between them. In the present case there was no common misfortune, the ship was not seized as prize at all, and the seizure of the goods was unlawful. The case of "*The Friends*" is therefore clearly distinguishable.

In their Lordships' opinion the appeal ought to be allowed, with costs here and below, and they will humbly advise His Majesty accordingly.

Their Lordships allowed the appeal.

Counsel for the Appellants—Roche, K.C. —R. A. Wright. Agents—William A. Crump & Son, Solicitors.

Counsel for the Respondents—Inskip, K.C.—Raeburn. Agents—Lowless & Company, Solicitors.

HOUSE OF LORDS.

Friday, November 3, 1916.

(Before Earl Loreburn, Lords Kinnear, Shaw, and Parmoor.)

(ON APPEAL FROM THE COURT OF APPEAL IN ENGLAND.)

GREENWOOD *v.* NALL & COMPANY, LIMITED.

Master and Servant—Workmen's Compensation—Compensation for Death by Accident—Calculation of Amount—Effect of Absence of Servant through Illness, &c.—Workmen's Compensation Act 1906 (6 *Edw. VII, cap.* 58), *Sched. I* (1) (*a*) *and* (2) (*c*).

W. G., a workman, met with a fatal accident in the course of his work on 14th September 1914. In the preceding three years during which he had been employed by the respondents he had been absent 163 days. The respondents claimed to fix the amount of compensation due at the wages actually paid during these three years, £168, 13s. 5d. The appellant claimed £212, 11s., the amount W. G. would have earned had he worked continuously at his average weekly wage.

Held that compensation should be awarded upon the basis of the average weekly wage during the three years preceding the accident.

Decision of the Court of Appeal (1915, 3 K.B. 97) *reversed.*

The Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58), Sched. I (1), enacts—"The amount of compensation under this Act shall be—(*a*) where death results from the injury—(i) if the workman leaves any dependants wholly dependent upon his earnings a sum equal to his earnings in the employment of the same employer during the three years next preceding the injury . . . 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 one hundred and fifty-six times his average weekly earnings during the period of his actual employment under the said employer. . . ." (2) "For the purposes of the provisions of this schedule relating to 'earnings' and 'average weekly earnings' the following rules shall be observed . . . (*c*) employment by the same employer shall be taken to mean employment by the same employer in the grade in which the workman was employed at the time of the accident, uninterrupted by absence from work due to illness or any other unavoidable cause. . . ."

The applicant for compensation appealed.

The *facts* are given in their Lordships' judgment, which was as follows:—

EARL LOREBURN—The question in this case is whether a man who has been working for 3 years less 163 days for the same employer is to be compensated on the footing of the aggregate earnings for three years under Schedule I, sub-sec. 1 (*a*) (i). I think not, but that he ought to be compensated upon the alternative method provided by the statute. The object of that first limb of sub-sec. 1 (*a*) was to take the case of a man who has been in regular employment for three years continuously with the same employer and so to avoid any further calculation in arriving at the compensation that is to be paid to him; the object seems to be to take a short cut to award compensation automatically. There are many persons who would come within this standard; it is a sure standard, and if the standard does not apply, then you go to the end of the same sub-section and you apply the method which is there described. I look at the language of this particular sub-section; the language is "employment of the same employer during the three years next preceding the injury." Has a man been employed during the three years if he has for 163 working days not been employed at all? I think that question answers itself.

There is another sub-section in this Schedule to which reference has been made, that is sub-sec. 2 (*c*). I will not say anything which is unnecessary about the wording of this clause, but it is a difficult clause; whatever else it does it certainly supplies a definition of the phrase "employment by the same employer." I have been conferring with your Lordships in regard to that definition and I think we have all agreed to this. Leaving out any reference to grade, which is quite a different matter, this definition says that employment by the same employer means employment "uninterrupted by absence from work due to illness or any other unavoidable cause." It follows therefore that if the employment is so interrupted then it is not employment by the same employer. I apply that definition to sub-sec. 1 (*a*) (i), and I ask myself whether it can be affirmed in regard to this case that this employment was uninterrupted in the terms of that definition. It is an agreed fact that this employment was interrupted; if it were necessary that would be quite sufficient to show that in this case the contention of the appellants is accurate. In my opinion it is unnecessary to have

recourse to that sub-section because the words of the sub-section itself lead to the same result. I will only say, speaking with the greatest deference to the Court of Appeal, to whose judgment we are all obliged and most willing to pay deference, that it seems to me that, instead of using the words speaking of the employment as being interrupted or uninterrupted when they are dealing with sub-sec. (2) (*c*), a conception has been introduced in some of the judgments that the period of the employment is to be disregarded or the absence is to be disregarded. That introduces to my mind a new, and if I may respectfully say so, a confusing exception. I prefer to look at the words of the Act itself and I think that they sustain the contention of the appellant.

LORD KINNEAR—I agree entirely with the noble and learned Earl on the Woolsack, and I have very little to add—indeed I do not think I have anything to add beyond repeating what he has already said. But it appears to me that the question is one of mere interpretation of very plain language; we have got to ascertain what the legislature says.

In the first place we have to read the first section of the First Schedule; taking that apart altogether from the definition clause in the second section, I should be disposed to hold that the case provided for under sub-sec. 1 (*a*) (i) is that of a workman who has been employed continuously by the same employer during the three years next preceding the injury. The words "during a certain period" import duration, the period of duration is fixed, and if it is required that the employment shall have been during a certain fixed period I do not think that condition is satisfied by an employment which has lasted for a shorter period. I cannot read the words as describing the case of a person who from time to time in the course of three years has been employed. It is the case of a person who has been continuously employed throughout the whole period. I must, however, admit that whatever my own view may be there is a great deal to be said in support of a contrary view of that particular section; but then when we come on to sub-section 2 (*c*) it appears to me that any obscurity which may have been left in sub-section 1 (*a*) (i) is completely cleared up. The statute says in plain words that "for the purposes of the provisions of this schedule relating to 'earnings' and 'average weekly earnings' of a workman" certain rules shall be observed. Now that proviso which we have to construe is a provision relating to earnings, and upon one alternative to weekly earnings also. Then the section goes on to define the words that are used not only in the particular sub-section that we have been considering but throughout the series of sub-sections dealing with the computation of compensation with reference to a workman's earnings, and it says that where in these clauses you find the words "employment by the same employer" those words shall be taken to mean "employment by the same employer in the grade in which the workman was employed at the time of the accident uninterrupted by absence from work due to illness or any other unavoidable cause." I do not think we need to consider the precise meaning and effect of the new condition with reference to the grade of employment, although the words are plain enough. But assuming that this condition may be passed over in the meantime as creating no difficulty, the statute directs that whenever in the clauses to which it refers you find the mere words "employment by the same employer" you must take them to mean employment uninterrupted by absence from work due to illness or any other unavoidable cause. I cannot for myself see any room for doubt as to the meaning of these words. I say so with the greatest respect for the learned Judges of the Court of Appeal, and indeed I must say that my own difficulty throughout this case has been that when I find words which appear to me to be perfectly clear, and discover that they are construed otherwise by judges of so great eminence, I cannot rid myself of the apprehension that the apparent clearness to my mind may probably be due to my having overlooked some material consideration to which they have given its due weight. But then I cannot find in the reasons explained by the Court below anything to displace my own conclusion, and must therefore fall back upon the actual words of the Act of Parliament and read them for myself as best I can. As a mere matter of grammatical reading there can be, I suppose, no question at all that the words "uninterrupted by absence" relate to one possible antecedent and only one, namely, employment — employment during three years uninterrupted by absence from work. I think that means only one thing. It is impossible to argue about it or to make it plainer. The peremptory condition of sub-section 1 (*a*) (i) therefore as defined by section 2 (*c*) is that the man shall have been employed during an uninterrupted period of three years, and when you find that in fact his employment has been interrupted by absence for 163 days, I think that is not an employment which satisfies the condition of the statute. I cannot accept the construction that the words uninterrupted by absence mean that if such interruption occurs it is to be entirely disregarded.

I should only add with regard to the case of *Perry* v. *Wright*, 1908, 1 K.B. 441, which has been founded upon by the respondents, and founded upon very strongly in the Court of Appeal, that I assent to the reading of the statute which is to be found in the judgment of Fletcher Moulton, L.J. I do not understand that the authority of that case is disputed so far as regards the points actually decided and as to which the learned Judges were agreed. But the question as to the effect of sub-section 2 (*c*) with which we are concerned was not decided. It was really a side issue and the Judges differed about it. As I understand Fletcher Moulton, L.J., his view seems to be that in the case provided for by sub-section 1 (*a*) (i), when a workman has been in the same employment for an uninterrupted period of three years the compensation is to be based

on the total earnings for that period, but if that employment has been interrupted the compensation is to be based on a computation of average weekly earnings. But then the two cases are so distinguished, because in the first you have nothing to do with weekly averages but must take the facts as they stand, and in the second you cannot proceed upon actual earnings but must compute the average of the weekly earnings. But that result arises in the case of an interrupted employment just because in that case sub-section 2 (*c*) excludes the period during which the man may have worked prior to interruption from the scope of sub-section 1 (*a*) (i).

LORD SHAW—I entirely agree with the judgments which your Lordships have just delivered. I will put my own view in a very few words, referring particularly to the case of *Perry* v. *Wright*, 1908, 1 K.B. 441, to which I shall presently allude. Three years prior to the accident to this unfortunate workman he entered the employment of the respondents. In the course of those three years he was for periods amounting to six months earning no wages and giving no service by reason of injury and illness, and for the remainder of the period he was in the respondents' service. I am of opinion that these facts do not bring the case within the first portion of sub-section (1) (*a*) (i) of the first schedule seeing that the workman was not employed for what in my opinion is necessary, namely, a continuous period of three years.

There have been many difficulties raised as to what continuous employment is, and I am not surprised that sub-section 2 (*c*) was in the latest Act of Parliament inserted for the purpose, if possible, of clearing certain difficulties out of the way. The construction and effect of that sub-section has been treated by the learned Judges of the Court of Appeal in the present case as practically concluded by the case of *Perry* v. *Wright*. I myself would not have read the case of *Perry* v. *Wright* as a decision upon this point. Since, however, it has been referred to, I desire, following my noble friend who has just preceded me, to attach my adhesion to those words from the decision therein by the learned Lord Moulton, who said—"We have not here to consider a case in which those earnings have been interrupted during the three years by 'absence from work due to illness or any inevitable cause'"; and then he gives the reason applicable to such situation—"because according to sub-section 2 (*c*) that would prevent the earlier period counting and would thus exclude the case from the special provisions in question." I assent to that; it is entirely my own view, as I understand it to be the view of your Lordships.

With much respect to the learned judges of the Court of Appeal, in the present case I do not feel able to assent to their view that sub-section 2 (*c*) must be construed in the sense that a court of law is bound to disregard the fact and period of interruption. That does not seem to me to be what the section provides. And I would add this, that the Court of Appeal itself does not disregard the fact and period of the interruption, because the fact and period of interruption are reckoned in for the purpose of summing up the gross period of employment, and they are of course reckoned out for the purpose of the calculation of wages. In short, the result of this assumed process of disregarding the interruption is that the Court has assumed that the weeks of interruption were weeks of employment but of employment at no wages at all. I do not think that that was what was meant by the statute, nor do I think that that is the result of the provision.

It humbly appears to me that sub-section 2 (*c*) can be read, and read perfectly simply, along with the cardinal provision in sub-section 1 (*a*) (i). An interrogative may furnish a comprehensive and crucial test to apply to such a case. The question to be put is—Has the workman been employed by the same employer in the same grade during the period of three years, which employment has not been interrupted by absence owing to sickness or other unavoidable cause? If these things (1) employment by the same employer, (2) in the same grade, and (3) uninterruptedly for three years, can each and all be affirmed, then sub-section 1 (*a*) (i) applies; if this cannot be so answered the calculation will have to proceed upon the alternative basis furnished by the Act, and the parties have agreed upon the figure so reached, which will accordingly appear in the judgment of this House.

LORD PARMOOR—There are two methods by which the amount of compensation may be calculated in the first schedule of the Workmen's Compensation Act 1906, sub-section 1 (*a*) (i). In the first of these cases, which implies mere arithmetic, the sum is "a sum equal to his earnings in the employment by the same employer during the three years next preceding the injury." I agree that that necessarily implies continuity of employment, but it appears to me that if that phrase had stood alone without the subsequent definition which we find in sub-section 2 (*c*), various difficulties and nice questions of law might have been raised. It is important, particularly in an Act like the Workmen's Compensation Act 1906, to get all the clearness possible in order to avoid unnecessary litigation. The second alternative we are not concerned with, the amount in that case is 156 times the average weekly earnings of the workman.

Now the first point which has been discussed is whether sub-section 2 (*c*) applies. It was pointed out that in the headnote in the Law Reports the Court of Appeal were said to have found that sub-section 2 (*c*) did not apply to sub-section 1 (*a*) (i). I do not read the decision of the Court of Appeal in that sense. It appears to me that it is impossible to say that sub-section 2 (*c*) has no application when we look at the words with which that sub-section commences—"For the purposes of the provisions of this schedule relating to 'earnings' and 'average weekly earnings' of a workman the following rules shall be observed." Now sub-

section 1 (*a*) (i) refers both to earnings and to average weekly earnings, and I do not think under those circumstances it is possible to suggest that sub-section 2 (*c*) is not applicable.

As regards the construction of sub-section 2 (*c*) I desire to express my entire agreement with what was said by the noble Earl on the Woolsack, and I do not desire to add any words of my own. I must say that I am unable to understand, speaking with all respect of the very learned judges of the Court of Appeal, how they came to the conclusion which perhaps is expressed most clearly in the words of Warrington, L.J., who, after quoting sub-section 2 (*c*), says this —"I think it means this, that you are to regard the period of his employment in the one grade, and for that purpose interruptions by absence from work due to illness or any other unavoidable cause are to be disregarded." I should have thought that on the clear words of sub-section 2 (*c*) absence from work due to illness or any other unavoidable cause was not to be disregarded, but that you had to consider whether interruptions had arisen from either of those causes in considering the continuity of employment by the same employer.

It seems to me that the matter is not one of much difficulty, because if you read the definition in sub-section 2 (*c*) into sub-section 1 (*a*) (i) it reads thus—"a sum equal to his earnings in the employment of the same employer where there has not been interruption by absence from work due to illness or other unavoidable cause." It is clear that there was such interruption in this case, and therefore that portion of the schedule is not applicable.

In my opinion the appeal succeeds.

Their Lordships sustained the appeal.

Counsel for the Appellant—Sir J. Simon, K.C. — Leigh — Fenton. Agents — Shaen, Roscoe, Massey, & Company, for T. A. Needham, Manchester, Solicitors.

Counsel for the Respondents—Swift, K.C. —Eastham. Agents—Nicholson, Graham, & Jones, for Wood & Lord, Manchester, Solicitors.

HOUSE OF LORDS.

Thursday, November 9, 1916.

(Before Earl Loreburn, Viscount Haldane, and Lords Shaw and Parmoor.)

(ON APPEAL FROM THE COURT OF APPEAL IN ENGLAND.)

HAMPTON *v.* GLAMORGAN COUNTY COUNCIL.

Contract — Building Contract — Principal and Agent—Effect of Sub-Contract.

In a contract for the erection of a school the contract price included £450 for a hot-water installation which the respondents might elect to have or not as they pleased. On the instructions of the respondents' architect the contractor S. ordered a heating apparatus from the appellant. Before payment was completed S. became insolvent. The appellant claimed payment from the respondents.

Held that S. acted as principal in the sub-contract, not as agent for the respondents, and that the action had been rightly dismissed.

Decision of the Court of Appeal, 113 L.T.R. 112, *affirmed.*

The plaintiff appealed.

The *facts* are given in their Lordships' opinions, which were as follows :—

EARL LOREBURN—In this case I think the order appealed from ought to be affirmed, and at the outset I will say a word about the decisions to which reference has been made in the very able arguments which have been addressed to us.

The facts of the case are hardly ever of any value when considering the facts of another case, and the same thing may be said in regard to the construction of one contract which is rarely assisted by reference to the construction of other and different words. When the case goes upon the construction of a contract or upon a decision of fact, the main—I may say, broadly speaking, the whole matter—consists in looking at the point of view from which the learned judge looks at the language or looks at the evidence.

The question in this case is whether the Glamorgan County Council were debtors to the plaintiff. I concede that it is hard upon the plaintiff to have supplied these items and not to have been paid for them; but the County Council have paid, or will have to pay, the creditors of Shail. It is always a misfortune when bankruptcy supervenes. But can the plaintiff say that the County Council owes this money to him? I think not. Certain work had to be done which is described and comprised in the specification. An entire sum was named for the whole, namely, £13,600—but a part of the work stood upon a separate footing—that is to say, the heating apparatus, up to the sum of £450, part of the £13,600, was provisional. There is no special theory of law as to what is meant by a contract. You have to look at the contract and see what it means itself, and in this contract I think it meant that the County Council might prefer to do the work itself, or it might put in a cheaper apparatus than what would cost £450, or it might require Shail to do it up to the £450 cost; and he agreed to it, in which case he, of course, might employ some-one else, just as he might employ any tradesman for the purpose of providing the thing required; and the £450 would be paid as a part of the whole £13,600, or not paid, or short paid, accordingly, by the County Council to Shail.

Shail was required to do it, and he employed the plaintiff for this heating apparatus and made a contract with him; he had to obey the architect according to the contract, but the architect had no authority to pledge the County Council's credit, and there