the Burgh Fever Hospital, and in the employment of the defenders. Now, the effect of section 166 is that the Local Authority shall not be responsible for the irregularity of their servants, and then follows the time limitation which I have read. Now, in that state of facts, it seems to me, agreeing with both the Sheriffs, that the statutory limitation very clearly applies, and we have a very definite *terminus a quo*, or point of time from which to count the two months.

On that short ground I am of opinion that the action is barred, and this being so, it is not necessary to consider the argument which was stated on the Act of 1893.

LORD M'LAREN—I think that it is perfectly clear that this is an action against a Local Authority. It is so stated in the instance of the petition, and the ground of action is based on that description of the defenders. It appears to me to be equally clear that the action is for a wrong done in the exercise of powers conferred upon a local authority by the provisions of the Public Health Act 1897. These two facts concurring appear to be the condition under which a party bringing an action against the Local Authority is bound to give notice within two months. The Act says—"Every action or prosecution against any person acting under the Act on account of any wrong done in, or by any action, proceeding, or operation under this Act, shall be commenced within two months after the cause of action shall have arisen." This seems to me to be just an amplification of the words in other Acts of Parliament with which we are familiar—"for any wrong done in the execution of the Act." It is evidently impossible to make a relevant case against the Local Authority except on the assumption that the neglect of the servant in leaving the acid beside the child was a wrong done in the execution of the Act of Parliament; for if not, it would become a wilful wrong committed by the servant outside the sphere of her employment. I am therefore of opinion that the two months' limitation of the Act of 1897 applies to this case. That being so, it is unnecessary to consider the Act of 1893, because in Scotland it is only applicable where there is no other statutory limitation of the right of action.

LORD KINNEAR—It appears to me that this action is founded upon the alleged negligence of the Local Authority in the performance of a statutory duty laid upon them by the Public Health Act 1897. The duty they undertook to perform was to take charge of a child suffering from an infectious disease, whose removal they had ordered to the fever hospital, and the negligence with which they are charged consisted in the carelessness of a housemaid, for whom they are responsible, and who had left a bottle of nitric acid within reach of the child. If that is not an action for negligence in the performance of a statutory duty, I am unable to find any other ground of action in the case. I think, therefore, that the limitation in the Act of 1897 applies. If that limitation does not apply, the Act of 1893 would probably be available to the defenders, but it is unnecessary to consider that question, because your Lordships hold, and I concur in that opinion, that the Act of 1897 does apply.

LORD ADAM was absent.

The Court refused the appeal, affirmed the interlocutor appealed against, and of new dismissed the action, and decerned.

Counsel for the Pursuer and Appellant—J. R. Christie. Agent—Archibald R. Steedman, Solicitor.

Counsel for the Defenders and Respondents—Cullen. Agents—Carmichael & Miller, W.S.

Tuesday, December 2.

FIRST DIVISION.

[Lord Kincairney, Ordinary.

STROYAN *v.* M'WHIRTER.

Expenses—Copying—Type-writing.

Observations on the use of type-writing for copying purposes.

When the pursuer's taxed account of expenses in this case came before the Court in the Single Bills their Lordships' attention was drawn to a note to the Auditor's docquet in the following terms:—*Note.*—"In this case a very large amount is charged for copies. This would have been very much less if the copies had been type-written. Without referring to all the copies the Auditor finds that by type-writing the copies of the precognitions and correspondence there would have been a saving of £34, 8s. 6d. It seems unreasonable that such an unnecessary expense should be allowed, but there being no rule against it the Auditor has not felt himself entitled to deal with the matter."

The expenses were taxed at the sum of £459, 8s. 2d. No objections had been lodged to the Auditor's report.

The table of fees in the Supreme Courts of Scotland as regulated by Act of Sederunt, 15th July 1876, provides as follows:—"3. Copying papers per sheet—(1) If in English 1s. 6d. . . . Where more than three copies of papers are necessary the same shall be printed, and if not printed the charges for three copies only shall be allowed by the Auditor."

Counsel for the pursuer argued that as no objection had been taken to the report the question was now closed, but that even if the question had still been open no objection could have been taken, for only two written copies were charged for, and that was allowed (Act of Sederunt, 15th July 1876). An agent was not bound to use a new and, possibly for him, inconvenient

process, although it might be cheaper, provided he kept within the provisions of the Act of Sederunt.

Counsel for the defender argued that where a note was added by the Auditor to his docquet the Court would consider it, although no objection had been lodged—*Dempster* v. *Wallace, Hunter, & Co.*, 1834, 12 S. 844. As it was now possible to get type-writing done outside, inconvenience could not be pleaded.

LORD PRESIDENT—There is a good deal to be said in support of the view that type-writing is a kind of printing, but it is obviously not the printing contemplated by the provision which has been read to us. At the same time I think that if there had been any abuse in multiplying manuscript copies of the papers in this case the Court might well have considered whether the rule suggested by the Auditor should not be adopted and applied. But, as I understand, only two manuscript copies of the papers were made, and accordingly, if this had been a case of printing, the rule of the Act of Sederunt would not have applied.

LORD M'LAREN — I agree that type-writing might be regarded as a species of printing, but I am not quite sure that for the purposes of taxation we should so treat it. For I understand that law-printing is charged at a uniform rate, and that rate is probably higher than type-writing. I think we are indebted to the Auditor for the suggestion in his special report, and if it appeared that undue expense was occasioned by the multiplication of hand-written copies instead of making use of the type-writer, we might correct the evil by making a new rule. In the meantime we can all see that type-writing is being extensively used by the agents practising in our Courts.

LORD ADAM and LORD KINNEAR concurred.

The Court gave decree for the expenses as taxed.

Counsel for the Pursuer—A. S. D. Thomson. Agent—P. Adair, S.S.C.

Counsel for the Defender — Munro. Agents—Auld & Macdonald, W.S.

Tuesday, December 2.

SECOND DIVISION.

[Sheriff Court at Dunfermline.

CAMPBELL *v.* FIFE COAL COMPANY, LIMITED.

Master and Servant — Workmen's Compensation Act 1897 (60 *and* 61 *Vict. cap.* 37), *First Schedule* 1 (*a*)—*Amount of Compensation*—"*Average Weekly Earnings*"—*Trade Week or Calendar Week.*

In calculating the average weekly earnings of a workman under section 1 (*a*) of the First Schedule of the Workmen's Compensation Act 1897, his total earnings for the period of employment fall to be divided by the number of "trade" weeks, and not by the number of "calendar" weeks in which he has been employed.

Fleming v. *Lochgelly Iron and Coal Company, Limited*, June 19, 1902, 4 F. 890, 39 S.L.R. 684, *followed.*

Section (1) of the First Schedule of the Workmen's Compensation Act 1897 enacts —"The amount of compensation under this Act shall be—(*a*) where death results from the injury—(1) if the workman leaves any dependents wholly dependent upon his earnings at the time of his death, a sum equal to his earnings in the employment of the same employer during the three years next preceding the injury, or the sum of £150, whichever of those sums is the larger, but not exceeding in any case £300, provided that the amount of any weekly payments made under this Act shall be deducted from such sum; and if the period of the workman's employment by the said employer has been less than the said three years, then the amount of his earnings during the said three years shall be deemed to be 156 times his average weekly earnings during the period of his actual employment under the said employer."

In an arbitration under the Workmen's Compensation Act 1897 in the Sheriff Court at Dunfermline, Maggie Black or Campbell, widow of Andrew Campbell, miner, Kelty, as an individual and as tutor and administrator-in-law for her pupil child John Campbell, claimed from the Fife Coal Company, Limited, compensation for the death of her husband, who was killed by an accident on 10th June 1902 while in the employment of the Company.

The Sheriff-Substitute (GILLESPIE) found the claimant entitled to £234 as compensation, and the Coal Company appealed.

In the case for appeal the Sheriff-Substitute stated that the following facts were admitted:—"The deceased Andrew Campbell was a miner, and entered the employment of the appellants on Thursday, 15th May 1902, at their Blairadam Colliery. He continued to work at said colliery until Tuesday, 10th June 1902, when he was fatally injured by a fall of material from the roof, succumbing to his injuries the same day. Said Blairadam Colliery is a 'mine,' and the appellants are the 'undertakers' in the sense of the Workmen's Compensation Act 1897, and the death of the said Andrew Campbell was the result of an accident arising out of and in the course of his employment. The earnings of the deceased during the period of his employment amounted to £6. Under the general regulations and conditions of employment in force at said colliery the deceased was bound to work eleven lawful days each fortnight. At appellants' said colliery, with a view to facilitating the making up of the wages, the trade or colliery week commenced on Wednesday morning and ended on Tuesday night. From the time that he entered the em-