pleted the construction of the said works. The pursuers say there were eight weeks' delay, but allow two weeks' extension, and claim for six weeks' delay. It appears to me, upon a sound construction of clause 24, that the pursuers' demand fails, for the clause was not intended to apply to the case where another contractor completes the work. In support of this view the provision that the architect may allow an extension of time is of importance. The contract has been so innovated upon that no application to the architect for an extension of time by the original contractor is possible. The reason is that the pursuers have exercised their rights under the 26th clause, which entitles them to enter and employ any other person to complete the works. Upon completion the architect is to verify the amount of the expenses properly incurred consequent on and incidental to the default of the original contractor, who is either to receive or pay, as the amount may be greater or less than the sum that would have been due to him if he had completed the works. This in the circumstances displaces the 24th clause which provides for liquidate damages.

I may add upon the relevancy of the pursuers' case on this head that I am unable to see how the pursuers can charge Brown & Sons under a liquidate damages' clause because they failed to complete the works by 31st January 1910, when on their bankruptcy they made a contract with Henshaw & Sons to complete by 31st December 1909. The respondents submitted an agreement that the pursuers' averments of damage were wanting in specification, but I do not think there is anything in this. I am accordingly of opinion that the reclaiming note should be refused.

The Court adhered.

Counsel for Pursuers (Reclaimers)—Murray, K.C.—D. Anderson. Agents—Hume M'Gregor & Company, S.S.C.

Counsel for Defenders (Respondents)—Constable, K.C.—M. J. King. Agents—Simpson & Marwick, W.S.

Friday, February 23.

FIRST DIVISION.

INCORPORATION OF TAILORS OF EDINBURGH, PETITIONERS.

Friendly Society—Trade Incorporation—Alteration of Bye-Laws—Act for the Abolition of the Exclusive Privilege of Trading in Burghs in Scotland (9 *and* 10 *Vict. cap.* 17), *sec.* 3.

The only surviving member of an ancient incorporation of tailors petitioned the Court, under section 3 of the Act for the Abolition of the Exclusive Privilege of Trading in Burghs in Scotland, to give its sanction to certain alterations in the bye-laws of the incorporation. The petition was opposed by representatives of the tailors' trade on the ground that the petitioner's proposal was really a scheme to endow his own relatives, and the respondents suggested that they themselves should be allowed to submit a scheme, or alternatively that the Court should remit to some person to submit one.

The Court dismissed the petition *de plano*, *holding* that it was not "just and expedient" to sanction the proposed alterations, and (*dub.* Lord Dundas) that the Court was not entitled to adopt the suggestion of the respondents that it should create a scheme of its own and impose it upon the incorporation.

The Act for the Abolition of the Exclusive Privilege of Trading in Burghs in Scotland (9 and 10 Vict. cap. 17), section 3, enacts—"It shall be lawful for every such incorporation from time to time to make all bye-laws, regulations, and resolutions relative to the management and application of its funds and property, and relative to the qualification and admission of members, in reference to its altered circumstances under this Act, as may be considered expedient, and to apply to the Court of Session by summary petition for the sanction of the said Court to such bye-laws, regulations, or resolutions; and the said Court, after due intimation of such application, shall determine upon the same and upon any objections that may be made thereto by parties having interest, and shall interpone the sanction of the said Court to such bye-laws, regulations, or resolutions, or disallow the same, in whole or in part, or make thereon such alterations or adject thereto such conditions or qualifications as the Court may think fit, and generally shall pronounce such order in the whole matter as may to the said Court seem just and expedient."

On 17th October 1911 the Incorporation of Tailors of Edinburgh presented a petition to the First Division of the Court for sanction of alterations upon the existing bye-laws and regulations of the Incorporation in terms of the Act 9 and 10 Vict. cap. 17, section 3.

The petition set forth, *inter alia*—"2. The petitioning Incorporation is one of the ancient crafts or trade incorporations of Edinburgh. It was constituted under Seal of Cause of the Town Council of Edinburgh, the oldest constitutive document being a charter or act of the Town Council of Edinburgh, dated 26th August 1500. Up to the date of the said recited statute it possessed, like other similar incorporations, certain exclusive trading privileges and rights which were abolished by section 1 of the statute above recited. It also from ancient times possessed accumulated funds which were derived entirely from payments by intrants and members and were not contributed to by any outside person or persons, body or bodies. Said funds were applicable and were applied to various competent purposes of the Incorporation, and, *inter alia*, for the mutual benefit of members and their widows and

children in respect of old age, sickness, and bereavement.

"3. During the course of its history prior to 1846 the Incorporation had been in constant use and had been entitled to pass of its own authority and without the sanction of the Court all bye-laws, regulations, and resolutions relative to the conditions of application for membership, of qualification therefor, and of admission, and relative to the investment, use, and application of the said accumulated funds.

"4. In 1853 the Incorporation applied, in pursuance of the said recited statute, to the Court of Session for sanction of certain bye-laws and regulations for the administration of the Incorporation and its affairs. After sundry procedure in said application the Court upon 11th June 1853 pronounced an interlocutor approving of the bye-laws and regulations as amended in that process. . . .

"5. As time went on the membership of the Incorporation diminished. In 1883 the number of members was three, in 1886 it was two, and by the death of James Dundas Grant, advocate, in 1900 it was reduced to one. The causes of this diminution were efflux of time, the natural wastage by death of the membership, and the stringency of the conditions imposed by way of qualification upon all applicants by the said bye-laws and regulations. Of old the chief sources of new intrants were found in two favoured classes—(*a*) those qualified by relationship as son or son-in-law of a member, or (*b*) those qualified by apprenticeship to the craft. The latter avenue has for many years been closed, apprenticeship not being now in observance. The supply of new members by way of relationship has been obstructed by reason of the requirements of the first and second of said bye-laws, and in particular by reason of the requirement that an applicant must have been regularly bred to the craft, and because in the altered circumstances of the Incorporation the entry-moneys, calculated according to the bye-laws and regulations, have become prohibitive.

"6. There are at present no annuitants or claimants for allowances (other than the aforesaid member) possessing any claim, whether present or contingent, against the Incorporation or its funds. In the present position of affairs, and unless the alterations hereinafter set out or similar alterations upon the bye-laws are effected, it is certain that upon the decease of the present member the Incorporation will cease and determine and its said accumulated funds, subscribed as aforesaid, will be derelict. The said funds amounted, as at 30th June 1911, to about £8250.

"7. The present member was admitted in 1870, and he married in the year 1879. His wife is alive, and there are one son and two daughters of the marriage alive and all over twenty-one years of age. It has been held, as the result of an investigation had into the affairs and funds of the Incorporation, that the present member Mr Robert Gillespie Muir must be held, upon the dealings had with the funds, to have failed to pay the marriage tax provided by article VIII of the bye-laws and regulations. Accordingly, in virtue of the declaration in that article contained, his wife, if she survives him, and his children have forfeited all benefit from the funds of the Incorporation. As there will be, and can be in the event of the said present member dying, no claimants or beneficiaries on the said funds whose interests can compete with the equitable claim of such widow and children, the Incorporation is of the opinion that the said forfeiture ought in the circumstances to be relaxed in favour of the said wife, and that she ought to be restored to the position as regards a claim upon the fund in the event of surviving her husband, which for many years after her marriage she was understood to possess. As regards the said children, they are all now beyond the age for receipt of children's benefits.

"8. The scale of funeral allowance under the existing bye-laws and regulations appears to the Incorporation to be inadequate in view of changed habits and customs in this regard.

"9. In the opinion of the Incorporation, in view of its altered circumstances under the said recited statute and of the diminution in its membership, it is now expedient that certain changes should be made in its bye-laws and regulations relative to the qualification and admission of members and to the management and application of its funds and property. The changes contemplated consist in—(1) facilitating the admission of sons and sons-in-law of present or future members by the removal of the said obstacle to the admission of such members, imposed by the first and second bye-laws, which it is thought is obsolete and inappropriate to the present circumstances of the Incorporation, and by diminishing and simplifying the entry-moneys to be exacted; and (2) permitting an increased funeral allowance in respect of the change in habits that has taken place in this regard. In the opinion of the Incorporation it is also just and equitable to exempt the present member's widow from the operation of the said forfeiture clause.

"10. Accordingly there was laid before the Incorporation in writing, at its quarterly meeting on 6th June 1911, five resolutions containing the proposed alterations upon the existing bye-laws and regulations and the said proposal for exemption. The adoption of the said resolutions having been duly proposed, they lay upon the table until the next quarterly meeting held upon 1st August 1911, at which meeting they were discussed and approved. . . .

"11. It was further resolved at the said meeting held on 1st August 1911 that, in terms of the Act 9 and 10 Vict. cap. 17, application should forthwith be made to your Lordships for the sanction of the Court to the said resolutions."

"*Resolutions.*

"1. That article 1 of the bye-laws and regulations of this Incorporation be altered by the addition thereto of the words 'Pro-

vided that in the case of sons or sons-in-law of present or future members proposing to enter it shall not be necessary that such entrants shall have been regularly bred to the craft.' . . .

"3. That article 6 of the bye-laws and regulations of this Incorporation be altered by deleting therefrom the words 'If either a son or son-in-law of a member, regularly bred to the business, shall enter the Incorporation, his entry-money shall be calculated upon the data above prescribed for the case of stranger-entrants, with the exception that instead of 25 per cent., only 10 per cent. shall be added to the net result of the calculation'; and by adding at the end thereof the following words — 'The entry-money of a son or son-in-law of a member shall be a single payment of £100, or in his option four annual payments of £25 each.' . . .

"5. That the widow of any present member of this Incorporation shall be entitled to such annual sum as the state of the funds can from time to time afford in terms of the bye-laws and regulations and existing practice of the Incorporation, exempt from and notwithstanding any disability or forfeiture in respect of marriage tax or any other dues unpaid, whether incurred under article 8 of the said bye-laws and regulations or otherwise."

The petitioner craved service upon James Campbell Dewar, C.A., Edinburgh, who had been appointed judicial factor upon the estate of the Incorporation.

On 23rd November 1911 the Court pronounced an interlocutor appointing intimation of the petition to the Lord Advocate as representing the public interest, the Corporation of the City of Edinburgh, and the said James Campbell Dewar as trustee on the sequestrated estates of the said Robert Gillespie Muir, and appointing the insertion of an advertisement in the *Scotsman* intimating the petition "To the Tailors' Trade in Edinburgh."

Mr Dewar, as judicial factor on the estate lodged answers, which set forth, *inter alia*—"It is admitted that since 1900 the only member of the Incorporation has been Mr Robert Gillespie Muir. The present petition, though bearing to be presented in name of the Incorporation, is really presented in his own interest. Mr Muir's rights in the funds of the Incorporation are, as after explained, vested in his trustee in bankruptcy for behoof of his creditors, and no other person has at present any claim on said funds. . . .

"In an action at the instance of Muir's trustee against the judicial factor of the Incorporation, raised on 6th April 1907, the Lord Ordinary (Guthrie) found and declared that the pursuer was entitled to payment from and after August 1906 of the whole free income of the funds of the Incorporation during Muir's lifetime, so long as he remained the sole member of the Incorporation, subject to deduction of debts, if any, due by Muir to the Incorporation. The bankrupt's interest in the funds of the Incorporation is the only property which he possesses and out of which the claims of his creditors can be satisfied. . . .

"The alterations proposed on the 1st and 2nd bye-laws, in the opinion of the respondent, involve a fundamental change in the objects of the Incorporation inasmuch as they may ultimately confer upon the family and descendants of a particular individual, irrespective of any trade qualification, the benefits which under the constitution of the Incorporation are intended solely for those who are 'bred to the craft.' The respondent is not aware that it has become impossible for persons proposing to enter the Incorporation to acquire the trade qualification. If it is still possible, the proposed alteration would be to the manifest prejudice of such applicants. In any event the respondent submits that such a complete diversion of the funds is incompetent.

"The alterations proposed on the 6th bye-law will greatly increase the advantage with regard to entry-money already possessed by the sons and sons-in-law of members over strangers.

"Further, according to the previous practice of the Incorporation, the dues of entry have been calculated on the footing that each entrant should bring into the Incorporation an amount which with accumulations would be equivalent to the benefits which he would ultimately receive, so that the interest of existing members should not suffer. This principle is abandoned in the proposed alteration, under which entrants at the near hand would be favoured at the expense of others who paid dues of entry on the old scale. In particular, this would seriously prejudice the right and interest of R. G. Muir in the funds of the Incorporation which is at present vested in his trustee for behoof of his creditors. The claim of the said Mrs Muir to participate in the benefits of the Widows' Fund has already been, as above explained, under the consideration of the Court and has been refused.

"The respondent submits that the proposed alterations on the bye-laws of the Incorporation should not receive the sanction of the Court."

The Lord Advocate as representing His Majesty as *ultimus hæres* lodged answers, which set forth, *inter alia*—"It is admitted that Mr R. G. Muir is the sole surviving member of the Incorporation. His right therein, which is presently vested in his trustee in bankruptcy, the respondent James Campbell Dewar, C.A., for behoof of Mr Muir's creditors, consists in a life annuity from the funds of the Incorporation. The yearly interests accruing from the funds of that body are more than sufficient to meet said annuity. On its expiry the whole capital and estate of the Incorporation will fall to His Majesty as *ultimus hæres*.

"The said Incorporation does not exist for charitable purposes, and although it is possessed of certain powers in that direction it is not a charity in the sense that would entitle the Court to settle a scheme

for the future administration of its funds. It is, in fact, truly a benefit or friendly society with a corporate existence; its members are such *ex contractu*, and have paid and pay for the benefits which they are entitled to receive from it, and only such as pay their proper contributions are entitled to share in those benefits. The incidental powers which the Incorporation possesses to distribute charity do not detract in the least from its fundamental character of a friendly or benefit society. . . .

"The proposed scheme also involves radical changes in the constitution of the Incorporation, in the class of persons eligible to be members, and in the conditions of membership, changes which if carried out will clash with the existing objects of the Incorporation, and with the interests of His Majesty as *ultimus hæres*. . . .

"The respondent submits that the proposed diversion of the funds of the Incorporation from their legitimate uses is *ultra vires* and incompetent, and that the petition should be refused."

The Lord Provost, Magistrates, and Council of the City of Edinburgh lodged answers, which set forth, *inter alia*—"The respondents, the Lord Provost, Magistrates, and Council of the City of Edinburgh, subject to the explanations after written, admit the statements in the petition, and for any interest they may have they concur in the prayer thereof, except in so far as the petitioners propose to dispense with the necessity for entrants being regularly bred to the craft in the case of the sons and sons-in-law of present or future members.

"The respondents, as the successors of the original granters of the Seal of Cause, under which the Incorporation of Tailors of Edinburgh was formed, are entitled, subject to the existing interests in the funds and estate of the said Incorporation, on the application or with the concurrence of the persons holding such interests, to recal and cancel the Seal of Cause or to modify the conditions of the same, and to prescribe the conditions of administration and future benefit of the funds and estate of the said Incorporation. Upon the death of the last surviving member of the said Incorporation the fee or capital of the said funds and estate will or may revert to the present respondents, who accordingly have an interest in the administration and ultimate destination of the said funds and estate. . . .

"In the event of the prayer of the petition being granted dispensing with sons and sons-in-law of members serving an apprenticeship, it should be subject to approval of the existing member or members or principal masters of the Incorporation for the time being, as required by the said provision. The respondents object to the admission of members to the Incorporation who are not qualified or eligible in terms of the Seal of Cause and the provision before mentioned, without the respondents' consent."

Mr Dewar, as trustee on the sequestrated estates of John Gillespie Muir, lodged answers which set forth, *inter alia*—"3. In an action at the instance of Mr Muir's trustee against the judicial factor of the Incorporation raised on 6th April 1907, the Lord Ordinary (Guthrie) found and declared that the pursuer was entitled to payment from and after August 1906 of the whole free income of the funds of the Incorporation during Muir's lifetime, so long as he remained the sole member of the Incorporation, subject to deduction of debts, if any, due by Muir to the Incorporation.

"4. The whole proceedings narrated in the petition have been carried through without any intimation to the respondent or without his consent being asked or obtained, although the effect of the proposed alterations will be seriously to affect Mr Muir's interest in the funds of the Incorporation presently vested in the respondent. . . .

"8. The proposed alterations will diminish the interest of Mr Muir in the funds of the Incorporation presently vested in the respondent, both by facilitating the entry of new members, and by changing the principle upon which entry dues are calculated. The alterations will also operate only in favour of Mr Muir's sons and sons-in-law and their descendants, and will thus benefit his family at the expense of his creditors.

"9. The respondent submits that the prayer of the petition should be refused in so far as it affects Mr Muir's interest in the funds of the Incorporation which is vested in the respondent. He further submits that in the circumstances no alteration should for the present and until the claims of Mr Muir's creditors are satisfied be made on the bye-laws which would diminish Mr Muir's rights in the funds of the Incorporation which are vested in the respondent."

Councillor John Harrison and others, who had been authorised by a meeting of the members of the tailors' trade in Edinburgh to act on their behalf, lodged answers, which set forth, *inter alia*:—"These respondents, on behalf of the tailors' trade in Edinburgh, respectfully submit, for the reasons stated in the answers lodged by James Campbell Dewar, judicial factor on the estates of the said Incorporation of Tailors in Edinburgh, that the resolutions mentioned in the petition as well as the suggested alterations of the bye-laws and regulations of the Incorporation, should not receive the approval of your Lordships.

"These respondents further submit that the existence of the said Incorporation ought to be maintained and continued in the interests of the tailors' trade of the city of Edinburgh. A considerable number of the members of the tailors' trade in Edinburgh have indicated their desire, in the event of the bye-laws and regulations being so altered as to admit of their doing so, to become members of the Incorporation. But the respondents conceive that before the Incorporation can be properly resuscitated it is necessary, having regard

to the present condition of the Incorporation, (1) that temporary machinery should be provided for the admission of new members, and (2) that certain of the bye-laws and regulations hitherto in force should be altered so as to bring the Incorporation within reach of ordinary members of the trade in Edinburgh. These respondents are prepared, if such a course is considered competent, themselves to submit for the consideration of the Court a scheme for the amendment of the existing regulations and the future administration of the Incorporation and its funds. Alternatively, they would respectfully suggest that the Court should appoint the judicial factor as an officer of Court to submit a scheme, in which case these respondents will be prepared to submit all information at their disposal and all suggestions which may occur to them either to the judicial factor or to the Court or to any person to whom such scheme may be remitted by the Court for report."

The petitioner moved that the petition and the answers, except those for Councillor John Harrison and others, be remitted to a reporter, and argued—The Incorporation was a full legal incorporation—*University of Glasgow* v. *Faculty of Physicians and Surgeons*, August 7, 1840, 1 Robinson's Appeals 397, at p. 406; *Incorporation of Cordiners, Petitioners*, 1911 S.C. 1118 (*per* Lord President at pp. 1124-5), 48 S.L.R. 912 (*per* Lord President at p. 915). A corporation always sued in its own name and could act through a single member—*United Incorporation of Masons and Wrights of Haddington, Petitioners*, July 20, 1881, 8 R. 1029, 18 S.L.R. 550; *Anderson* v. *Campbell, Deacon of the Skinners of Ayr*, July 31, 1736, Elchies, vol. i., s.v. "Jurisdiction," No. 9; *Rex* v. *Richardson*, April 12, 1758, 1 Burrow 517 (*per* Lord Mansfield at p. 541). By the Act 9 and 10 Vict. cap. 17, section 3, alterations in the bye-laws of the Incorporation could only be initiated by the Incorporation itself. The Lord Advocate, the Town Council, and the trustee had no *locus standi* at all, and although the judicial factor and the tailors' trade had a *locus standi* their answers were irrelevant. Further, with regard to the answers for the tailors' trade, they were not sufficiently specific, in respect that they did not show what the scheme was which the tailors' trade proposed, and the Court could not force upon the Incorporation any scheme substantially different from the existing scheme — *Incorporation of Cordiners of Edinburgh* v. *Allan*, 1907 S.C. 654 (*per* Lord President at p. 665), 44 S.L.R. 495 (*per* Lord President at p. 503).

The respondent Mr Dewar, as judicial factor on the estate of the Incorporation, moved that the prayer of the petition be refused, and, as trustee on the sequestrated estates of Mr Muir, moved that it be refused in so far as it affected Mr Muir's interest in the funds of the Incorporation, and argued—The petitioners' contention that he, Mr Dewar, had no *locus standi* as trustee, was wrong, because any person with an interest was entitled to appear, and as trustee he had an interest. The alterations of the bye-laws proposed by the petitioner should not be sanctioned, because it was a scheme to benefit his own family at the expense of the Incorporation and of his creditors—*Muir* v. *Rodger*, November 18, 1881, 9 R. 149 (*per* Lord Ordinary (Curriehill) at p. 152), 19 S.L.R. 121 (*per* Lord Ordinary (Curriehill) at p. 123).

The respondent, the Lord Advocate, as representing His Majesty as *ultimus hæres*, moved that the prayer of the petition be refused, and argued — Apart from Mr Muir's life interest, the whole interest in the Incorporation was now in the Crown as *ultimus hæres*, and therefore the respondent had a *locus standi*, but the tailors' trade generally had no interest, because the benefits of the Incorporation were only intended for a special part of the trade. This was not a charity, and it was not competent for the Court to suggest a new scheme—*Mitchell, &c.* v. *Burness*, June 19, 1878, 5 R. 954 (*per* Lord President at pp. 958-9 and Lord Shand at p. 960), 15 S.L.R. 640 (*per* Lord President at p. 642 and Lord Shand at p. 643); *Smith* v. *Lord Advocate*, March 11, 1899, 1 F. 741, 36 S.L.R. 547. The petitioners' proposals involved an essential alteration of the constitution of the Incorporation, which it was not competent for the Court, either at common law or under the Act 8 and 9 Vict. cap. 17, to sanction—*Incorporation of Wrights, &c., of Leith*, June 4, 1856, 18 D. 981 (*per* Lord President, Lord Ivory, and Lord Deas at p. 983 *et seq.*) The Court had no power to repeople the Incorporation.

The respondents the Lord Provost, Magistrates, and Council of the City of Edinburgh moved that the prayer of the petition be refused, in so far as it would result in admitting to membership of the Incorporation persons not qualified by the Seal of Cause, without the consent of the respondents, and argued—The Town and not the Crown was the ultimate heir of the Incorporation, because the Town was the parent incorporation which had established the daughter incorporation by granting her a Seal of Cause—*University of Glasgow* v. *Faculty of Physicians and Surgeons*, *supra*, at pp. 400-2-3. Therefore the Town had an interest to appear and a *locus standi*. The petitioner's proposals, if sanctioned, would cancel the main provision of the Seal of Cause, and therefore they should be rejected—*Gray* v. *Smith*, June 30, 1836, 14 S. 1062, *per* Lord Glenlee, at p. 1068.

The respondents Councillor John Harrison and others, on behalf of the tailors' trade in Edinburgh, moved that the prayer of the petition be refused, but that they should be allowed to submit a scheme, or that the Court should remit to the judicial factor or some other person to submit one, and argued — The Incorporation was a trust for the benefit of existing and future members, and thus in a sense for the benefit of the trade generally—*Sadler* v. *Webster*, November 14, 1893, 21 R. 107, *per* Lord Kyllachy at p. 115, and Lord

M'Laren at p. 115, 31 S.L.R. 89, *per* Lord Kyllachy at p. 93, and Lord M'Laren, at p. 94. The respondents had an interest in the petitioners' proposals. For example, the question of the amount of the entry-money interested them. They were qualified tailors and eligible for admission to the Incorporation, but the machinery whereby they could be admitted was lacking. It was competent for the Court to make such an order as would allow temporary machinery to be set up, and thereafter the Court could modernise the arrangements. The Court had power to do so under its *nobile officium*, for it had undoubtedly jurisdiction in every kind of trust. There was no need to invoke the doctrine of *cy pres*. The proposal was merely to alter the amount of the entry-money and the conditions of admission. That was not an alteration of the constitution. It was merely an alteration of the bye-laws, and the Court had power to alter them under section 3 of the Act 9 and 10 Vict. cap. 17. It was true that under section 3 the application for an alteration of the bye-laws should be made by members of the Incorporation, but under the circumstances the respondents' proposals were reasonable and competent.

At advising—

LORD PRESIDENT—This is a petition for the approval of alterations in its bye-laws, which are put forward by the Incorporation of Tailors. Now the Incorporation of Tailors is in a very peculiar position—it has dwindled down to one member; he is bankrupt; there is a judicial factor upon the funds of the Incorporation, and the whole of the income which the bankrupt takes out of the funds of the estate has been by decree assigned to his trustee. The bankrupt has asked us to sanction a scheme which is really a scheme for the endowment of his own relatives, and answers to this application have been lodged both by the judicial factor and by the trustee in bankruptcy, as also by the town of Edinburgh and by the Crown. Appearance is also made for a gentleman who represented a meeting of the tailoring trade.

I have no doubt that we should not give our confirmation to the bye-laws as proposed, because I think it is simply a scheme for the endowment of the one member's family, and, incidentally, for the cutting down of the revenue, which revenue in one sense goes to himself, but really goes to his creditors. I should not myself think the latter consideration to be material; the former seems to me to be fatal. The scheme is not one for the encouragement of the tailoring trade in any way.

The Crown and the town are really here with a view to what may ultimately happen. I think it is premature to say what may ultimately happen if this Incorporation comes to extinction by the disappearance of all its members. Such an occurrence is not at present imminent, because the present member is not particularly old, and it is to be hoped that he will still live for a considerable time. There is obviously therefore no decree which could be pronounced which would in any way benefit those objectors at this time.

The only difficulty I have had is in connection with the appearance of the representatives of the tailoring trade. One cannot help having the feeling that it is a great pity that what ought really to be a fund for the benefit of the tailoring trade should be allowed to perish because the conditions of entrance are such that they do not fit the present conditions of that trade; and if this were in any sense a petition to the *nobile officium*, I should be very glad to give effect to such considerations.

It is quite clear that the idea at the time when the Act was passed by which the exclusive trading privileges were taken away—and at that time these societies were allowed to continue for benefit purposes—it was never expected that these societies would dwindle away to nothing, and they never would have been allowed to dwindle away if it had not been for the selfishness of particular members. This particular society came to consist of only two members, the present petitioner and a gentleman who is now deceased—a gentleman who was an advocate, and who, whatever he may have been in his early years, was not really a proper person to become the only representative, along with another, of an endowment for tailors. He died, and the membership came down to one.

This application is not to the *nobile officium* of the Court, and it cannot be. The Court here is exercising merely its statutory jurisdiction. It is put in the position of considering the bye-laws put forward by the Incorporation. It is quite true that the terms of the Act which confers this jurisdiction is wide in this sense, that when alterations are proposed the Court has power to cut and carve upon them, and may make such alterations upon them as it may think just. But I cannot bring myself to think that that means that the Court is entitled to form a scheme of its own and then, so to speak, thrust it down the mouth of the unwilling Incorporation. I think it is quite evident that any scheme which would benefit the class which Mr Harrison represents would really be something entirely different from that which exists at present, and I do not think it is the proper function of the Court to create such a scheme and to impose it upon an unwilling Incorporation.

Accordingly I think the only thing to do is to dismiss the petition *de plano*. As regards the future I cannot say, but two possible solutions suggest themselves to me. Either the existing tailors may go to the sole incorporator and make terms with him, or else others may force their way into the Incorporation and, having got there, propose a more liberal scheme.

There is no question of the possibility of the latter solution; the test which the Incorporation requires is not an impossible

test, for I suppose there are still persons in the tailoring trade who can cut out clothes and make an essay.

Failing some such solution the time will come when the Incorporation will in one sense disappear, and as to what will happen then I say nothing. The result is that the petition must be dismissed.

LORD DUNDAS—Your Lordships, I understand, are both of opinion that this matter ought to be disposed of *de plano* upon the petition and answers. On this footing I agree that the petition should be refused; because the proposed resolutions are not, in my judgment, such as the Court ought to sanction or approve. I confess, however, that I should not have been sorry if your Lordships had seen your way, in the very peculiar circumstances of the case, to obtain some further information, by way of remit or otherwise, particularly as to the position and rights (if any) of the respondents Councillor John Harrison and others, in order to judge how far they are "parties having interest" (section 3 of 9 and 10 Vict. cap. 17), and whether we could arrive at any "order in the whole matter . . . just and expedient," which would give effect to their desires, when we knew precisely what these are, for the legitimate continuation of this old Incorporation.

I observe that in the *Cordiners' (1st) Petition* (1907 S.C. 654, see pp. 664, 665) the Court refused to sanction bye-laws proposed by compearing respondents because they were not "put forward by the general members of the Society," and not such as the Court should force upon the Society "against the wishes of the Society in general." But the respondents were at least allowed to submit their proposals; and in the present case there are no "general members of the society," and there is no "society in general," only Mr Muir; and it remains to be seen what attitude "the Incorporation" (such as it is) would assume towards the proposals when tabled, and whether that attitude would be justifiable. It might, for all I know, turn out that the Incorporation would be willing to agree to and adopt some competent alterations of the existing bye-laws, which would preserve the funds for their original uses, and yet make it possible for the Court to sanction (under widened conditions) the resolutions contained in the petition, or some of them. But while I think it right to indicate a course which I should have been very willing to see adopted, I do not desire to dissent from the judgment your Lordships are to pronounce.

The LORD PRESIDENT intimated that LORD CULLEN concurred in his opinion.

LORD KINNEAR, LORD JOHNSTON, and LORD MACKENZIE were absent.

The Court dismissed the petition.

Counsel for the Petitioner — Fleming, K.C.—A. M. Mackay. Agents—Wishart & Sanderson, W.S.

Counsel for the Respondent (Mr Dewar as Judicial Factor and as Trustee)—Graham Stewart, K.C.—J. H. Henderson. Agent—William Considine, S.S.C.

Counsel for the Respondent (the Lord Advocate)—Mercer. Agent—Alexander Ramsay, S.S.C.

Counsel for the Respondents (The Magistrates of Edinburgh)—Wilson, K.C.—W. J. Robertson. Agent—Sir Thomas Hunter, W.S.

Counsel for the Respondents (the Tailors' Trade)—Constable, K.C.—Kemp. Agent—Robert Fleming, S.S.C.

Wednesday, February 28.

SECOND DIVISION.

GRANT AND OTHERS (GRIFFITH'S TRUSTEES) *v.* GRIFFITHS.

Succession—Husband and Wife—Mournings—Acceptance by Widow of Testamentary Provisions Declared to be in Satisfaction of Legal Rights—Claim for Mournings.

A trustee in his settlement declared that the provisions in favour of his widow therein contained "shall be deemed and taken to be in full satisfaction of all terce of lands, *jus relictæ* or legal share of moveables, and any other right or claim competent to her through my decease."

Held—following Buchanan v. *Ferrier*, February 14, 1822, 1 S. 299 (1st ed. 323)—that an allowance to the widow for mournings was not excluded by the clause quoted, and that she was entitled to such allowance in addition to her provisions under the settlement.

A Special Case was presented for the opinion and judgment of the Court by John Pattison Grant and others, trustees acting under the trust-disposition and settlement of the late Edward Griffiths, *first parties*, and Mrs Mary Jack or Griffiths, his widow, *second party*. In his trust-disposition and settlement the late Edward Griffiths, who died on 18th April 1910, made certain provisions in favour of his widow, the second party, and declared as follows:—"And I provide and declare that the foresaid provisions in favour of my said wife shall be deemed and taken to be in full satisfaction of all terce of lands, *jus relictæ*, or legal share of moveables, and any other right or claim competent to her through my decease."

The first parties *maintained* that by her acceptance of the provisions of the trust-disposition and settlement in her favour the second party's claim for mournings was excluded by the terms of the trust-disposition and settlement, while the second party maintained that she was entitled to an allowance for mournings in addition to her provisions under the settlement.

The Case contained, *inter alia*, the following *question of law*:—"(6) Is the second party entitled to an allowance for mournings out of the trust estate in addition to