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

her provisions under the said trust-disposition and settlement?"

Argued for the first parties—The claim for mournings was a provision given by the law to the widow out of the deceased's estate to enable her to appear decently at the funeral, and as such was part of her legal rights, and fell within the discharge operated by acceptance of the provisions under the settlement.

Argued for the second party—The claim for mournings was a privileged debt and part of the funeral expenses, and therefore was not excluded by such a clause as was here founded on—*Buchanan* v. *Ferrier*, February 14, 1822, 1 S. 299 (1st ed. 323)—Fraser, Husband and Wife, 2nd ed. pp. 967-8.

LORD SALVESEN—[*After dealing with questions with which this report is not concerned*]—The sixth question seems to be concluded by authority, the law of Scotland holding that an allowance for mournings is a debt of a privileged nature, just as funeral expenses are, and that a widow's claim to that allowance is not excluded by such a clause in a settlement as the one to which we were referred in this case, and which is in these terms—"[. . . *quotes*, v. *sup.* . . .]" Accordingly I am of opinion that the sixth question should be answered in the affirmative.

LORD GUTHRIE—[*After dealing with questions with which this report is not concerned*]—The sixth question is the only one which raises a question of general application, and I agree that it is conclusively settled by authority in favour of the view maintained by the second party.

The Court answered the question of law in the affirmative.

Counsel for First Parties — Sandeman, K.C.—Hon. W. Watson. Agents—Macpherson & Mackay, S.S.C.

Counsel for Second Party — Graham Stewart, K.C. — Cowan. Agents—R. R. Simpson & Lawson, W.S.

Tuesday, February 6.

FIRST DIVISION.

[Lord Cullen, Ordinary.

DUKE OF ARGYLL *v.* CAMPBELL AND ANOTHER.

Prescription—Title—Habile to Prescribe—Title by Progress—Construction by Earlier Writs—Possession Attributable to Title but not Adverse to Opponent—Conveyancing and Land Transfer (Scotland) Act 1874 (37 *and* 38 *Vict. cap.* 94), *sec.* 34.

C. held the lands of D., with their parts and pertinents, under charters which, in addition to the feudal services of watching and warding, bound the vassal to make the castle of D. patent and open to the granter and his heirs and successors at all times when required, and to uphold and maintain the fabric. The castle itself, however, was not included in the grant. It was burned down in 1810 and was not rebuilt. A., the superior, having in 1911 claimed the castle in property, C. pleaded ownership in virtue of prescriptive possession for twenty years, following on a decree of special service in favour of his father recorded in 1880, and a similar decree in his own favour as heir of his father recorded in 1908.

Held that the special service was not a habile title in the sense of section 34 of the Conveyancing and Land Transfer (Scotland) Act 1874 on which the prescriptive possession claimed could be founded, in that it was not a service to the castle of D. but to the lands of D. with the pertinents, but that it was subject to construction by the earlier titles to which it referred, and these titles showed that the possession was not exclusive and adverse to the superior, and was therefore inept to establish the prescriptive right.

Property—Title—Parts and Pertinents—Fortress—Ward Holding—Clan Act 1747 (20 *Geo. II, cap.* 50).

C. held a grant of the lands of D. with pertinents under a reddendo which included, in addition to the services of watching and warding the castle of D., the duty of making the castle patent and open to the granter and his heirs and successors at all times when required, and of upholding and maintaining the fabric. According to the law at the time the castle was not included in the original grant of the lands.

Held, in an action at the instance of A., the superior, against C., that the abolition of military services by the Clan Act of 1747 had not effected any change in the ownership of the castle.

The Conveyancing and Land Transfer (Scotland) Act 1874 (37 and 38 Vict. cap. 94), sec. 34, enacts—"Any *ex facie* valid irredeemable title to an estate in land recorded in the appropriate register of sasines shall be sufficient foundation for prescription, and possession following on such recorded title for the space of twenty years continually and together, and that peaceably without any lawful interruption made during the said space of twenty years, shall for all the purposes of the Act of Parliament of Scotland 1617, c. 12," anent prescription of heritable rights, "be equivalent to possession for forty years by virtue of heritable infeftments for which charters and instruments of sasine or other sufficient titles are shown and produced, according to the provisions of the said Act. . . ."

The Duke of Argyll, *pursuer*, brought an action against Angus John Campbell of Dunstaffnage, Argyllshire, and his mother Mrs Jane Campbell, widow of A. J. H. Campbell of Dunstaffnage, as his curator appointed in his father's antenuptial contract of marriage, *defenders*, for declarator "*First*, that the subjects following, *vide-*