

discontinuous work, within the meaning of article 7328 of said Revised Statute, § 2;

“Considering therefore that subsection three of said paragraph No. 7328 did not apply to plaintiff's case, and that there is error in the judgment under review;

“Considering that subsection two of said article is applicable to plaintiff's case, and that in consequence the Court below should have determined the yearly wages of the plaintiff by applying in the said subsection which reads as follows: “In the case of workmen employed less than twelve months before the accident, such wages shall be the actual remuneration which they have received since they were employed in the business, plus the average remuneration received by workmen of the same class during the time necessary to complete the twelve months;

“Considering that the time necessary to complete the twelve months is to be reckoned backwards from the time at which the plaintiff entered the defendant's employ for a period of five months;

“Considering that the expression “workmen of the same class” is to be interpreted as meaning “workmen” of the class of the plaintiff, when he entered the employment of the defendant, and not “workmen of the same class” as the plaintiff, at the time of his accident;

“Considering that the plaintiff has not made proof of the average wages of workmen of his class during the five months previous to the beginning of January 1917;

“Considering that there existed therefore, at the time when the judgment in this case was rendered, no sufficient evidence to form a basis for said judgment.

“Considering however that if the present action were dismissed, the plaintiff would be deprived by prescription