no separate interest was here given to the wife so as to be separate estate in her person unattachable for her husband's debts, and I think therefore that the trustee for creditors was right in refusing to recognise this claim.

LORD KINNEAR—I agree. The effect of this provision was to give £1000 belonging to the husband to the wife to administer for his benefit, and I do not see how her claim to money thus set aside for her husband's benefit can be preferred to that of his creditors.

LORD ADAM was absent.

The Court adhered.

Counsel for the Pursuer and Reclaimer—Ure—Cullen. Agents—Dundas & Wilson, C.S.

Counsel for the Defender and Respondent — Rankine — Maconochie. Agents — Maconochie & Hare, W.S.

Tuesday, July 10.

FIRST DIVISION.

[Court of Exchequer.

THE BURNLEY STEAMSHIP COMPANY, LIMITED *v.* AIKEN (SURVEYOR OF TAXES).

Revenue—Income-Tax—Profits of Trade—Allowance for Depreciation of Plant—Income-Tax Act 1842 (5 *and* 6 *Vict. cap.* 35), *Schedule D—Customs and Inland Revenue Act* 1878 (41 *Vict. cap.* 15), *sec.* 12.

Section 12 of the Customs and Inland Revenue Act 1878 provides that in assessing the profits of any trade or adventure chargeable under Schedule D of the Income-Tax Act, the Commissioners shall allow such deduction as they may think reasonable as representing "the diminished value by reason of wear and tear during the year" of any plant used for the purposes of the concern.

Held that a shipowner was not entitled under this section to an allowance for depreciation in the value of his ship caused by better vessels being built.

The Burnley Steamship Company, Limited, the owners of the steamship "Burnley," which was employed for carrying cargo for hire, were assessed, under Schedule D of the Income-Tax Acts for the year ending 5th April 1894, on the sum of £327. They appealed against the assessment to the Commissioners for General Purposes, objecting that a sufficient sum had not been allowed in respect of diminished value under the provisions of the Customs and Inland Revenue Act 1878. The depreciation allowed to the company under the assessment had been fixed on the basis of deducting 5 per cent. from the cost of the ship for the first year of the existence, and of deducting 5 per cent. from the written down value from each subsequent year.

After hearing evidence the Commissioners found the deduction at the rate of 5 per cent. upon the written-down value from year to year reasonable in the case of a vessel such as the "Burnley," if applied as an average rate over a series of years, and accordingly confirmed the assessment.

The company being dissatisfied with this decision, the present case was stated for the opinion of the Court of Exchequer.

The following note was appended to the case—"The Commissioners in this case were asked by the appellants to take into consideration, in deciding what rate was just and reasonable, the facts (1) that ships frequently become obsolete and of less earning power before they were physically worn out; and (2) that their market or sale value might and frequently did fall below their value as fixed by the depreciation rate allowed in making the assessment or even that proposed by the appellants. Evidence was led on both these points. The Commissioners are of opinion that the words 'diminished value by reason of wear and tear,' used in section 12 of the Customs and Inland Revenue Act 1878, do not cover (*a*) loss of earning power owing to plant being rendered more or less obsolete through the introduction of improved or other plant, or (*b*) diminution in market value apart from its having been caused by wear and tear."

Section 12 of the Customs and Inland Revenue Act of 1878, provides—"Notwithstanding any provision to the contrary contained in any Act relating to income-tax, the Commissioners for General or Special Purposes shall, in assessing the profits or gains of any trade, manufacture, adventure, or concern in the nature of trade, chargeable under Schedule D, or the profits of any concern chargeable by reference to the rules of that schedule, allow such deduction as they may think just and reasonable as representing the diminished value by reason of wear and tear during the year of any machinery or plant used for the purposes of the concern, and belonging to the person or company by whom the concern is carried on." . . .

Argued for the Burnley Steamship Company—The Act of 1842 only provided that allowance should be made for the actual cost of repairs, but under the Act of 1878 it was provided that allowance should be made for diminished value by reason of "tear and wear." These words were susceptible of construction, and should be construed liberally, for the object of the clause was to remove an injustice, and the same considerations which justified an allowance for tear and wear would justify the allowance for which the company contended. Liberally construed, the words "tear and wear" would cover depreciation caused by newer and better vessels being built. This contention derived support

from the views expressed in *The Caledonian Railway Company* v. *Special Commissioners of Income-Tax*, November 18, 1880, 8 R. 89.

Argued for the Surveyor of Taxes—The words "wear and tear" could not be contended to include depreciation caused by plant becoming obsolete and out of date.

At advising—

LORD PRESIDENT — Mr Dickson has very properly admitted that if the question were to be determined on the Act of 1842 he has no case. The Act of 1878 was passed because the Act of 1842 did not allow for anything but a certain amount of repair, and accordingly it is really on the Act of 1878 that this question turns. Now, I can quite follow the argument by which it is maintained for the shipowners that a logical carrying out of the policy of the Act of 1878 might lead to some further extension of the deductions. I am not saying that that is a necessary result or that the argument is sound, but it is at all events plausible. But what we have to do is to consider whether the Act of 1878 gives the relief now claimed, and I think quite clearly it does not. Taking the terse statement of the contention of the appellants in the note to the case, what they ask is that they shall have an allowance for loss of earning power owing to the plant being rendered more or less obsolete through the introduction of improved or other plant. Now, the introduction of improved or other plant means its introduction in the ships of other people; and, accordingly, the state of the argument is this, can we say that Mr Dickson's ship has suffered wear and tear because other shipowners have built better ships? It seems to me that that is a fair statement of the contention, and I think that it answers itself. The words "diminution of value through wear and tear in a year" plainly point to the physical deterioration going on in the subject which is being considered, and to bring in under these words the fact that relatively the ship is now of less value because during the year other people have built better ships seems to me to strain the language in a way which is entirely unwarranted. I am therefore for refusing the appeal.

LORD M'LAREN—I agree with your Lordship, and on the same grounds. It seems to me that the depreciation which is claimed under the head (*a*) in the note appended to the Commissioners' opinion, if it refers to depreciation such as will affect the earning capacity of the ship during the actual year, then that is already allowed for, because on the income side of the account the amount of freight or income earned is less, and therefore less tax is paid. But if it means, as I understand the argument, that the vessel through competition with other vessels is less able to earn freight during the remainder of its existence, then I think, on the principle of the case of the *Coltness Iron Company* and other cases of that class, no deduction can be made upon that head, because the assessment is not made upon capital but upon income, and the principle of the Act is that you pay income-tax upon a subject which may be continually diminishing in value, and when it is exhausted you have no longer any tax to pay because the income ceases. An exception, and only one, has been admitted to that somewhat hard principle of taxation, and that is the allowance to be made for wear and tear, but on a fair construction I think wear and tear means nothing more than the physical depreciation of the subject apart from its being rendered less useful by the discovery of better machinery or better modes of doing the same thing. I am therefore of opinion that the Commissioners have rightly rejected the claims made under the two heads (*a*) and (*b*).

LORD KINNEAR concurred.

LORD ADAM was absent.

The Court affirmed the determination of the Commissioners.

Counsel for the Steamship Company—C. S. Dickson—Wilson. Agents—J. & J. Ross, W.S.

Counsel for the Surveyor of Taxes—Comrie Thomson—A. J. Young. Agent—P. J. Hamilton Grierson, Solicitor of Inland Revenue.

Wednesday, July 11.

FIRST DIVISION.

GARDNER & COMPANY *v.* LINK AND OTHERS.

Company — Winding-up — Petition by Creditor — Opposition of Majority of Creditors—Companies Act 1862 (25 *and* 26 *Vict. cap.* 89), *secs.* 79 *and* 80.

The creditor of a company having charged for payment of his debt, and the *inducice* having expired without payment being made, he presented a petition for a winding-up order. The application was opposed by creditors who held much the greater part of the debt due by the company, on the grounds that a liquidation would be injurious to the just interests of the creditors, and that the petitioner would get nothing by it.

The Court *held* that the petitioner was entitled to the order craved, the respondents having failed to show that there were no assets which could be made available in the liquidation for payment of his debt.

Observations on *The Chapelhouse Colliery Company's case*, L.R., 24 Ch. Div. 259.

On 18th June 1894 G. P. Gardner and Company presented a petition for the purpose of having the Columba Steamship Company wound up by the Court.