sion in any way relating to the property or affairs of the said burgh of Leslie, and to cede possession of the whole heritable subjects belonging to the said burgh or the community thereof to the pursuers, in order that the pursuers may enter thereto and possess the same in terms of the foregoing findings and declarations in all time coming; prohibits and discharges the defenders from interrupting, interfering with, troubling, or molesting the pursuers or their successors in the said property, possession or administration of the same, as foresaid in all time coming; decerns and ordains the defenders to lodge an account of their intromissions with the said property or any part thereof: Finds neither party entitled to expenses, and grants leave to reclaim."

Counsel for the Pursuers—Campbell, K.C. —Sandeman. Agent—W. J. Lewis, S.S.C.

Counsel for the Defenders—Guthrie, K.C. —Anderson. Agents—Fletcher & Morton, W.S.

Thursday, May 12.

SECOND DIVISION.

[Lord Pearson, Ordinary.

WOOD *v.* WOOD'S TRUSTEES.

Expenses — Action in which Expenses Found Due Followed by Separate Action to Recover Amount.

Held that the rule is absolute that as between parties to an action all questions of expenses must be determined in the action in which the expenses are incurred.

James Wood, cab-driver, 4 Murdoch Terrace, Edinburgh, and another, raised an action against the trustees of the deceased John Wood, 2 Sciennes Hill, Edinburgh, in which the pursuers sought to recover a sum of £218, being expenses to which they had been found entitled in an action of count, reckoning, and payment at their instance against the same defenders.

In the action of count and reckoning referred to, an interlocutor was pronounced on 9th January 1902 by which, *inter alia*, the pursuers were found entitled to expenses, but they never obtained decree for the taxed amount thereof, having failed to lodge their accounts.

That action was finally disposed of on 1st July 1903.

The present action was raised in August 1903.

On 23rd December 1903 the Lord Ordinary (PEARSON) dismissed the action as incompetent.

Opinion.—"The pursuers are sons of the deceased John Wood, and the defenders are the trustees under John Wood's will. The claim in this action is for payment of a sum of £218, 8s. 2d., being the expenses to which it is said the present pursuers were found entitled in a previous action of count and reckoning at their instance against the same defenders.

"In that previous action the pursuers, by interlocutor of 9th January 1902, were found 'entitled to expenses generally down to 18th June 1901,' other than certain expenses there mentioned; and, on the other hand, the defenders were found entitled to certain expenses. Accounts of these expenses were allowed to be lodged, and a remit was made to the Auditor to tax and report. The defenders lodged the account of their expenses, and the Auditor's report thereon was approved, subject to certain objections stated by the defenders. The pursuers, however, failed to lodge their account of expenses; and after repeated enrolments by the defenders to have them ordained to do so, a state showing the interim division of the trust estate among the beneficiaries was prepared, irrespective of the pursuers' claim for expenses. That state was approved by interlocutor of 18th February 1903, which also fixed the balances due by the defenders to the two pursuers, and decerned therefor. On a reclaiming-note by the pursuers, this interlocutor was affirmed; and I understand it has since been extracted, on the footing that it exhausted the cause.

"The pursuers now bring this action in order to have effect given to the finding of expenses in their favour contained in the interlocutor of 9th January 1902. They produce an account of these expenses; and they desire now to have it remitted to the Auditor for taxation. In other words, they propose now, in a separate action, to take up the incidental procedure in the action of count and reckoning at the point where it was left through the unexplained default of themselves or their law-agent. I have not to consider whether it might have been possible to resuscitate that action so as to give effect to the claim, for the discussion before me proceeded distinctly upon the footing that it is now too late to do so, and that a separate action was necessary.

"I think the pursuers' demand is quite out of the question. It furnishes a strong illustration of the propriety of what I have always understood to be a rule of practice, that, as between the parties themselves, all questions of expenses must be determined in the action in which the expenses are incurred. There may be apparent exceptions, but none of them touches the present case, and, indeed, I know of no exception to the rule as I have stated it. Even if, as being a rule of practice, it were capable of being relaxed, this is certainly not a case for relaxing it.

"It is suggested that after all the liability was determined in the previous action by the finding in the pursuers' favour, and that the present claim is merely for decree conform, or for constitution of the debt. In my opinion it cannot accurately be so described, but even if it could, I should desiderate some authority on or practice in support of the pursuers' contention as applied to a matter of expenses.

"It may seem hard that the pursuers should lose the right to recover so large an account as appears to have been incurred. But it has been lost through default. If it

was their own default, they cannot complain of the loss. If it was not, they may possibly have a good defence against a demand for payment of the account."

The pursuers reclaimed, and argued—The rule of practice which the Lord Ordinary had followed was unsupported by authority. The present action was competent, following on a finding as to expenses obtained in the action in which they were incurred. Mackay's Manual of Practice, 637.

The respondents were not called upon.

LORD JUSTICE-CLERK—I see no ground for interfering with the judgment of the Lord Ordinary.

LORD YOUNG concurred.

LORD TRAYNER—I concur. I have always understood that the rule as stated by the Lord Ordinary is absolute.

LORD MONCREIFF was absent.

The Court adhered.

Counsel for the Pursuers and Reclaimers—A. M. Anderson. Agent—W. R. Mackersy, W.S.

Counsel for the Defenders and Respondents—Wilson, K.C.—Craigie. Agent—Henry Wakelin, Solicitor.

VALUATION APPEAL COURT.

Thursday, May 12.

(Before Lord Kyllachy and Lord Stormonth-Darling.)

J. & R. K. BELL *v.* ASSESSOR FOR EDINBURGH.

Valuation Cases—Basis for Valuation—Rent—Lease non Bona Fide.

A firm consisting of two partners leased premises to a limited liability company having a capital of 2599 shares. Of these each of the partners of the firm which granted the lease held 1288, while two other persons held 10, three other persons 1 share each. *Held* that the lease was not a *bona fide* one, and that the rent was consequently rightly disregarded by the assessor as a measure of value.

Valuation Cases—Case on Appeal—Remit.

Where the assessor fixed the yearly rent or value of subjects by taking a percentage on their cost, and the appellant led no evidence to combat his figures when the case was before the magistrates, the Court, in a case on appeal, *refused* his request for a remit to the magistrates for inquiry.

At a Court of the Magistrates of the City and Royal Burgh of Edinburgh, held at Edinburgh on 10th September 1903, to dispose of valuation appeals, Messrs J. & R. K. Bell, Pentland Laundry, Westfield Road, Edinburgh, appealed against the following entry in the Valuation Roll of the burgh for the year ending Whitsunday 1904:—

Description and Situation of Subjects.		Proprietor.	Occupier.	Feu-duty or Ground Annual.	Yearly Rent or Value.
Description.	Situation.				
Offices, Laundry, & Stable.	Pentland Laundry, Westfield Avenue.	A. Bell & Sons, per G. H. Bell, Manager.	A. Bell & Sons Limited, per G. H. Bell, Manager.	£159, 12s. 9d.	£760

The following statement of facts admitted or proved to the satisfaction of the Magistrates is taken from the case.

"1. The appellants are feuars of an area or piece of ground, part of the lands of Damhead, extending to 2·456 acres, conform to an extract registered feu charter by the trustees of the late Sir George Campbell, baronet, in favour of John Bell and Robert King Bell, both dyers and cleaners in Paisley, sole partners of the firm of Archibald Bell & Sons, dyers and cleaners there, and the survivor of them, and the heirs of the survivor, as trustees and trustee for behoof of their said firm, dated 5th and 11th, and recorded in the Division of the General Register of Sasines applicable to the county of Edinburgh 26th, all days of September 1902. The feu-duty payable under the said feu-charter amounts to £159, 12s. 9d. per annum. The feuars are thereby taken bound to erect buildings on the ground yielding at least an annual return of three times the amount of the feu-duty.

"2. A lease was produced, dated 8th and 9th September 1903, between the said John Bell and Robert King Bell, and A. Bell & Sons Limited, incorporated under the Companies Acts, 1862 to 1898, and having their registered office in Paisley, whereby the said John Bell and Robert King Bell purported to let to the said A. Bell & Sons Limited the said area or piece of ground, with the whole buildings, erections, and machinery, so far as belonging to the lessors, therein, which subjects are commonly known as the Pentland Laundry. The rent stated in the said lease is £360 per annum, and the term of endurance is five years from Whitsunday 1903.

"3. Nearly the whole of the shares of A. Bell & Sons Limited are held by the said John Bell and Robert King Bell. The total number of shares issued (of £10 each fully paid) of said company is 2599, whereof the said John Bell and Robert King Bell each hold 1288 shares, the said John Harvey and A. C. Y. Bell each hold ten shares, and Patrick Rattray, David Rattray, and Charles Mackillop each hold one share.

"4. The said Pentland Laundry subjects only form part of the subjects feued by the foresaid feu-charter, and the proportion of the feu-duty effeiring thereto is £114 per annum.

"5. The Assessor's valuation was made up as follows:—

Cost of buildings, £9500, at 6 per cent.	£570	0	0
Cost of machinery, £1000, at 7½ per cent.	75	0	0
Proportion of feu built on .	114	0	0
	£759	0	0