate of Barnbarrow, as shall be sufficient to discharge these debts; and for their Lordships to interpose their authority to such sale, upon proof of the rental and value of the estate.

A remit was made to an accountant, as to the amount of the debts and the rental of the estate; but the Court ultimately pronounced this interlocutor:—"But, in regard there