

Tuesday, January 27.

OUTER HOUSE.

[Bill Chamber, Lord Kinnear.

STARK v. THE COMMISSIONERS OF SUPPLY
FOR DUMBARTONSHIRE.

*Valuation Cases—Commissioner of Supply—
Qualification—Heritable Creditor.*

The husband of a lady who was heritable creditor in actual receipt of the rents and profits of certain heritable subjects by virtue of a decree of mails and duties following upon a bond and disposition in security, but who was not himself possessed of the necessary qualification for a commissioner of supply of the county, claimed to be enrolled as a commissioner of supply on the ground that he was the husband of a proprietor infest in lands and heritages sufficient to make up the necessary qualification. *Held* that he had not sufficient qualification.

The Lands Valuation (Scotland) Act (17 and 18 Vict. cap. 91), sec. 19, provides—"From and after the passing of this Act the qualification requisite for a commissioner of supply shall be the being proprietor or the husband of any proprietor infest in liferent or in fee, not burdened with a liferent, in lands and heritages within such county of the yearly rent or value, in terms of this Act, of at least one hundred pounds. . . . Provided always that with reference only to the qualification of commissioners of supply under this Act, the yearly rent or value of houses and other buildings, not being farmhouses or other agricultural buildings, shall be estimated at only one-half of their actual yearly rent or value, in terms of this Act."

Section 42 provides—"The following words and expressions when used in this Act shall in the construction thereof be interpreted as follows, except when the nature of the provision or the context of the Act shall exclude or be repugnant to such construction—(that is to say) the word 'proprietor' shall apply to liferenters as well as fiars who shall be in the actual receipt of the rents and profits of lands and heritages."

The Rev. John Stark, minister of the United Presbyterian Church, Duntocher, was proprietor of houses at Hardgate and Fairley, in the parish of Old Kilpatrick and county of Dumbarton, of the annual value of £55, 15s., and of a field at Fairley of the annual value of £3, 5s. The annual value for the purposes of qualification as a commissioner of supply, in terms of 17 and 18 Vict. c. 91, sec. 19, was £31, 2s. 6d. His wife was heritable creditor in possession of houses and shops at Kilreggan, in the parish of Roseneath and county of Dumbarton, of the annual value of £169, and was in actual receipt of the rents thereof in virtue of a bond and disposition in security in her favour duly recorded, and decree obtained by her in an action of mails and duties at her instance as heritable creditor. The annual value of these subjects for the purposes of qualification was £84, 10s. Mr Stark, who had stood on the roll of the commissioners of supply of Dumbartonsire as a commissioner in

respect of his own property, ceased to have right to be entered in respect thereof, owing to a quarry which formed part of them being no longer worked, and was, on objection taken, struck off the roll of Commissioners of Supply. He then claimed enrolment on the ground that he had a qualification in respect of being a proprietor, and that his wife being heritable proprietor in possession of other subjects brought up his qualification to the requisite amount, but the Commissioners sustained an objection to his being on the roll, on the ground that his interest in the subjects at Kilreggan was not of the character requisite to constitute a qualification as a commissioner of supply in terms of the Valuation Act.

Mr Stark appealed to the Lord Ordinary officiating on the Bills, and the Commissioners lodged answers to his petition.

Argued for the appellant—In the interpretation clause of the Valuation Act the word "proprietor" included liferenters in actual receipt of the rents and profits of the lands and heritages, and by the 19th section the husband of a female proprietor was entitled to be enrolled in respect of his wife's qualification. This was the case here, and Mr Stark ought therefore to be enrolled as a commissioner of supply.

Argued for the respondents—(1) A heritable creditor, even if he drew the rents of the subjects, was not infest in the meaning of the Act; he was there only temporarily, and the Act intended that only persons who had a permanent interest in the subjects should be eligible as commissioners of supply. (2) It was objectionable that the appellant here should combine his own qualification with that of his wife in order to make up the necessary qualification for a commissioner of supply.

The Lord Ordinary on the Bills (KINNEAR) dismissed the appeal with expenses.

"*Opinion.*—I am of opinion that the determination of the Commissioners is right, and that the appeal must be dismissed. The appellant is not the proprietor or the husband of a proprietor infest in lands and heritages within the county of the value required as a qualification for the office of commissioner of supply. He is the husband of a creditor who is in actual possession of the rent by virtue of a decree of mails and duties following upon a bond and disposition in security. But such a bond is not a title of property, but a burden upon the infestment of the true proprietor. It is unnecessary to consider whether the appellant's wife may not for certain purposes be regarded as a proprietor under the provision as to the interpretation of that word contained in section 62 of the statute. For the words interpreted in that section are not to receive the extended construction there given to them if the nature of the provision in which they occur or the context of the Act are repugnant to that construction; and I am of opinion that the nature of the provision contained in the 19th section, and the terms in which that section is expressed, are inconsistent with the construction for which the appellant contends."

Counsel for Appellant—Dickson. Agents—J. & J. Ross, W.S.

Counsel for Respondents—Jameson. Agents—C. & A. S. Douglas, W.S.