Q.Then did you test for gas in front of that brattice? A. When I came in on afternoon shift on Tuesday, yes.

Q.Did you find any? A.Yes .

Q.About what time did you find it, do you remember? A. As soon as I went in, the start of the shift.

Q.What did you do about it? A. I erected a brattice up the prop line.

Q.It would not be true that Mr.McGarrity and Mr.Ackerman first of all drew your attention to the presence of gas in the shunt area? A.No.

Q.Well, you would deny, would you, that they made a complaint to you of gas in that area - A.No, I would not deny it.

Q.I had not finished the question: That they made a complaint to you of gas in that area and it was after that complaint that you put up the brattice screen? A. From what I can remember this all happened when we started.

Q.It all happened when you started? A. We had to go in there - to brush the floor we had to bring back the machine which was opposite A heading, the intersection, and I think while the machine was coming back or something, somebody had to pick up a water hose.

Q.Don't you go ahead and test the area? A.This was the area.

Q.Had you made any tests before somebody picked up the water hose and said "I think there is gas here"? A.I don't remember.

Q.Do you understand that the regulations lay down the type of tests you shall make? A.Yes.

HIS HONOR: Q.If you had tested and found gas soon after you went in, would you have let men go in there to pick up water hoses or do anything else? A. It was not a matter of going in there. That is where the machine was - this blackdamp that I detected was lying, possibly, a foot off the floor.

Q.Which came first, the complaint or the test? A. Well, I don't remember.

Q.You do not remember? A.No.

MR.LEE: Q.To get the sequence again, the brattice went up - the brattice screen went up? A. This is the one I had put up on the side?

Q.Yes, and is it a fact that Mr.McGarrity or Mr.Ackerman after the screen went up told you they could still taste gas? A.I don't remember that.

Q.Did one of those gentlemen say to you "Could we use a bleed tube like we did further up"? A. I don't remember that either.

Q.Well, think about it, Mr.Cambourn, and see whether you can't remember a situation where the men after the screen went up are saying to you "We can still taste it, won't you put a bleeder tube in"? A. No, I don't remember them saying this, sir. I have thought about this.

Q.I will put it to you quite directly. One impression one can get from what the men have said is that they had to ask for

various things to be done before they were done, that you did not come in, in effect, and take charge and do what was required until they asked you. Now is that right? A.No, that is not right.

Q.That is not right? You had used a bleed tube in No.3 cut-through ? A.Yes.

Q.And you have no recollection of Mr.Ackerman, for instance, - this is at the top of p.133 -

HIS HONOR: Mr.Lee, would you mind if at this stage Mr.Cambourn's reports were handed up?

MR.LEE: No.

MR.McNALLY: I have taken out the reports for the week preceding the 9th which would be all the work in the section while work was being done on No.2 cut-through. Some have already been tendered. At this stage I might point out that the fitter makes an inspection of the machinery. He is the person appointed by the mine to inspect the machinery under the General Rule 5 and there is provision on this for that to be done. It is on the day shift. Your Honor will see the various reports by the fitter in the file.

MR.LEE: Q. At page 133, I propose to ask you about this conversation. Is this right, that after the brattice screen was put up, Mr.Ackerman came to you, either with or without Mr.Clem Robinson, and after the brattice screen was put up he said " there is gas still seeping out of there, is there anything you can do about it"? A.I don't remember this.

Q.Well, did you say to him "Well, I have got a concertina trunk up there, a tube, we will put it on." Do you remember that? A. I said to somebody "there is a concertina trunk, " that is right. It was in the crib cabin.

Q.You notice in what I have read out to you, it is alleged these men - Mr.Ackerman came in and said "There is gas still seeping out of there", referring to this area? A.I don't know how he would know this. There was nobody working thereat the time. There was no reason for these chaps to be there.

Q.Let me ask you directly: Was gas still seeping out of this area in the shunt just before you put the bleed tube up or don't you know? A.Before,when I put the brattice up I considered it clean.

Q.So it would be wrong to say that gas was seeping out of there after the brattice was put up? A.Yes, I would say so.

Q.If you thought the area was clean why did you think it necessary to use the bleed tube? A. Because for the anchor point - the shuttle car had to move down that night.

Q.What is the significance of that? A. Well, the bleed tube was used in 3 so it was used in 2.

Q.You had something in your mind? A. I had nothing in my mind.

HIS HONOR: Q.Do you mean you automatically shifted over the bleed tube to the shunt when it had been used somewhere else when there was no sign of gas; is that what you are saying? A. That is the system developed by the under-manager in No.3. I just completed it in No.2. If that place had worked,it would have come back to 1 .

Q.So there was no condition of gas that you detected that caused you to move the bleed tube over? A.I didn't put the bleed tube

over because of gas.

MR.REYNOLDS: That is the question Your Honor asked him before lunch and asked him to think over, and he adhered to it.

HIS HONOR: Q.What you are saying is that somebody devised a system of a bleed tube in No.3 and you did not really know what it was for excepting that it accompanied a shuttle car shunt? A. It was to ventilate the shuttle car shunt.

MR.REYNOLDS: He said before it was to ventilate the shunt. With great respect, Your Honor seems to treat this answer as incredible.

HIS HONOR: No, I am not treating it as incredible, I am just thinking about the system. Assuming it to be true, I am surprised at the inferences one draws.

Q.Did you or did you not say a little while ago that you followed a pattern that had been devised by the under-manager in No.3 - is that right? A.That is right.

Q.And forgetting what you said, did you then mean this, that you really did not know what it was for but your impression was that it was to ventilate the shunt in the way Mr.Reynolds has just described in evidence from the Bar table? A. There is no doubt in my mind it was there to ventilate the shuttle car shunt.

Q.No doubt in your mind? A.No.

Q.Did anybody ever tell you why it was there? A. Did they tell me why it was there - no .

Q.Nobody ever told you; you did not ask? A. The day it first went in, the day shift deputy said to me -

Q.The day shift deputy said to you? A. Each deputy sees the deputy on the next shift, like.

Q.This is the day it went in No.3? A.Yes, No.3.

Q.What did he say? A.He said to me like "the chaps are working back there putting a bleed tube in to ventilate the shuttle car shunt". You see, the shuttle car driver must have fresh air.

Q.So must everybody? A.That is right, that is why it was put in.

MR.LEE: Q. And when did the shuttle car driver start to operate - what day? A. That would be on the Wednesday day shift the shuttle car shunt would be in operation.

Q.But the position is, however, is it not, that this tube was put up on the Tuesday? A.Yes.

Q.After some men complained to you that gas was still coming from the goaf? A.Well, I don't remember the men complaining.

Q.You do not? A.No sir.

Q.Well, in the first instance the bleed tube only went a couple of bars in to the shunt, did it not? A. In the first instance?

Q.Yes, when it was put up? A. There were two lengths on - it was well into the shunt.

Q.Do you say that an extension was not at some point of time put on to the bleed tube? A. It was put on the following dog-watch shift after us.

Q.After you? A.There were three lengths of elephants trunk, if you like to call it. We put on too,dog-watch completed it.

Q.When you left it you understood that there was to be a further piece of tubing put on it, is that not so? A. Yes, that was the set up in the shunt before, three lengths.- this was the set-up in the shunt in 2.

Q.You have no knowledge then, is this what you say, that once the brattice screen went up, of any complaints of gas from the men after that point of time? A. The brattice screen I put up along the side?

Q.Yes. A. No sir.

Q.No knowledge at all? A.No.

Q.You were not aware that Robinson became squeamish on one occasion? A. I can't remember this. This could be right.

Q.Is it common for the men in the mine to become affected by the gas there? A. Would you ask that again please?

MR.REYNOLDS: You asked that before.

MR.LEE: Q.Is it common for the men to become affected by gas in this mine? A.Not to my knowledge.

Q.That is not the answer we had earlier. If it came to your knowledge, you see, while you were a deputy,doing your duty, that a man had become squeamish, that would be a matter you would investigate, would it? A.I would have.

Q.Was Robinson on your shift? A.Yes, he was my shuttle car driver.

Q.And you have no recollection or no knowledge of him becoming squeamish? A.No.

Q.From your experience as a deputy, when a place is properly ventilated can you still get a smell of gas in it? A. Around 8 Right there was a distinct odour there all the time, or taste.

Q.Would it be correct then - I am reading from p.136, Mr.Ackerman's evidence - from your knowledge of 8 Right, that it would be quite possible that a person could smell gas almost every night over a period of six weeks? A.No, I would not say that.

Q.Was there a smell of gas in 8 Right? A. There was a distinct taste or odour of something and it is still there too.

Q.Let us go at the moment to the events we are speaking about, the 9th. That distinct smell, is not that something, if it is there, that is capable of being detected on the lamp? A. When the smell is it can't be detected on the lamp.

Q.What, have you tried to detect it? A. I have.

Q.Am I to understand you to say that in 8 Right there has been, shall we say, a peculiar smell? A.Yes.

Q.That you could not identify? A. I could not identify it.

Q.And is that smell only in 8 Right in the Bulli Colliery as far as you know?A. No sir. Any place that has got a goaf behind them or beside them, this smell is common, I would say.

Q.It is common ? A.Yes.

Q. In other words, I suppose that anywhere else in the system in the Bulli Colliery where a goaf has been developed, you have noticed it there, have you?A. Coming from the goaf, yes.

Q. Have you ever drawn - I mean, has it been discussed by yourself amongst other deputies, this peculiar smell?A. Yes, we have talked about it.

Q. Has it ever occurred to you that it might be bottom gas?A.No.

Q. And in fact did some of the men prior to the 9th speak to you about a peculiar smell in the A heading in the shunt area?A.Prior to the 9th?

Q. Yes, prior to the fire?A. Well, they could have, I could not remember.

Q. You told His Honor that you did test for methane?A. That is right.

Q. And you did test for CO2?A. Yes.

Q. With an oil safety lamp?A. That is right.

Q. In the shunt area?A. Yes.

Q. And after the brattice screen went up you never got any reading at all of either?A. No.

Q, That is the position, is it not?A. That is right.

Q. Did you ever test for bottom gas?A.Had I ever tested?

Q. No, did you before the 9th?A. Yes, every night.

Q. Every night?A .Yes.

Q. Did you know whether other deputies on the other shifts were reporting noxious gas in the week before the 9th?A. I would know.

Q. You would know?A. Yes.

Q. And were they?A. I can't remember. Before our shift starts we counter-sign the General Rule 4 of the deputy before.

Q. You counter-sign it?A. Yes.

Q. So the position is as far as you were concerned that from the first day, really, you were unaware of any gas in this section at this point?A. From the first day?

Q. After you got your brattice screen up?A. After the brattice screen went up and the bleed tube went in that place, I never detected gas in it again.

HIS HONOR. Q. I take it that you have learned that under these conditions which have been simulated since the fire - that is, simulated as closely as possible to the conditions that were there before the fire - in this very area in which you tested and say you found no gas, substantial quantities of gas have been found?A. That is right. I have been in there every night.

Q. You have been in there every night, have you?A. Yes.

Q. And have you tested for gas since?A. Yes.

Q. And have you been finding it?A. Yes.

Q. But you had not found it before the fire?A. Not inflammable gas.

Q. What gas have you been finding?A. Noxious gas.

Q. You were only able to find it on one occasion, noxious gas before the fire, were you not?A. I couldn't remember.

Q. According to your report, you found it on 3rd November - noxious gas detected on goaf edge being diluted. You do not say in the shunt area?A. No, that would be in B heading.

Q. I am doing you an injustice: on 2nd November, noxious gas detected on goaf side on the miner face?A. That is the day the machine started.

Q. That was not in the shunt area at all?A. That was the goaf side of the miner face, the shunt area - that was not the shuttle car shunt.

Q. You found it there then, did you?A. Yes.

Q. That was on the 2nd. From my glance through, they appear to be the only occasions on which you reported gas: the 2nd and the 3rd and not thereafter?A. No.

HIS HONOR:Q. Yet right up to the date of the fire you said you had been finding noxious gas - you found no noxious gas or any other kind of gas for a week before, the best part of a week, but since then, since the conditions have been simulated you have been finding gas there continuously - noxious? A. No noxious gas - all inflammable.

Q.What? A. No noxious gas.

Q.You have been finding inflammable?A. Inflammable gas.

Q.On the floor? A. Everywhere - on the roof, on the floor, on the sides.

Q.What have you been testing with? A. An oil flame safety lamp.

Q. It has been showing up on that? A. Yes.

Q. With no tendency for your flame to go out at all? A. No, I have not found a trace of blackdamp or CO2 since the fire.

Q.Were you down there when Mr. Longworth was testing? A. I would not think so, I am on afternoon shift.

Q.Have you been down every day since the fire? A. Yes.

Q.Mr. Longworth has tested since the fire? A. Yes.

Q.You have tested every day since the fire? A.Yes.

Q.You found no blackdamp yet Mr. Longworth tells me he has found it. I suppose you are not an expert in these things, you would not like to venture an explanation as to how that would come about? A. No.

Q.I think in answer to Mr. Lee this evidence was given:

> "At this point you might add something, if you would. You had found the methane at near floor level for all intents and purposes. Had you also tested for carbon dioxide there? A. I didn't.
> Q. Well, did somebody? A. Mr. Griffiths - no. You could get the feel of it.
> Q. You were aware it was there? A. Yes, and Mr. Griffiths lost his light. He actually lost his light in blackdamp as he was bent, checking for CH4 " .

MR. LEE: Again, at p.159 it is referred to, two thirds of the way down: "That is the right-hand side... and the percentages of CH4 varied from 5% down to 3%, 2½%". Then, on the next page, "You smelt the CO2 and you tested methane... with a detector and a lamp." He got a concentration in the flow of methane of 2½ to 5%. He talks about the methanometer, that it may be affected by the presence of CO2. I think there are other passages. It is certainly in his report. He has percentages shown in the report. P.165 is another. There are the actual readings of carbon dioxide "Tests were then carried out ... on an oil safety lamp at this point."

MR.McNALLY: I don't know when these tests were carried out.

MR.LEE: After the fire.

WITNESS: Pardon, Your Honor, I am talking about after the condition was simulated.

HIS HONOR: The first statement I read out to you from Mr. Longworth was after the fire.

WITNESS: If it was simulated they would have had to lift up the stopping to go to the goaf in A Heading.
HIS HONOR:
Q. This is the area you say you tested? A. In the shuttle car shunt, Your Honor.

Q. In the shuttle car shunt? A. Yes.

MR. LEE: The actual passage in relation to simulated conditions is p.159.

HIS HONOR: I think it is clear Mr. Longworth is saying there was blackdamp there under the simulated conditions.

MR.LEE: Q. Anyway you have not got any blackdamp at all or been aware of it since the fire? A. No.

Q. The only thing you have been aware of is methane? A. Yes.

Q. Prior to the fire the only thing you were aware of was blackdamp and you weren't aware of methane? A. That is right.

Q. May I take you back to No.3 cut-through: You told us the situation that prevailed there was, to all intents and purposes, repeated in No.2 cut-through? A. Yes.

Q. Was the pattern or arrangement that was set up at No.3 cut-through in existence any earlier in the workings? A. You mean the bleed tube?

Q.Yes? A. The bleed tube was first used in No3.

Q. Was there any situation earlier in the workings where there was a brattice in A Heading near the goaf edge? A. I could not remember.

Q. You could not remember? A. No.

Q. The bleed tube was first introduced when you got to No.3? A. Yes.

Q. Can you remember how it came to be put in? Who gave the instruction or who made the decision - if you were there? A. I was not there, it was put in during the day shift, what day I could not tell you, but it was put in during the day shift and when I got in on afternoon shift it was on.

Q. Did you ever inquire of any of the officials of the company as to who decided to put it in? A. No, the deputy did tell me Mr. Puddle had it sent in or something to that effect.

Q. Were you aware of any men becoming sick or squeamish in any part of the workings before you got to the point where the fire took place? A. While 8 Right was a section?

Q. Yes? A. Not to my knowledge.

Q. You know Mr. Ackerman? A. Yes.

Q. Did you ever know whether on two other occasions when the goaf was a good deal further back than it was that he had become nauseated? Did that ever come to your knowledge?
A. I remember one night he got hit on the head with a piece of stone, he was nauseated that night.

Q. Apart from that were you ever aware of Mr. Ackerman becoming "squarmy" or nauseated from this smell of the gas or whatever it was in an area of the workings before the goaf had developed out to where it was? A. I don't remember.

Q.You put a brattice screen up?A. Yes.

Q.Somebody took that down apparently before the fire; is that so? A. I never took much notice.

Q. We have been told there was on the day of the fire a brattice in the shunt, it might have been an ordinary brattice with a cement washed brattice behind it or it may have been just an ordinary brattice, that is somewhat beside the point at this stage, but we have not heard at all of the existence of any brattice screen at the entrance to the shunt area on the day of the fire. Can you remember it being removed? A. No but before the shuttle car could shunt in there- I don't say all of it - but most of it had to be pulled down, it was coming across the corner - the shuttle car could not have shunted with that brattice there.

Q. The brattice had to come down? A. Most of it, yes.

Q. The brattice you had put up and which had been so effective in getting rid of the gas had to come down to make room for the shuttle car? A. That is right.

HIS HONOR:Q. So from the point of view of ventilating the shunt all that would be left while the shuttle car was working would be the bleed tube? A. Yes.

Q.That is if the bleed tube ventilated the shunt by bringing fresh air in? A. Yes.

MR.LEE:Q. You took the view when you put the brattice screen up in the light of the knowledge you had as to gas at that point that it was essential to have that screen there as part of the ventilation system? A. To clean that shunt out.

Q.Yes? A. Yes.

Q. And to keep it cleaned out. You did not imagine someone would come along next day and knock it down? A. Well, it was temporary.

Q. IT was temporary? A. Yes.

Q. Before anyone knocked it down were specific tests made for gas at the point? A. The bleed tube was in at that point

q. Never mind about the bleed tube -(Objected to by Mr.Reynolds quesation withdrawn).

Q.You put the brattice screen up for the specific purpose of getting rid of gas you detected in the shunt area? A. Noxious gas.

Q.You have maintained here on a number of occasions the bleed tube has got nothing to do with getting rid of gas; is that correct?(Objected to by Mr. McNally; allowed).

Q. You told us earlier that the purpose in putting the brattice screen up was because you found gas in the shunt area? A.Yes.

Q. That is right, isn't it? A. That is right.

Q. The whole object of the exercise there was to get rid of the gas? A. That is right.

Q. As far as you were concerned when the brattice screen went up the gas was dispersed? A. Yes.

Q. When the bleed tube went in there was no gas problem as far as you were concerned? A. No.

Q. It never occurred to you the bleed tube was in there to take off any gas because you did not think there was any gas in there? A. That is right.

Q. Did you ever direct your attention to the fact that the brattice screen you had put up had been removed? Did you ever think about that and consider the likely possibilities, if there were any? A. Of why it was removed?

Q. No, of the effect it might have in the shunt area? A. After the bleed tube went in I would say it had no effect.

Q. No effect at all? A. No.

Q. You could take it down? A. Yes.

Q. Because there was no gas in the shunt then? A. That is right.

Q. DID you imagine if there were any gas in the shunt the bleed tube would effectively dispose of that or did you not think about the problem at all? A. No, I thought about that - if the fresh air comes in it must - if there is any gas it must dilute the gas.

Q. It must dilute it - effectively dilute it ? A. Yes.

Q. Any quantity of fresh air required according to your knowledge? A. Not to my knowledge.

Q. It depends on the quantity of gas coming through, doesn't it? A. That is correct.

Q. As to whether the amount of fresh air will have the desired effect? A. Yes, that is right, the more gas the more fresh air -

Q. Is needed? A. That is right.

HIS HONOR: Q. Do I understand you to say that once the brattice had gone the bleed tube in your mind was there to bring fresh air into the shunt area and ventilate it? A. Yes.

Q. It was not there just for the purpose of removing noxious gas by sucking them up in the tube? A. I would say if it was there to remove noxious gas purposely it would have been put in the stopping or behind the stopping.

Q. This was the system used in No.3 Heading? A. Yes.

Q. This was copying the pattern in No.3? A. Yes.

Q. I take it the same deputies worked in this area as worked in No.3? A. Yes.

Q. And would have seen the same thing? A. I would say so.

Q. Am I to understand it was the common understanding between deputies that that was the purpose of the bleed tube? A.Yes, I would say so.

Q.I want you to listen to this piece of evidence and tell me, as a deputy, what you think, whether you have any comment at all to make? A. Is this an opinion?

Q. I am asking you for one, you see: This is the evidence:

"Then I came back up and into the shuttle car shunt again and I went in there and this time I got down on my hands and my knees and I got this sensation right down low on the ground. It is a smell or a sensation or whatever anyone likes to call it. It is something like a sensation in your nose and mouth but it also burns your eyes and I gave this elephant tube a little bit of a wave around and then I could not smell anything else again and I tested all round that area with the lamp and could not find anything".

You understand of course what the witness is saying: He found blackdamp? A. You can smell or taste blackdamp.

Q.In the shunt area. What he did to remove it was to take the elephant tube and wave it over it as you might do, perhaps, with a vacuum cleaner? A. Yes.

Q. Is that your understanding of what the elephant tube was designed to do? A. To me, what he would be doing would be drawing a stream of fresh air over a particular area.

Q. He would not be sucking all the noxious gas into the elephant tube by waving it over that particular area, he would be drawing fresh air over the area? A. That is my understanding. The gas would dilute. There is no doubt - I think it would go in the tube.

Q.That implies, does it not, the tube is not doing an effective job in this place to draw fresh air into the shunt area, what you have to do, there are still these pockets of gas and you have to wave it over the gas itself to draw fresh air into the shunt area. That is what your statement implies, doesn't it? A. Are you talking to me?

Q.Yes. That is what your statement implies. Do you want me to repeat it? It implies that when you use the elephant tube to draw fresh air into the shunt area it was not doing its job because it still left a pocket of gas and so what you do is to wave the elephant's tube over the pocket of gas to draw fresh air into the shunt area; is that right? A. The way that reads, yes.

Q.What I have read to you were the words of Mr. Deputy Stewart. That is some time just prior to the fire. You tell me your belief is it is a common understanding amongst deputies as to what this bleed tube is for - and they all worked in No.3? A. Yes.

Q. Would you have done the same thing if you detected gas? Would you have picked up the elephant tube and just waved it over the gas? A. If I could have detected gas in there?

Q.Yes, if you had? A. I think there would be two alternatives, either do that or run brattice up the side again, but you would not be able to use the shuttle car shunt.

Q.If you erected the brattice you would stop the shuttle car from working that shunt? A. I would say so.

Q. The only alternative you could see is to wave the elephant tube round; is that right? A.Yes.

Q. As soon as you wave it round and put it down again it might well only temporarily remove the gas; that is the position, isn't it? A. That is possible, yes.

Q. The shuttle car might well shunt into that area after a pocket of gas had collected? A. I think that is possible, yes.

MR. LEE: Q. Just yourself, if you found the situation of a pocket of gas in there in the vicinity of the bleed tube would that be a sign to you the ventilation in the shunt area was in fact inadequate and not diluting the gas? A. Yes.

Q. It would? A. Yes.

Q. It would have been a red flag to you? A. Yes.

Q. That bleed tube or no bleed tube the ventilation was inadequate? A. Was inadequate, yes.

MR. MURRAY: Q. The fact is that you continued, as you understood it, in No. 2 cut-through a system the same as one which you had seen one of the mine officials create in No3. cut-through earlier? A. Yes.

Q. Was there a No. 4 cut-through? A. Yes.

Q. What was done there, can you remember? A. No, I can't.

Q. The identity of that mine official is, by name? The name of the mine official, I think you called him an Under- Manager or something like that? A. Mr. Puddle - I am not sure about this - I was only told this.

Q. You thought Mr. Puddle was the mine official or that mine officials has done it? A. Mr. Puddle was the mine official that had the bleeder tube sent into the pit. I don't know who installed it in No. 3.

Q. Do you know who installed the brattice in No. 3? A. No.

Q. As a Deputy we have been told many times you have certain responsibilities from the management and also under the various Legislative provisions on safety matters? A. Yes.

Q. And that is your understanding? A. Yes.

Q. As far as this mine was concerned the management made it quite clear over the period you were working there, I take it, that you also had certain specific responsibilities as far as production was concerned; is that right? A. I would not say that.

Q. If production was low were you asked questions? A. They may ask me what is wrong - that would be as far as it went.

Q. There was no impression given to you or no directive given to you that you had the responsibility to direct the work in the most efficient way in mining coal? A. No, safety is my business.

Q. Safety exclusively? A. No, I am the official, if you like, in the section on afternoon shift. I am there all the time.

Q. Your job is to see coal is won , isn't it? -

MR. McNALLY: I thought he was going to add something.

MR. MURRAY: Q. What were you going to say? A. Other than when the overman or assistant Under-Manager comes in.

Q. What is your responsibility as far as the winning of coal is concerned? A. My responsibility?

Q. Yes? A. To see it is won safely.

HIS HONOR: Q. Whose job is it to see the men actually work? A. Mine.

Q. MR. MURRAY: The work of winning coal? A. Winning coal.

Q. It is quite clear your employers are in the business of winning coal and that is what you are there for? A. I am there to carry out the requirements of the Coal Mines Regulation Act and any other duty comes after that.

Q. So that it is very clear that your duties as far as getting the men to work to win coal is concerned, that it is entirely subservient to the safety requirement? A. Yes.

MR. CRANE: No questions.

HIS HONOR: Other deputies' reports have been handed to me and they should go into evidence. I propose to make the-m part of Exhibit "F".

MR. SULLIVAN: First thing tomorrow morning could I put the District Vice-President of my client Union into the box in connection with that document?

MR. REYNOLDS: Who do you suggest it was?

MR. SULLIVAN: It was Mr. Pearce who was in charge of operations at the pit top during the fire.

MR. REYNOLDS: I will admit that.

MR. SULLIVAN: I understood my friend said it was issued by someone who had not been down the mine. I will call him, Your Honor.

MR. REYNOLDS: If you want to prove that Mr. Lloyd Pearce handed that document to a representative of the Miners' Federation or to a newspaper person I will admit it.

MR. SULLIVAN: I will call him, Your Honor. There is another matter.

(His Honor released Mr. Donegan from further attendance subject to recall if necessary.

HIS HONOR: There is another matter: One of my brother Judges drew my attention to the fact that some years ago Mr. Justice Davidson held an Inquiry into the coal industry and there was a very large report. I do not think it touches on the subject matter of this Inquiry, it probably does not, but I understand it may well be of some assistance tome in this matter. I am told the Mines Department has a copy. Before we adjourn for Christmas do you think it might be made available to me?

MR.LEE: I will do my best to see it is obtained.

(Further hearing adjourned till 10 a.m. on Wednesday, 22nd December, 1965).

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IN THE COURT OF)
COAL MINES REGULATION)
HOLDEN AT BULLI)

No. 1 of 1965

BEFORE HIS HONOR JUDGE GORAN

ASSESSORS:MESSRS.MAHON and BUCK

WEDNESDAY, 22nd DECEMBER,1965

IN THE MATTER OF AN INQUIRY IN PURSUANCE OF THE COAL MINES REGULATION ACT INTO AN ACCIDENT WHICH OCCURRED AT THE BULLI COLLIERY ON 9th NOVEMBER 1965 AND ITS CAUSES AND CIRCUMSTANCES.

(PART HEARD)

(Mr.Sullivan announced a further appearance with him, of Mr.Geddes)

(By consent witness interposed)

ROBERT CECIL CRAMP
Sworn and examined as under:

MR.SULLIVAN: Q.What is your full name?A. Robert Cecil Cramp.

Q.What is your address? A. 5 John Street Balgownie.

Q.You are the vice-president of the Southern District of the Australian Coal and Shale Employees' Federation, are you not? A. Yes.

Q.And the President is Mr.Smart? A.Yes.

Q.On 9th November 1965 did information reach the Federation office in Wollongong that there was a fire at Bulli colliery? A. Yes.

Q.It did not come from the colliery itself? A.No.

Q.Did you and the President, Mr.Smart, then go to the colliery? A. Yes.

Q.What time did you arrive there? A.Well, I can only give you an approximate time.

Q.Approximate will do? A. Round about 11 a.m.

Q.Were you allowed in? A.Yes. We drove up to the colliery and as we were about to leave the car Mr.Pearce from the colliery office was standing looking out and he saw us and he beckoned us to come to the colliery office.

Q.Is that Mr.Lloyd Pearce? A.Yes.

Q.What is his position? A. I may be doing him an injustice - I know he has been promoted just recently. I think he is assistant general superintendent. I may be wrong there but I know he has been promoted.

Q.Did you go over to see him? A. Both Mr.Smart and myself went directly up to the office.

Q.Did he appear to be in charge of operations at the surface? A. Yes, he was in the office. He was at the management desk and to all intents and purposes appeared to be in charge.

Q.Was he communicating on the telephone with people underground? A.Yes - before that - he was doing that but we asked him what the score was and he indicated there were four men trapped and he went to the map on the wall and explained to us just where the seat of the fire was and the area where they considered the men were and indicated to us when he considered the fire started and he did say that there had been an ignition of gas, and that was generally accepted. There were others present of course, there was Mr.Harry Campbell the superintendent of the Corrimal colliery and I think Mr.Southward Jones who was the assistant manager of the Bulli colliery and I do believe Mr.Gordon Sellers was there together with Mr.Harry Marsh the manager of the Corrimal colliery, Mr.Smart, of course, and Mr.Arthur Crouther, the secretary of the Bulli Miners Lodge. There may have been others as well.

Q.I show you Exhibit GG. You recognise that document? A.Yes I do.

Q.Would you tell His Honor what led up to the issue of that document? A.Well naturally we were all concerned about the situation and, incidentally, when we approached the colliery there were officials at the gate, at the commencement of the property, and they did not hesitate to let us in, they opened the gates and let us in, they recognised Mr.Smart and myself. There was a number of cars there, possibly twenty or thirty people, including some women but they were not allowed in. We proceeded through and Mr.Pearce during the morning after conveying information to us and explaining on the map the seat of the fire frequently had telephone conversations with somebody underground and he conveyed the text of the messages to us inasmuch as he indicated, well, the fire is still going, no sign of the bodies up to date, etc, and with his permission we at intervals left the office and conveyed messages to members that were waiting outside the tunnel mouth.

This went on for possibly a period of two hours and we became concerned because we had been advised that there had been a news release from Sydney indicating there had been a disaster at Bulli and our concern was that we believed that if something wasn't stated in relation to the real facts then we could have an influx of families coming to the colliery and there would be real panic so consequently we discussed it, Mr.Crouther, Mr.Smart and myself together with Mr.Pearce and finally it was decided there should be a news release but it was stated that it would be advisable at first, before anybody released a statement, that the widows, not necessarily the widows, the wives of the persons concerned who were trapped should be informed of the situation and it was generally accepted there at that stage that little or no hope was had for getting the persons concerned out alive but consequently Mr.Marsh - -

HIS HONOR: Q.What time was this? A.That was probably between quarter to twelve and twelve o'clock or possibly might have been eleven thirty.

MR.SULLIVAN: Q.You did that? A.Yes, finally, acting on instructions from Mr.Pearce, Mr.Marsh and Mr.Crouther the Lodge secretary went to the residences of the four wives concerned and advised, for the purpose of advising them of the situation as it would apply to their husbands. While they were away Mr. Pearce prepared this statement: He wrote it out in longhand and took his time and wrote it out and after he prepared it he read it to us but he said that he would not release it until their publicity officer came from Wollongong and, consequently, somebody got on the phone, I don't know the gentleman's name - I met him at the office later. Mr.Pearce prepared this, read it to us and when this gentleman came from Wollongong he gave him the copy and he went down the gates and released the statement. When he came back I requested Mr.Pearce that I should have a copy of it.

Mr.Pearce agreed and consequently this is the copy that was given to me.

Q.What about the writing on it? Somebody wrote in the addresses of the deceased? A. I did this. I did it for the purpose - because it is my responsibility as a district official to contact the persons concerned. For instance, the next day I had occasion to go and see them all. We filed applications for the widows pension and long service leave, etc.

Q.There is a time which I think His Honor asked about yesterday. There is a time on that, I think Thursday 11a.m., isn't it?A.Yes.

Q.Do you know what that is? A.Yes, that is my writing. I put that there. I am just at a loss to know - I just can't - -

MR.SULLIVAN: Does it matter?

HIS HONOR: It does not matter. Is there any cross-examination?

(No response) (Witness retired)

WILLIAM GEORGE CAMBOURN
Cross-examination continued:

HIS HONOR: Q.You took an oath to tell the truth yesterday. You are still bound by that oath, do you understand? A.Yes.

MR.MURRAY: Before Mr.Parkinson begins, I omitted two matters yesterday. Is this an exhibit, Your Honor?

MR.REYNOLDS: It has not yet been tendered. I will tender it.

(Coloured plan tendered and marked Exhibit JJ).

MR.MURRAY: Q.(Copy Exhibit JJ shown to witness) This is a representation of the way the work was carried out to the left of the main headings prior to the fire? A.Yes.

Q.Is that consistent with your recollection? I am not asking you about the details? A.Yes.

Q.As far as you know had there been any trouble about gas in the mine before the work was started out to the left? A.Not to my knowledge.

Q.As the work was being carried out on what is marked 9 , for instance and 3 and 4 on the plan before you, was gas found to your knowledge to be present? A. In different places in that area, yes.

Q.As those goafs were being created? A.That is right.

Q.Or pillars extracted? A. In different places depending where the machine was.

Q. And what was that - what was detected? A. Noxious gas.

HIS HONOR: Q.Any inflammable gas? A. There was inflammable gas found in that area some time - I could not say where in the area.

MR.MURRAY: Q.Is the evidence you are giving and this information you are telling me now of your own knowledge or what you were told by deputies or mine officials? A.This is from my own knowledge.

Q.You mentioned there was discussion between deputies as they changed shifts. Was there discussion between yourself and your colleagues about the presence in those areas of gas? A. I would say so.

HIS HONOR: Q.If you found it you would have to report it to your next deputy? A.That is right.

Q.And you would have to make a report on it yourself? A.That is right.

Q.And did you do that? Did you make those two reports? A. Yes.

MR.MURRAY: Q.Did you discuss the matter of the presence of gas in those earlier workings with any mine official or did you have any conversation with any mine official about that?A. The mine official has CO reports every day.

Q.So to your knowledge the mine officials were aware that both noxious gas and inflammable gas had been found in the earlier cut-throughs driven off to the left of the main headings? A.I would say so,yes.

Q.You said you were responsible for production - I forget your exact words and I am not suggesting those are your exact words? A.That is right.

Q.But it is the responsibility of the fitter, is it not, to care for the maintenance of the shuttle cars, the machinery? A. The machinery,yes.

Q.And it is the responsibility of the electrician to care for any of the electrical components on them? A.Yes.

Q.And you merely ask them to attend to a fault if it arises? A. If it arises I notify either.

MR.PARKINSON: Q.How long have you been a deputy at Bulli colliery? A. Approximately six and a half years.

Q.When these headings were being driven were you on afternoon shift as deputy at that particular time? A.Yes.

Q.You have already told Mr.Murray that during that particular time of driving in the solids you did not detect any noxious or inflammable gas in the three headings or the cut-throughs? A. Not to my knowledge, not as far as I can remember.

Q.These three headings: Did they run into a fault? A. We never actually hit a fault but they were heading in that direction.

Q.Before the last line of pillars was being extracted were you given any instructions by any senior official at the colliery as to methods of ventilation to be adopted? A. As far as I know, these are worked out by the senior officials.

Q.But were you given any specific instructions? A. On the first initial stage?

Q.When you started to extract the first line of pillars or develop the workings at the first line of pillars? A. I don't think I was. These fans are set up by the night shift and day shift follows them, afternoon shift follows them and this is -

Q.Does that mean then that if some deputy has an idea in day shift, then it must be followed by the afternoon shift and the dog-watch deputies? A. The system is worked out by the under-manager or the manager.

Q.I see, but the system when it is worked out - there was no specific instruction given to you about that? A. Not as far as I can remember.

HIS HONOR: Q.Did you yourself ever undertake to solve any problems of ventilation? A. I never considered we had any, sir.

Q.You did not consider you had any? (No answer)

MR.REYNOLDS: I think it is probably only a use of the word. He probably understands a problem differently from us.

MR.LEE: He has told us about the brattice screen.

HIS HONOR: Q.When you get a local problem, surely, of getting rid of a layer or pocket of gas, would you consider that a problem of ventilation? A. Yes, but when I talk about ventilation I am talking about the main ventilation of the section.

Q.You mean the overall ventilation? A. Yes.

Q.I see; then you had local problems of ventilation from time to time? A. Small things,yes.

Q.Did you receive any instructions regarding the solving of those problems? A. Mostly you solve them yourself.

Q.Just use your ingenuity? A. Just put a piece of brattice up or something,yes.

MR.PARKINSON: Q. Now you are under the impression, are you not, for the general method of ventilating this particular pillar area that was left in the hands of senior officials? A.Yes.

Q.Incidentally, when you refer to senior officials, just exactly who is that - the manager, the under-manager or who? A. Anyone - the assistant under-manager, the under-manager or the manager.

Q.I would like you now to take your mind back if you would to the Friday night, or the afternoon shift on Friday 1st October. I might be able to assist you here - this was the six hour week-end? A. The 6th October?

Q.No, the Friday, the 1st October this year. It was six hour weekend. You would have a statutory holiday on the Monday, the 4th, wouldn't you, and you would resume work on Tuesday October 5th in afternoon shift? A.I presume so.I can't remember this.

Q.Well, you were still afternoon shift? A. I have been afternoon shift for about six and a half years.

Q.When you met deputy Stewart on that particular afternoon, did deputy Stewart indicate to you in any way what he had had to do in No.3 cut-through in relation to a brattice stopping in A heading? A.I could not remember.

Q.Do you recall the brattice stopping in A heading in the No.3 cut-through? A.This is the one that was cement rendered?

Q.Yes. A.Yes sir.

Q.Would you or could you give an opinion that it would be somewhere round about 5th October when you first saw it? A.No, I could not. Dates - no dates.

Q.There is evidence here to the effect that deputy Stewart, Cliff Lake and Sid Chilby - incidentally, the transcript notes refer to Tilby - all had a hand in assisting each other in erecting this particular brattice stopping at A heading and we are now dealing with No.3 cut-through? A.Yes.

Q.Deputy Stewart did not say anything to you about this brattice stopping? A.He did say,outside,that during the day,that they had

put up a stopping, had it cement washed and put in a bleed tube to ventilate the shuttle car shunt.

HIS HONOR: Q.He told you that, did he? A.Yes.

Q.Are you able to tell us when that was - I do not mean the exact date but about that period? A.I could not tell you.

Q.You cannot say whether it was the beginning of October or the end of October or the middle? A.I wouldn't be able to.

Q.Or a week before the fire? A. It was definitely not a week before the fire.

Q.It was before then? A.Yes.

Q.You are not able to say how long before the fire? A.No.

MR.PARKINSON: Q.Did he tell you why this had been done? A. Why it had been put up?

Q.Yes. A. To ventilate the shuttle car shunt.

Q.To ventilate the shuttle car shunt? A. Actually it was not a shuttle car shunt then. This particular night it was just the same set-up as what 2 is - the miner had just started there. The miner must do a day's work before there is enough room to fit the shuttle car in.

Q.Now Mr.Lake says in evidence that the shuttle car had travelled about 100 feet from the intersection down the No.3 cut-through. Do you recall that? A. I don't think that would be right.

Q.What makes you think now that it couldn't be right? A.That would mean the shuttle car would be shunting in B heading and normally they try to get the shuttle car shunt as close to the machine as possible.

Q.Well now, if the machine is 100 feet down from the A-No.3 cut-through intersection, they would be starting to shunt into A heading then, wouldn't they? A. From experience they do two shifts to drive that one down. Day shift started, afternoon shift completes it as far as they can go and then the following night the shuttle car shunt moves down. This is to my knowledge.

Q.How far in a normal shift would the machine travel? A. I could not say that. Depending on the conditions, stones, height.

Q.Well, how far would the continuous miner travel -

HIS HONOR: Q.What is the least it would travel and what is the most, are you able to tell us that? A.Offhand , no, depending on the type of coal, stone, the steepness of the place,the condition of the machine and whether you have got two shunttle cars or one shuttle car.

MR.PARKINSON: Q.You said that on this particular occasion deputy Stewart said to you that this brattice stopping had been erected and the bleeder tube installed? A.Yes.

Q.It is evidence that the brattice stopping was not completed until ten minutes to two that afternoon? A. I don't get in there till four o'clock.

Q.Well, you get in there at 4 o'clock; how long would it take to instal a bleeder tube? A. I would say ten minutes, fifteen minutes.

Q.Ten or fifteen minutes? A.Yes.

Q.So it could have been installed between ten minutes to two and the time that you arrived? A. Yes.

Q.At No.3 cut-through intersection? A. Yes.

Q.Now do you say exactly the same method was adopted in No.2 cut-through as in No.3? A.Yes.

Q.But if Mr.Lake in his evidence is correct the machine had travelled 100 feet down No.3 cut-through but it hadn't travelled at all down No.2 cut-through had it? . . (Objected to by Mr. Reynolds; rejected in that form).

Q.Have you any idea, or did Mr.Stewart indicate to you when he told you about the brattice stopping in No.3 cut-through and the installation of the bleeder tube, as to whether he had been given any instructions to have these erected and installed? A. He told me the under-manager, Mr.Puddle, had rung to the surface and had this bleeder tube and the vent T piece sent in. As far as I can remember, that is about all.

Q.And he only told you, or did he only tell you that it was for purposes of ventilating? A.Yes.

Q.The particular heading from the intersection? A.Yes.

Q.He did not say anything to you about the crook conditions that Mr.Lake gave in evidence here, did he? (Objected to by Mr.Reynolds; rejected in that form).

Q.Did Deputy Stewart indicate to you how he had found the conditions in this particular heading in No.3 cut-through that particular afternoon? A.How the conditions were?

Q.Yes. A. No.

Q.He did not indicate to you in any shape or form that the men who had been sent to him to assist him erect this brattice stopping, he had instructed them that day to keep on going out and coming back, going out and coming back in order to get some fresh air? A.I am sure he said nothing to me about that.

Q.Have you any idea when pillar extraction actually commenced in this particular area? The first commencement of pillar extraction in this section, have you any idea? A. At the time it commenced?

Q.Yes, pillar extraction? A.No.

Q.Could you say whether it was three months -

MR. LEE: I think we have that in Mr.Menzies' report.

MR.PARKINSON: I think it was said towards the end of July, if my memory serves me correctly. The headings commenced some time in May and I think the evidence is to the effect that pillar extraction commenced some time in July and I thought that may have been in Deputy Stewart's evidence also.

MR.LEE: It may have been, but I think Mr.Menzies covered it.

HIS HONOR: That is my recollection of the evidence.

MR.REYNOLDS: It was not changed, so I do not think there is much point in asking this witness.

HIS HONOR: The witness said he does not know when pillar extraction commenced, but you may put it to him, "assuming".

MR.PARKINSON: Q.I will put it to you this way: Would you say that pillar extraction from the commencement up to the day of the disaster would be somewhere in the vicinity of 3 months? A.I couldn't say that. I wouldn't know when the section even started.

MR.LEE: 12th July 1965.

MR.PARKINSON: Q. 12th July 1965 - that would be approximately 12 to 14 weeks, somewhere in that vicinity. What was the number of the first cut-through that was driven to form the pillars? A. The number of the first cut-through which was driven?

Q.Yes, the extended cut-through which was driven to form the pillars for extraction, the first line of pillars extracted. What was the number of that? (No answer)

MR.REYNOLDS: Your Honor called this witness and I indicated that Mr.Puddle would be called and there is a plan which has been tendered in evidence and it will be sworn to. If Mr.Parkinson wants to do this, of course he cannot be stopped, but I do indicate that people will be called who can answer these questions with complete authority.

MR.PARKINSON: I do not know what more authority one would have than deputy Cambourn who has been in this particular area ever since its commencement. I would like to develop it to the point it was leading to and if Mr.Cambourn cannot answer it then I will certainly ask the person who can answer it.

HIS HONOR: Mr.Reynolds says there is somebody coming who can answer this. Does that suit you, Mr.Parkinson?

MR. PARKINSON: I want to know what Mr.Cambourn has to say about it.

MR.McNALLY: May I assist here. I understand the plans the deputy used - I may be incorrect - were not numbered. I do not think the plan in the room had A, B, C headings as on these plans and I do not know whether the cut-throughs are numbered.

HIS HONOR: Q.What do you say, Mr.Cambourn? A. I think the cut-throughs were numbered, if I recall.

Q.They were numbered? A.Yes. These plans are changed periodically, I could not tell you what period but every so many months there was a new plan put there, how the workings were when this plan was drawn up.

MR.PARKINSON: Q.During the extraction at this particular period where it is up to at the present moment would you say there was almost complete extraction taking place? A. I would say reasonably fair extraction.

Q.Would that mean there was a reasonable amount of coal being left? A. In this area to my knowledge there were two or three clay dykes running from C heading to A heading, that direction. They tried to work the coal around these clay dykes.

Q.Did you give instructions - I thought I heard you say yesterday you had given instructions to the dog-watch deputy on the Monday night to erect a brattice stopping in A heading in No.2 ? A.That is correct.

Q.When you came in the following afternoon that stopping had been erected? A.Yes, that was Tuesday.

Q.Had the bleeder tube been installed? A.No.

I happened to be there, I know why Mr. Murray is referring to this time, I was there - when it holed I happened to be there, and noxious gases started to come from the direction of the No. 1 holing.

Q. The No. 1 holing? A. Yes.

Q. Where you were holing through from No. 1, is that the position? A. Where No. 1 holed through to No. 2.

MR. MURRAY: Q. Near where the word "bord" is shown on the plan? A. Yes, that is right, there was some gas started to come across from there .

HIS HONOR: Q. That is down No. 1? A. It came across from No. 1 through the hole we had made and thence up No. 4 and 3 to the return.

Q. When you say through the hole you had made, through the hole you had made from No. 1? A. Back to No. 4, yes.

MR. MURRAY: Q. In other words, a draught of air through the bleed tunnels had been created and evidenced itself by drawing off gas from the area of No. 2? A. Yes.

HIS HONOR: Q. I take it this is goaf gas? A. It was, Your Honor, yes.

Q. Which would mean it had come from the area marked 7, am I right? A. Yes - 2 and that area. 2 was holed down there too and 1. It can come from anywhere in that area across there.

Q. 1 itself is not goaf, is it? A. No, it is only air.

Q. 7 by this time had become goaf? A. Not if I understand the order correctly, No. 5 was the one we had just holed through, but there was some work done in beyond cut-through No. 6 between the three development headings. If you look straight along the plan, these cut-throughs are numbered 1 to 6.

Q. Work had been done in No. 6 which is not coloured? A. Yes.

Q. On the top right-hand side of the plan. So it would have travelled, this gas, possibly at any rate, from No. 6 down to A heading? A. Yes, down through No. 2.

Q. Into No. 1? A. Yes.

Q. And found its way into the hole which you had just made into No. 4? A. Yes.

MR. MURRAY: Q. I may have perpetrated an error by the way I have put my questions because I understand the numbers on JJ are put forward by the management as representing the temporal sequence in which the work was carried out? A. Yes. (Objected to by Mr.Reynolds: question withdrawn.)

HIS HONOR: In order to assist me, who puts it forward, Mr. Reynolds?

MR. REYNOLDS: I intervened because of the situation which will arise because I believe Mr. Puddle is of the view that 7 was done after 2 and 1.

HIS HONOR: You say there is some error?

MR.REYNOLDS: Yes, I believe Mr. Puddle's recollection is different to the manager's recollection.

WITNESS: Yes. I think he has a more intimate knowledge.

MR.REYNOLDS: That is why I say it is not put forward by the management in any sense. There will be evidence given by two witnesses which differs in one point only, as to the sequence in which 7 was taken out.

HIS HONOR: If Mr.Puddle is right the gas possibly came from there.

MR.REYNOLDS: Yes. If he is right there was an extra source of gas on the occasion to which Mr.Stone is referring.

MR.MURRAY: Q.Did you have any part in the preparation of Exhibit JJ personally? A.No, not much. I saw it being made up by people, that is all.

Q.From what records is the mine able to say either that that is the temporal sequence of the work of that some other sequence took place? A. Memory, mainly.

Q.Isn't there in existence, which was produced in response to a subpoena from the Miner's Federation, a development plan which is the system of work or the plan laid down by you and your superiors and followed by the underground staff? A.I think it was explained very carefully in the beginning that the plan you are talking about is in that brown paper over there, a plan of the mine, and we explained we only put up these three headings because we did not know what we were going to run into. I think we said that earlier.

Q.That explains what is or what is not on the plan wrapped in brown paper? A.Yes.

Q.Is there any document drawn up by you or under your supervision by others, or by your superiors which shows the under manager or other subordinates underground just how the work will be done? A.Not for this coloured section of 8 right.

Q.What about the mirror image I think you described it on the other side? A.That is before my time. I don't know what happened before that.

Q.You don't know if there was any plan drawn before the work commenced or not? A.No.

HIS HONOR:Q.Is there a plan kept of what work has been done? A.Yes, it is recorded on the colliery plans.

Q.What do they show? A.They do not show the order of drivage, they show what has been done but would not show whether this has been laid out in this order beforehand unless, perhaps, our surveyor may have some record of work he has been asked to do.

Q.I would have thought the colliery would have set these things down step by step so that you get a temporal sequence in a diary. Is anything like that kept? A. No, the usual process, if you are going to develop an area, whoever is responsible for the development sits down and works out what is to be done. This is done in rough form and then the surveyor is asked to draw this up in proper form with proper distances and proper boundaries and what-not on it. This may be issued to the panel deputy in something like this, with straight lines in it, showing him what he is to do about distances and directions and so forth, the directions kept by the surveyor and the distances kept by the deputy who tells him where he has reached for a day's work and so forth. When this

is finally all over, it is recorded on the statutory plans.

Q. But not the order in which each part of the work has been done? A. No.

Q. Mr. Buck tells me it is done quarterly? A. At the end of the quarter the surveyor is required to mark the extent of the workings, the then extent of the workings and put a line under it with his signature and the date.

MR. MURRAY: Q. Part of the material upon which you drew for your approving of Mr. Puddle's work was what had been done successfully in another part of this district, wasn't it? A. Yes.

Q. Where the mirror image of this, you say, had been - this system on Exhibit JJ had been carried out successfully not far away? A. That is true.

Q. In the light of what you have just said in evidence, what did you draw upon which enables you to say this work was carried out in this way but in a mirror image form? A. The best thing I suggest is if you have a look at this and have a look at the other one on the plan and see the similarity.

Q. I thought it was the question of the sequence of work which is all-important? A. No, it is not.

Q. Don't you agree that the system which has been put to you by other counsel appearing had been changed - the system was that you always had a bleed tunnel outby of the place you were working on pillar extraction until the extension of No. 2 cut-through was commenced? A. Yes, that is right.

Q. Would you just explain to me when you said in the proof which was tendered, or put to you, that you drew for support for approval of this system in the extension of No. 2 cut-through a successful equivalent earlier? How did you know in what sequence the work had been done? A. You can take my word that it was not done from outby in or you would not get back out. Take a look at the plan.

Q. Just put the plan aside and explain to me from what colliery document you were able to say that--? A. No.

Q. What information did you draw upon to come and give in evidence that the mine had successfully done the same operation in a mirror image form earlier? A. The colliery plan has records on it of what was done.

HIS HONOR: Q. Mr. Mahon has been saying something to me: The Act requires, in s.35, that you should keep in the office an accurate plan of the workings of the mine showing the workings up to date, not more than three months previously? A. Yes.

Q. And certain details of it?--

MR.REYNOLDS: We cannot hear Your Honor.

HIS HONOR: I am sorry. I was referring to s.35, the first part of it.

Q. I take it that was kept, was it? A. Yes, this is the main colliery plan.

Q. The Act also requires that the workings have to be shown up to a date not more than three months previously? A. That is correct; this is the reference Mr. Buck made to a quarterly survey.

Q.The Act goes on in Section 1A - I am sorry, sub section 1A of Section 35 to say that the owner, agent, or manager of a mine at periods of not more than six months shall forward to the Under Secretary for Mines an accurate tracing of the plan required to be kept in the office of the mine under sub-section 1 of this section showing the mine work up to a date not more than three months previously, entitled "mine record tracing"? A.Yes, that is kept in the Mines Department. We don't actually forward it to them, they keep it and send it to us for bringing up to date and we send it back.

Q.One way or the other the Mines Department gets tracings; is that right? A.Yes.

Q.There is, in addition to the overall plan, I am told, a sectional plan. This is what Mr.Mahon informs me. What do you say as to that? A. I am not sure which one Mr.Mahon is referring to.

MR.MAHON: Q.You have a colliery plan don't you? A.Yes.

Q.Don't you have a plan for each section? A.You mean a detailed plan of each section of the colliery?

Q.Yes? A. There are various forms of these. There are, in each crib room - there is a plan a scaled plan of that section out to the main intake for the use of the people in the panel. There are various other smaller sections for fire fighting purposes as required under the Act. There are small sections for the use of various officals that carry them about with them. There are many of these.

HIS HONOR: Q.Mr.Buck tells me he thinks the deputy has them.Is that the position? A. Yes, the Deputy carries a scale plan of the district, but he might only have, as far as the development work is concerned, is this what you are getting at? He might have a very small amount of the development in front of him. The Deputy does not need to know so much in advance, only a matter of days or weeks ahead.

Q.Are these plans of sections or portions of the development kept afterwards? A.They might be in some Deputy's pocket, but once they are finished -

Q.But is not a copy kept in some office, apart from any handed to a deputy? A. There would be quite a few sections about if -

Q.One would have thought at a particular stage a plan would show that a certain part of the work had not yet been carried out and from that one could learn from a subsequent plan that another section came after it or before it? A.It is difficult to tell from the small sections. You would do better off the main coloured plan.

Q.What about these actual section plans rather than the small development plans? Do you know anything of those, what they would show? A. No, they would not show any sequence of this sort of thing.

Q.I take it that to get the order you just rely on the memory of some men in charge, is that the position? A. Yes, for the minor details of it.

Q.I do not know whether you would call it a minor detail? A.Well, I am sorry - the details, for instance, of an area here that is coloured, it is perfectly obvious that these three headings are taken out to the end of an area but the work must have been done in order coming back but the strict order of one particular cut through or heading may not be evident.

MR. MURRAY: Q. I have discovered from what you said which prompted a later comment from Mr. Lee about there being a mirror image - I remind you that you said in chief at p.3 of the document, and are you referring to the method of ventilation associated with the cutting of a particular, I suppose it is called a cut-through, is it - all this like the extension of No. 2? A. Yes.

Q. I am referring you to what you said on p. 3 when you were referring to the ventilation associated with the making of pillars by the creation of cut-throughs. You said, "The method of extraction was, so far as I know, an accepted one. It has been followed before in this mine with success and was not then, so far as I know, regarded as being radical or innovatory"?A.Yes.

Q. I take it from what you have now told me in evidence that what you rely upon on what happened in this mine in relation to this method of extraction was what someone told you? A.Yes.

Q. Who was that person? A. Well, when we planned this second panel here, this 8 Right, it was between myself, Mr. Ryan and Mr. Puddle. Both those gentlemen were at the mine when the other panel was driven.

Q. But you have told us that the actual creation of the extension of No. 2 was not done in consultation with you and indeed you discovered it, I think your words were, when it was too late to do anything about it? A. No, I think we were talking about the extraction of No. 11, weren't we? It looks a bit different to me.

MR. LEE: What he said was that they started on No. 13 after they extracted No. 11 and 12, but that is much the same as what Mr. Murray is putting, the fact that the set-up was allowed to develop in No. 2 contrary to the original scheme.

MR. MURRAY: Q. What I am suggesting to you is that what was discussed as a plan between yourself and the other gentlemen, Mr. Puddle and Mr. Ryan, was a system essentially different from that which was in fact being done underground when the No. 2 cut-through was being extended because there was no bleed tunnel behind the working? A. Well, there was no bleed tunnel behind the work, that is right.

Q. But it was the system that had been discussed, according to what I understood from you yesterday, the system that occurs on Exhibit JJ in the early stages, the driving of No. 1 and then going inby and making No. 2 and so on, and then, as we know now, taking No. 3 which is marked 7? A. Yes.

Q. I am suggesting to you that that was the plan which was discussed at managerial level and approved? A. Yes.

Q. Is that correct? A. Yes, but I still -

Q. And I am contrasting that for the purposes of my next question with what was in fact done underground, with what appears in pencil and marked 9 on Exhibit JJ and also what appears in pencil and marked 13 on Exhibit JJ was carried out? A. Your question has got so long I have forgotten what you are really asking, but if you are asking me - (Question read by Court Reporter).

Q. Is that question quite clear to you? A. No, I am sorry I don't know what it means.

Q. Well, when you are referring on p. 3 of your proof to the method of extraction being an accepted one and having been followed with success in the mine before, are you referring to

the method of extraction which involves the preparation of a bleed tunnel outby of the proposed pillar extraction area? A. Yes.

Q.Therefore what was approved in the planning discussion between yourself, Mr.Puddle and Mr.Ryan was different from that which in fact took place underground when No.2 cut through was extended? A. Yes, to the extent that we have already talked about that there was no bleed outby.

HIS HONOR: Q.Would you regard that as an essential difference? A. Well, it is different in that when it was done in Green panel, the one you are referring to - I don't know, this is only hearsay, but I don't think they ever took the pillar which is marked 11 without having the bleed outby.

Q.Perhaps my question is not fair and I will split it up : Would you say it was an essential difference as far as the overall result for winning coal was concerned that a bleed tube should be driven first before you extract the coal? A. Not purely as a getting coal method.

Q.Was it an essential difference as far as safety was concerned? A.Yes, I would think so.

MR.MURRAY: Q.Further to what His Honor asked you, you in fact said Mr.Puddle's method - that is the driving of the cut through before there was a bleed tube outby - was a more efficient method from the production point of view. You said that yesterday? A. I had better be careful -

Q.Do you recall saying that yesterday? A. No, I don't recall saying those words. What I did say was that 11 was in good condition and he took it while it was green and this resulted in better production.

Q.Does the same thing apply to the driving of an extension of No. 2 cut through - would it enable you to take the pillar while it was green? A. Well, while you are extending No.2 you are not getting the pillar. If you extended the pillar hole into 9 and then hopped straight into that hole you formed, that would give you better production,yes.

Q.You said that was the instruction to the men, to hole into No. 9 as soon as they could? A.Yes, to hole in, but not to take the pillar immediately.

Q.The vent tubes had been set up for you to split the pillar inby 13? A.No.

Q.There was a steel piece already in the vent tubes about half way down from A heading towards the face? A.Yes there was, that is right.

Q.And do you say it was not proposed to split the pillar at that point? A. That is right, it wasn't.

Q.From what records or conversation do you draw on for that fact? A.Well, I have talked to Mr.Puddle, I have talked to the deputies on the job. The idea was that when this place holed -

MR.LEE: Q.What is "this place"? A. I am sorry. When the extension of No.2 cut through which is 13 holed into No.9, it is such a long way back - perhaps it might be better if I showed it over there, Your Honor. (Witness approaches exhibit A). The next move after holing this place was to take the machine round into this cut through to split that pillar.

HIS HONOR: The witness is now referring to the pillar between 13 and 9.

WITNESS: Yes. We were going to split that straight down and lift off against the goaf. If this holed early in the shift it would take a long time to run the machine right back here with all the equipment necessary with it.

HIS HONOR: Q. That is, take it back and up A heading and set it up midway between No. 9? A. So what they would do for a couple of hours or so or whatever remained of the shift would be to nick into the rib midway along 13 off that T piece you referred to. If you don't make much of a hole in that time you can leave a bit of brattice in there and keep it clean between shifts, or if at the end of the afternoon shift you could put the machine in there on maintenance shift.

MR. MURRAY: Q. So that the next place in which the continuous miner was going to work according to the plan was from what was used as a shunt? A. Yes, that is right. After holing there, the production would start from there and split this pillar here, that is right.

Q. Adjacent to the goaf? A. Yes - well, the goaf is there, yes.

Q. You mentioned that it would have taken production time. You did not say "production time" but it would have taken time to move the machinery round to travel in again between 13 and 9 and parallel to them? A. Yes.

Q. You know, do you not, that the deputy on the afternoon shift asked for and received certain instructions as to the repositioning of the mechanical miner at the end of the extension of No.2 cut-through? (Form of question objected to by Mr.Reynolds.) A. I don't know what instruction - (Objection argued.)

HIS HONOR: You may ask him whether he knows of his own knowledge.

MR. MURRAY: Q. As manager, do you know that a decision was made by the under-manager on the afternoon shift to reposition the continuous miner? (Objected to by Mr.Reynolds.)

HIS HONOR: Q. Perhaps I can assist. You know these things either of your own knowledge or something you have been told? A. That is generally how you get to know about it.

Q. How do you know the thing Mr. Murray is asking you about?

MR. MURRAY: Q. That the deputy asked for directions as to the repositioning of the continuous miner during the afternoon shift prior to the day in question ? A. I don't know if he did, but I presume that he would. This is the way he does his work.

Q. Because he is under the continual supervision - (Objected to by Mr.Reynolds.)

HIS HONOR: Q. What is the position about the deputy asking for this? A. He asks his immediate superior. He might ask the overman or the assistant under-manager or under-manager, but he has enough instructions to know what he is doing in the next few days.

Q. He does not ask for the next few days? A. Only if something untoward comes up that he wants an opinion on.

Q. Now who is the man who would know whether special directions were asked on the day of the fire?

HIS HONOR: That is your question, Mr. Murray, is it?

MR.MURRAY: Q.The afternoon shift prior to the morning shift or day shift on which the fire took place - I suggest that the Deputy on the afternoon shift asked for direction initially and that certain work was then carried out by the night shift? A. I think you are referring to Mr. Cambourn. He would be the only one there who would know exactly who he asked what.

HIS HONOR: Q.You know it was suggested that somebody delayed the holing through? A.Yes.

Q.And therefore that there were some questions of directions as to where the machine should be placed in the shift before the one in which the fire occurred? A.Yes.

Q.The question firstly I want to ask you is do you know anything at all about this ? A.Yes.

Q.Before you say anything further, do you know it of your own knowledge? A.The only reason I know of it is from discussions with Mr.Puddle.

Q.Were those discussions since the fire? A.Yes.

Q.Since the fire? A.Yes.

MR.MURRAY: I do not pursue it further, Your Honor.

MR.LEE: Before my friend proceeds, to clear up Mr.Reynolds' position in the matter of the way we are to treat Mr.Stone's evidence, Mr.Stone was asked about a number of matters and he dealt with them in his statement which we are not to take any notice of if they become controversial. One in particular I cross examined him on and it was not mentioned in his statement. It was the question of splitting the pillar, and I accepted his answer that it was the intention of the company to split this pillar. Can Mr.Reynolds tell us whether we are to accept that statement from Mr.Stone as evidence in this case? Is it a fact he is putting forward or something which may or may not be useful on behalf of the company, depending on whether somebody makes it controversial or not. I took it that we have positive evidence from Mr.Stone that the pillar was split.

MR.REYNOLDS: Your Honor is making an inquiry, and it was on the basis of shortening the matter that this statement was prepared as Mr.Stone's evidence. I think the less said about it the better. I do not propose to discuss it further.

HIS HONOR: The answer to that is that since the question was not objected to, I must infer is not a controversial issue and therefore I must accept the answer.

MR.MURRAY: Q.I do not propose to ask any more questions along these lines. If I can go to another matter - perhaps you could go back to the box. What gas was discovered that caused the men to be withdrawn? A. Noxious gas.

Q. How was it discovered? A. The deputy examined with a safety lamp.

Q. What percentage? What proportion, do you recall? A. No, I don't know. If you have got noxious gas I don't know how you get the percentage, all you can tell is you have got it.

Q. Could you taste it or smell it? A. Yes, I had a sensation, I am not sure what to describe it as, but you can certainly know you are in it.

Q. No one waited to test for methane, the men were just withdrawn? A. We did not rush out of the place, we put some brattice up and guided the air and gas and so forth past the machine. We waited till it subsided somewhat and trammed the machine out.

Q. Did anybody on that occasion when you were present carry out a test for methane? A. I did not see it done, put it that way. I know Bob Stewart, the miner driver, told me he checked and he had noxious gas coming past him. I did not see him do that. Charlie Stewart went down with a light, I saw him working with a light but I did not stand right up alongside him to see what he was doing.

HIS HONOR: Q. How long before the fire was that? A. This must have been more than a month.

Q. More than a month? A. I think so. It is quite a while back. It would be five or six weeks, I think, Your Honor.

MR. MURRAY: Q. You have a copy of JJ in your hand. You see the two pillars hatched and marked 10 and 11? A. Yes.

Q. They were in fact split by the putting through of a tunnel parallel to A heading, weren't they? A. It doesn't indicate it there.

Q. I am asking you independent of that to agree that that is how they were split and extracted? A. I don't know that for sure.

Q. From your point of view as manager, and I am speaking prior to the fire, did you have any objections to the issue and use of methanometers? A. No, at the colliery I came from we used them quite frequently. The company would not have any objection to them.

Q. You see no practical difficulty? A. No.

(It was agreed Mr. McNally should defer his cross-examination till after Mr. Sullivan's cross-examination of the witness.)

MR.SULLIVAN: Q. Yesterday in reply to a question by my learned friend, as follows. "You have had prepared a statement by the company's solicitor, have you not?" you said "Yes" - (Objected to by Mr.Reynolds; allowed.)

Q. Can you tell us how the statement came into being? (Objected to by Mr.Reynolds; allowed.)

Q. How did it come into being? You did not either write or dictate it yourself, I take it? A. I sat down and discussed it with the company's solicitor.

Q. Who was the company's solicitor? A. Mr. Snelson.

Q. When you were discussing it with the company's solicitor was anyone else present? --

MR. REYNOLDS: I am in Your Honor's hands.

HIS HONOR: Assume the evidence was given without any proof being put forward, two things could happen: The witness could be asked, for example, whether before he gave his evidence he discussed it (a) with his solicitor, or (b) in the presence of somebody else. I think this is the exact equivalent. The other way that could happen is that his evidence being challenged he could be asked whether he made a statement and that statement could be called for and the same question could be asked about such a statement. I am perfectly satisfied the preparation of the evidence in this form and its presentation at this tribunal was done in a bone fide attempt by you and those with you to assist the inquiry and also to give me an opportunity to have the evidence in a manner I could study it.

MR.REYNOLDS: The legal profession has a responsibility in this sort of proceeding to try to assist the due administration of an inquiry of this kind and this is a view I have always firmly held and it was for that reason that work was done well in ad-- vance to assist Your Honor, and my learned friends have been given the courtesy of copies. If this sort of thing is going to be treated in this way it is a complete discouragement to this course being adopted. As I say it is entirely in Your Honor's hands as to whether we are going to have all this legal formalism of him being taken through it and asked who was there and what went on and whether a phrase was his or somebody elses.

HIS HONOR: I shall not allow that.

MR.REYNOLDS: I do not know what it is leading to. I am in Your Honor's hands.

MR.SULLIVAN: Is the question allowed?

HIS HONOR: Yes.

MR.SULLIVAN Q. I said, was there anybody else present? A. Well I think we had two, one or two sessions on that document.

Q.It was not all done at the same sitting? A.I don't really know who was present a lot of company officials.

Q.Was Mr.Puddle present ? A.No.

Q.Not at all? A.No.

Q.Between the sessions did you talk with Mr.Puddle about the contents of the statement? A.Yes.

Q.So we can say what appears in this statement is to some extent a composite statement checked on between you and Mr.Puddle; is that right? A.Yes, that is right.

Q.Anyone else? Mr.Ryan? Did he come into the preparation of the statement too? A. No, I don't think he was ever present.

Q.He was never present but did you have discussions with him about what you would say in the statement? A.No, not Mr.Ryan

Q.Any senior colliery official? A.I know most of my senior people have read it, they may have offered advice to Mr.Shelson or something.

Q.And advice to you? A.I don't recall any.

Q.Would you know? A.I would know. Yes, they did not give me any advise.

Q. Did they discuss its contents? A. They read it when I was there, yes.

Q. Did they make suggestions that it would be better to say this rather than something else? A. No, I don't think so.

Q. Or to alter the form of a paragraph or sentence? A. No, Mr. Snelson and I did that.

Q. You and Mr. Snelson did any alterations that were necessary; is that the position? A. Yes.

Q. As far as the statement itself is concerned, in the paragraph, I think you could call it the last paragraph really, and this is on p.1, you say "I am responsible for laying out the work in the mine and in doing so I consult with the under- manager"? A. Yes.

Q. What did you mean by "laying out the work in the mine"? A. Well, the general development of working areas.

Q. I still don't follow. Take 8 Right? A. Yes.

Q. Would you have laid out that? A. In the case of 8 Right the first three development headings were decided upon by four of us.

Q. Would you describe that as laying out? A. Yes, I would.

Q. I am to take it even though four of you were present you accept responsibility for that? A. As the manager, yes.

Q. You say equally, I suppose, for any subsequent development such as what was done to the left of A heading on Exhibit JJ, you also take responsibility for that; is that right? A. Yes.

Q. You go on to say, "The development of the mine is subject to overall planning by the superintendent of collieries"? A.Yes.

Q Are you referring now to your company set-up? A. Yes.

Q. You are speaking about the company? A. Yes.

Q. Is the Colliery's superintendent referred to there the person referred to in s.4A of the Act? A. As the agent, you mean, or as the superintendent?

Q. No, as the Colliery superintendent. A. Yes, Mr. Grierson.

Q. That is Mr. Grierson, is it? A. Yes.

Q. But still, I take it as colliery manager you still take full responsibility for what is done even though Mr. Grierson may tell you what he wants done? A. I have responsibilities under the Act.

Q. You then say that you are personally responsible for blocking out. That is a new one on me. What is that? A. Normally when an area is to be developed you may indicate by some straight lines the direction of some development headings. This gives the superintendent a visual picture of your general idea. The details of perhaps cut-through distances and some small details of where the track road will be and where the belt road will be - and stuff like this.

Q. That is what you call blocking out? A. Giving a little more detail.

Q. You say "The under-manager has authority to make his own decisions without reference to me so far as necessary to deal

with day to day situations which arise in the ordinary course." You are talking about some special feature of the company's heirachy or are you purporting to deal with the Coal Mines Regulation Act there? A. I think the Act would cover that.

Q.May I put this to you. Do you agree that this is what the Act says: "In every mine daily personal supervision shall be exercised either by the manager or by one or more under-managers nominated in writing",etc.A.Yes.

Q.Then, going to the schedule dealing with managers and Under managers, schedule 6 on page 171 - do you agree that the manager shall have full charge and control of all persons employed? A.Yes.

Q.You agree that includes the Under-manager? A.Yes.

Q.And of all operations at or about the mine? A.Yes.

Q.And shall in all respects comply with the requirements of this Act and regulations and shall enforce the observance of this Act and regulations by all other persons employed in or about the mine? A.Yes.

Q.That does not seem to fit in with the purported authority of the Under-manager here, does it? (Objected to by Mr.Reynolds)

Q.You say"the Under-manager has authority without reference to me" - (further objection by Mr.Reynolds)

Q.I will reframe it as a further series of questions: I read Clause 1 of the sixth schedule? A.Yes.

Q.Which seems fairly to put on you, I put to you, the full responsibility including control of the Under-manager? A.Yes.

Q.You agree with that? A.Yes.

Q.What I am putting to you is that what you have put here, that is, "the under-manager has authority to make his own decisions without reference to me so far as necessary to deal with day to day situations which arise in the ordinary course" - you remember saying that? A.Yes.

Q.That that is inconsistent? A.No.

Q.With the terms of the schedule? A.No I do not think that is right because somewhere in the Act, and I have forgotton the Rule if I am absent from the mine the Under-manager has complete authority.

Q.If you are absent - - -

HIS HONOR: I don't even know if the rule says you have to be absent from the mine. I refer to page 172. (Read)
It may be that doesn't necessarily mean in the absence of the manager from the mine, it may be the absence of the manager from the particular place where the work is being carried on.

WITNESS: That is what is indicated in my statement, anyway.

MR.SULLIVAN: It says "shall have full control and charge of the mine".

HIS HONOR: I realise that. It says "shall have full control of the mine and of all persons employed."It goes on to say he shall do other things.It is a matter for argument.I hope you do not ask the witness to argue the position before me.

MR.SULLIVAN: I am not going to ask him that but I am going to ask him this:

Q. Do you in fact when the under-manager goes underground leave him entirely on his own on day-to-day decisions? A. It depends on the magnitude of the decision.

Q. The type of decision the under-manager deals with may be a decision when he goes underground which the regulations put on you, the Coal Mines Regulation Act put on you. Is that not so - (Objected to by Mr.Reynolds. Question read by Court Reporter. Ruling on objection deferred till after the short adjournment.)

(Short adjournment.)

HIS HONOR: Before the adjournment I said I would make a ruling on the position that has arisen as a result of Mr. Sullivan's questioning of the witness. As I see it, the proper ruling is this: While normally speaking it is incompetent for counsel to question the witness on matters of law, there are at times certain complications. I shall allow a question as to law which is purely preliminary to the question of fact. I shall allow questions as to law which may serve to tend to test the witness' standards and that is linked up with the next proposition that I shall allow questions as to law which become questions of credit. If it is suggested to a witness that he has in fact deliberately committed a breach of the law, then that to me is a question of credit and I shall allow that, but those two latter propositions are subject to this further qualification: Since these are virtually questions as to the credit of a witness there is always a matter of probative value and the weight to be attached to such questions and as to those matters I shall exercise a discretion in relation to each particular question. If I may look to an example in this particular case, if, for example, it is suggested to the witness that his credit is in some way to be shaken because he has parked a car incorrectly, I would obviously rule out that. These are matters of degree and I shall, in relation to each question, exercise my discretion.

MR.SULLIVAN: Q. I think we were dealing with this question at the bottom of p.1 about the day-to-day decisions, when the argument arose.

HIS HONOR: This is a matter which I address to all counsel. Mr.Bevan has very properly drawn my attention to the fact that there may be a difficulty arising as to the reading of transcript later by referring to the witness' statement by page numbers. This statement has now been incorporated in the evidence by being read, and it would therefore be preferable to refer to the transcript page numbers.

MR.SULLIVAN: Q. I am referring now to the middle of p.627 of the transcript on this question of the day-to-day business. Mr. Lee was asking you some questions and he was referring to the position which obtained on 3rd November when the extension to No. 2 cut-through had been made. Do you recall the situation? A. Yes.

Q. Mr.Lee said to you, "Q. Did you not know the bleed had been dispensed with in this situation?" Do you remember him asking you that question? A. Yes.

Q. And do you remember your answer, "Not until we were well on, so far on with 11 that it was beyond recall"? A. Yes, I think so.

Q. You do remember that? A. Yes.

Q.Then Mr.Lee put to you "Q.So that the position was that Mr. Puddle did not tell you of his proposed method of developing this particular area until after it was well under way?" A.Yes.

Q.And your reply was "Yes - well - yes"? A.Yes.

Q.And that was the factual position, is that right? A.Yes.

Q.Do you leave questions of, say, like this, of altering the system of ventilation in a pillar extraction area by dispensing with a bleed tube, to your Under-Manager? A. Not ordinarily.

Q.How did it happen in this case? A. I can't quite recall why we -

Q.Could you try to help us? A.I will try to help you, but, as I say, I can't recall why we had not discussed this one at this stage.

Q.You yourself think it was a matter that should have been discussed with you? A. Well, in the light of events, certainly, yes.

Q.As a matter of fact the company employing you would have considered it was necessary for Mr.Puddle to consult you about that? (Objected to by Mr.Reynolds).

Q.It was the practice in your mine in your experience for him to do so when such a question arose previously, was it not? A. Yes.

Q.At the bottom of page 617 you seem to take the view, you say in your statement, "the only way in which 8 Right was different in any matter of substance was that something occurred, which overwhelmed the ventilation of the shunt"? A.Yes.

Q.And you are suggesting, are you not, something other than the fall in barometric pressure between midnight and 9.15? A.Yes.

Q.I think among other things you suggested to His Honor - correct me if I am wrong - a large fall in the goaf? A. Yes, I think that was one of the things suggested.

Q.Any evidence of it? A. I don't think anybody heard anything that I can recall.

Q.Or saw anything? A.No.

HIS HONOR: Q.Would you necessarily hear or see anything? A.I would not think so, not if it was deep in the goaf.

MR.SULLIVAN: Q.But actually there is no evidence of it? A.No.

Q.It is only hearsay? A.That is right.

Q.Arising from that, the other thing I would like to ask you is this: Was this statement that was produced by your counsel yesterday prepared prior to the Bord being reset up and tests being taken by the Departmental inspectors - that is the 8th December last? A.Yes, it was.

Q.So when you put forward that theory that it was an overwhelming incident other than the fall in barometric pressure, you were not aware that when the panel was reset up a large quantity of methane would be found in A shunt? A.No.

Q.Indeed is it that finding, as a result of the setting up of the panel by the Mines Inspectors, I think with your assistance,

that has caused you to resile from that position? A. No, I don't think so.

Q. May I put this to you then: A large quantity of methane accumulated behind the brattice screen when the panel was reset up on 8th December, did it not? A. Yes.

Q. And it was a quantity of methane sufficient, given an ignition point, to cause this fire? A. Yes.

Q. You are not suggesting there was any coincidental large fall in the goaf just before that was put up? A. No, I am not.

Q. Then why do you postulate just before the fire incident on 9th November that there was something other than the fall in barometric pressure? A. Well, I am certain in my mind that had the accumulation that we saw during the position you are talking about been there when Charlie Stewart and other people examined it, they would have found it.

HIS HONOR: Q. Would you mind saying that again? A. When the conditions were set up again, we had an accumulation of CH_4 behind the brattice but it was also obvious in the shunt and areas around there, you could find it quite readily at the edge of the shunt and around the brattice and round the back of the shunt, and I fail to see how anybody with an oil flame safety lamp could have missed it. I fail to see it.

Q. I suppose that must lead to one of three conclusions; that it was not there at the time is one conclusion; a second conclusion is that somebody tested and did not do the job properly? A. Yes.

Q. And a third conclusion is that he did not really test at all? Those three are inescapable; will you agree with that? A. There is a composition - it is quite likely that the composition was such that the CA2 content was high and it looked like noxious gas.

Q. You mean by that, although the area was tested, noxious gas was found and not methane? A. Yes.

Q. But of course the report does not say that noxious gas was found, does it? A. No, but this is what Stewart was getting rid of when he wagged the elephant's trunk about.

Q. And declared the area to be free of noxious gas? A. Yes.

Q. Assume there is something in what you put that there was noxious gas found, then either the tests were not sufficient or the instruments used were not sufficiently good to test for methane? A. Yes.

Q. But there is one thing you would say does not emerge from the tests of the Mines inspectors afterwards in simulated conditions, and that was that this was not a sudden onset of gas around the brattice because it was occurring days later; would you not agree with that? A. Yes, this is true.

Q. Unless it was the very commencement of the gas that developed for days afterwards? A. Yes, this is right.

Q. And would you not agree that it would be a strange coincidence that at that very commencement there became an ignition point to set it all on fire? A. Yes, I would agree.

Q. Perhaps I should not direct this question to you, but you have advanced theories and I am trying to test them, you see.

Would you not agree that the greater probability is that the gas was flowing out of there for some time at least before the fire started? A.Well, that is a possibility.

Q.Would you not say it is the greater probability? A. or, Mr. Reynolds, would you rather I did not ask that question?

MR.SULLIVAN: I would have asked it.

WITNESS: I have only made guesses, Your Honor, I haven't really -

HIS HONOR: Q.What did you say? A. You call my guesses theories though - I haven't any real theory.

Q.You say that what you put forward are guesses in an attempt to assist me to direct my mind? A.Yes.

MR.SULLIVAN: Q.Another thing, as well as the fall in barometric pressure that could have assisted the formation of a dangerous quantity of gas in A shunt would of course have been interference with the regulator, cutting the quantity of air going into 8 Right? A.Yes, this would do it, if it had been done.

Q.You yourself were concerned about that after the fire, were you not? A. After the fire, well, -

Q.May I put this to you from page 667: My learned friend Mr. Murray put to you "Q.Have you made, or to your knowledge have other officials of the company investigated whether or not there was any change at all made of the regulators on this day or the day before? A.Yes, I asked about that," and my friend Mr.Murray said to you "Q.Of whom did you ask? A. Mr.Puddle and Mr.Wright". Do you remember that? A.Yes.

Q.So you were concerned on the day after the fire about the possibilities of the regulators having been interfered with? A.No.

MR.REYNOLDS: Why do you say "So"?

MR.SULLIVAN: Q.Do you agree that you were concerned? A.No, I won't agree that I was concerned. I would have regarded it as a dead certainty that somebody would have asked me had the regulators been interfered with.

Q.We will leave that aside for the moment. That is an opinion you hold, that they would have? A.Well, my officials would have asked me, Mr.Sullivan even if you hadn't, but somebody would have asked me.

Q.Just leave that aside at the moment and please answer my question. When you asked those two gentlemen, Mr.Puddle and Mr. Wright, about this, you must have had something in mind that suggested to you the regulators had been interfered with?(Objected to by Mr.Reynolds; allowed) Is that so? A. No, I did not have anything in mind.

Q.What, you just out of the blue went and asked Mr.Puddle and Mr.Wright that? A. Yes, because I knew somebody would say "Had they been interfered with?"

Q.You knew somebody would ask? A. Yes, I knew you or somebody here would ask me.

Q.You knew somebody here would ask you? A.Yes.

Q.Is it a fact that there had been a complaint in western returns by the men of accumulations of inflammable gas at some little time before the fire? A.Mr.Parkinson said so but -

Q. Well, do you say there has not been? A. Well, they made a complaint to him apparently.

Q. And was Mr. Parkinson in that 8 Right area at the time that fire broke out? A. No.

Q. In the western returns area, I am sorry? A. Yes.

Q. With Mr. Puddle? A. Yes.

Q. Would it have been possible by robbing the 8 Right section of air by using the regulators to put air into the western returns section? A. I can see your inference, Mr. Sullivan. No, I don't think so. Very little, anyway.

Q. Some, though? A. Some.

Q. A matter of 8,000 cubic feet? A. No, I don't think you would get that much.

Q. Something near it? A. No, I would not think so, but I wouldn't know. There is something you would have to do to check this.

Q. You would have to do it to see it? A. Yes.

HIS HONOR: Q. Is there any section besides the 8 Right section where you could get sufficient air into the western returns to dispel the gas or dilute it so that a complaint might be unfounded? A. No, you could not do it.

Q. It could not be done? A. No.

MR.SULLIVAN: Q. Were you aware that on the day of the fire at 2.40 p.m. there had been a drop of 8,000 cubic feet in the amount of air normally going into 8 Right? A. On the day of the fire?

Q. Yes. A. No.

Q. You met Mr.Longworth, did you not? A. Yes.

Q. When he came in. You heard Mr.Longworth give evidence, I take it? I am referring to p.140. A. Yes. It was pretty lengthy.

Q. Well, Mr. Longworth when he was being examined by Mr. Lee, said, and I will read the questions and answers commencing at the third last question at p.140, and you stop me if I am going too fast: "In due course you went into the mine and you arrived in the panel I think, at 2.40 p.m. at No. 67 shuttle car in No. 2 cut-through? A. Correct." This is on the day of the fire. Were you with Mr. Longworth at that time? A. Well, there was a heck of a lot going on. I remember Mr.Longworth being there.

Q. Then there follow other questions, and on the next page Mr. Longworth then gave the following evidence: "Q. Just show, if you would, where these readings which I am mentioning in your report were taken," and then Mr. Longworth first of all indicated the intersection of B heading and No. 2 cut-through. You can see that on the plan, can you? You are familiar with it. A. Yes, I know where he is talking about.

Q. He got .25 per cent. methane. Then Mr. Lee said to him, "Q. I think the position at that point of time was 20,000 cumins.. ..20,000 cubic feet of air per minute was entering the district in C heading outby of No. 1 cut-through; is that right? A. Yes. Q. You now are indicating C heading? A. Along the road. Q. You indicate the area to the right of the words 'corner on C'? A.Yes." Would you come over here - (Witness approaches Exhibit A). That was the intake airway, wasn't it? A. This is the intake.

Q. "20,000 cubic feet of air per minute was entering the district in C heading outby of No. 1 cut-through; is that right? A. Yes. Q. You now are indicating C heading? A. Along the road. Q. You indicate the area to the right of the words 'corner on C'? A. Yes." A. This area here?

Q. No, to the right of "corner on C"? A. In there somewhere, (indicating).

Q. That is your main intake airway, isn't it? A. Yes.

Q. Do you want me to take you through it - there had been no brattice put up there that would impede air coming from the main intake airway, had there? A. By the time of the day of the fire, remember this B heading was not an intake.

Q. But C was? A. C was.

Q. And it was bringing in all the air coming into the section? A. Yes - are you suggesting this was down 8,000 feet, is that what you said?

Q. Yes. A. Well, perhaps the reason for that, I don't know -

Q. I am not asking you at present. (Witness back to box.) I am asking you about brattice at the moment. There was no brattice there to stop it, was there? A. There had been brattice put up across zero cut-through and 1 cut-through and this restricted the air to 1 heading, C heading.

Q. Yes, and that is where 20,000 cubic feet were coming in? A. Yes.

Q. You will agree, will you not, that on your own colliery monthly readings the amount of air normally going into that panel is 28,600 cubic feet? A. I think it was of that order, yes.

Q. And indeed on other occasions, and I refer Your Honor and my learned friends to p.163, 31,500 was going into that, on 16th November 1965? A. Yes. That will be in the records somewhere.

Q. And I am suggesting further to you that the reason why it was stepped up from 26,500 to 31,500 on 16th November 1965 was because you were providing extra ventilation to the goaf to disperse goaf gases, is that right? A. No, I don't know whether that is right or not.

Q. I will refer you to Mr. Longworth's evidence. At p.163 he says, and this is 16th November - Mr. Lee said, "Q. And you walked into No. 8 Right section along the transport road and took air measurements and the air quantity was measured at the brick wings, at the old door frame outby the transformers?" That is outby C heading? A. Yes.

Q. "Q. That is in the vicinity of the transformers on the map and you there registered 25,500 cumins?" and he gives the hygrometer roadings, and he answered "Yes, that is correct. Q. Is that quite in order, those findings? A. Yes. Q. Inby of this point it was noted that 8,000 cumins were coming into the roadway from old 8 Right?" A. Yes.

Q. That is quite normal, isn't it? A. Yes.

Q. You get 8,000 from there as well as that going up C heading? A. Yes.

Q."This was measured in the right-hand cut-through opposite the transformer? A. Yes. Q. What do you say about that reading? A. Well, added together, the two measurements, yes," implying that you add the two measurements together, and you would agree

with that; that reading would be correct? A. Yes.

Q. And you would agree that all Mr. Longworth's readings were correct? A. I trust Mr. Longworth to do that, yes.

Q. The position is this, is it not, that whilst all the air coming into the section was directed up C heading on the day of the fire, it was, when Mr. Longworth got there, more than 8,000 cubic feet per minute less than what normally goes into the section? A. Yes.

Q. And that could have been done at the regulator? A. It could have been.

Q. It could have been done by someone when Mr. Parkinson was in western returns? A. The answer is yes. I don't like your inference, but the answer is yes.

HIS HONOR: Q. What else could steal from 8 Right section 8,000 cumins? A. Well, having put the brattice across, those three cut-throughs I mentioned - yes, there were three - would have restricted the intake to one airway. This could have an effect.

Q. Where are you speaking about, brattices - this is the brattice put up after the fire, is it? A. No, during the course of the operations - we put a brattice screen across zero cut-through just inby what is known as the sweeps. Another brattice between B and C headings, a third brattice across B heading itself near 67 shuttle car.

Q. So what in effect is done is to block off B heading? A. Yes, and this restricts your intake to one road which could reduce it that amount, I don't know.

Q. But your intake is always along C heading, isn't it? A. It is distributed between, yes, but you get a reduction in resistance with two airways compared with one.

Q. You mean the fact that there is not enough room for it may affect the flow? A. Yes.

Q. Like partly blocking off a tap? A. Yes, like forcing water through a small pipe you will get more pressure.

MR.SULLIVAN: Q. Only in the position where you say it could have? A. Yes. I have no other explanation to offer.

Q. But you do agree with me that on those figures there was more than 8,000 cubic feet missing in 8 Right? A. Yes.

HIS HONOR: Q. How soon afterwards was it remeasured by anybody? After this day was it measured at any time, after this brattice screen was removed? A. Well, Mr.Sullivan mentioned the 16th.

MR.SULLIVAN: Q. When you say it may result, are you guessing or - A. Well, I am saying it is possible for it to happen, you see. I didn't check it.

Q. It is possible? A. Yes, it is possible for it to happen. If you have air flowing in two roads and then restrict it to one and you have no greater ventilation pressure, you will restrict your air flow.

Q. Do you remember the day you were good enough to show me the area? A. Yes.

Q. I think you had blocked off on that occasion several of these headings, had you not? A. No, we had run brattice right down into the miner face on your visit, I think.

Q.Yes, that is right. Were the fans going? A. Yes, but both B and C headings were both open again on your visit.

Q.But this one was brought down here, was it not, so as to direct all the air round the goaf and ventilate it? You were directing all your air round B and C headings that day, around the goaf edge? A.Yes, that is right. It was all going round the goaf edge.

Q.And I think on that day there was about 51,000 coming in, wasn't there? A. I don't remember the figure, but if you say so.

Q.At any rate, over 26,000? A. Mr.Parkinson took the readings and I think that is right.

Q.Leaving that, the other matter I would like your assistance on is your answers to some questions which my learned friend Mr. Lee yesterday asked relating to the percentage of methane in the return airways in the months going up from approximately June when the section started - from May up to November? A.Yes.

Q.You appear to take the view - correct me if I am wrong - that the finding of .02 in the return airway - A. .2

Q..2 per cent or .02 ? A. .2.

Q.It was 0.2 was it? A.Yes.

Q.That was not of any significance? A.No.

Q.But .25 in an airway is sufficient to cause a manager to stop work in the section from which it is eminating, isn't it? A. Only if it is in the intake airway.

Q.But still it is regarded as a dangerous dilutation in an airway, isn't it? A.No, it is not. It is a figure set down by the Coal Mines Regulation Act such that if this appears in the general body of your intake air, then you stop.

Q.Then we reverse the situation, you see - we have got .2 which is pretty close to .25, isn't it? A.Yes.

Q.In your return airway? A.Yes.

Q.And you have the records coming into the Under-manager's office A.Yes.

Q.That is right, they go there, don't they? A.Yes.

Q.And then, I suppose, to you; I suppose they come to you? A. I see them yes.

Q.I suppose you look at them, is that right? A.Yes.

Q.My learned friend put to you that the methane content of the return airway coming from 8 Right had double? A.Yes.

Q.Well, were you aware of that when you looked at them? A.Yes.

Q.Not only had it doubled but it had come within .05 of what the Coal Mines Regulation Act at any rate considers to be too great to be in an intake airway; do you see what I mean? A. But they consider different figures for the return airway, don't they?

Q.The next thing would be , would it not, to say "well, there is a methane make in 8 Right which is producing .2 per cent," is that right? A.Yes.

Q. And it has doubled as the goaf is being formed? A. Well, it has doubled over some period. It went up, then it went down and up again.

Q. Over a period of a couple of months? A. Yes, I think it went up and down.

Q. .2, .1, .2, according to Mr. Longworth. According to Mr. Menzies it was .2, .2, .2? A. Yes. Mr.Menzies would only get it from Mr.Longworth.

Q. That is the evidence. I do not think it is sufficiently material for me to turn it up. At any rate, there had been a doubling, and its source was 8 Right? A. Yes.

Q. You were aware of the set-up in 8 Right, the ventilation set-up, were you not? A. Yes.

Q. And you were aware of the ventilation set-up on 3rd November? A. Yes.

Q. You went in, as you said, with Mr. Puddle, and you asked to see the ventilation? A. Yes.

Q. And presumably you were shown it? A. That is true.

Q Was anything you saw on the mine records, such as the amount of methane in the return airway, prompting your visit to ask about the ventilation? A. No, it did not.

Q. However, you did ask to see the ventilation? A. Yes.

Q. When you got in there you of course saw a number of things, but you saw that in A heading a tight brattice had been put across the heading; is that right? A. Yes.

Q. You saw a bleed tube in there, is that correct? A. Yes.

Q. And did you know of any other source of methane in 8 Right other than the goaf? A. Yes.

Q. Where? A. The working place.

Q. Had methane been found in the working place? A. No, but I just say that is a source.

Q. A possible source? A. Yes, a possible source.

Q. And of course you could also get methane in the working place, couldn't you, if any came out there and was caught up by the induction of the fan? That could have taken methane to the working place? A. Yes.

Q. But of course if methane had got into the working place, production would have had to stop immediately, wouldn't it? A. Yes. In any sort of quantity, yes.

Q. As soon as the miner driver found it on his oil lamp, which would be at the best about 1.25, I suppose, he would have to stop? A. That is true.

Q. Do you agree with Mr. Menzies, and you know Mr. Menzies tested around to see whether there was any other source of methane; do you agree with him that the only other source of methan in 8 Right was the goaf? A. Well now, I could not be sure about this. We had noxious gas reported in that lift alongside the miner by -

Q.The lift - I think that was covered, wasn't it? A.No, didn't Deputy Stewart report something in there at that stage?

Q.That is right, I think it was methane? A. No, I am sure he said he had some noxious down there. What I was going to say -

HIS HONOR: Q.What day would this be? A.It could only be the day or two before because the machine only pulled out the day or two before.

MR.SULLIVAN: Q.What I am asking you, you see, is that I am speaking about methane in the return airway? A.Yes, but if this was bottom gas and not noxious gas there, then they could have had -

Q.Just a moment, there is plenty of time. It was noxious, was it?

MR.LEE: At p.118, he found noxious gas in the shunt and near the miner.

WITNESS: That is right. That was my memory of it.

HIS HONOR: Q.On the 8th he found noxious gas in the old lift and none in the working place? A.Yes, the lift adjacent to where he was working on the 9th.

MR.SULLIVAN: Q.Might that not have been the lift from earlier? It was in the working place, was it? A. I am told so.

Q.Is there any identification positively? A.I think Charlie Stewart said so here.

Q.The old lift? A. Yes, I think this was brought out.

MR.LEE: From my notes there are references at pages 114, 118 and 119.

WITNESS: I am sure this is what the intention was.

MR.SULLIVAN: Q. But that was noxious gas and I am talking about methane at the moment. It was methane that caused the fire here, wasn't it? A.Yes.

Q.Do you suggest that there was any other source of gas in 8 Right, and I mean inflammable gas, other than the goaf ? A. It is possible that we were getting some from the working face.

Q.Possible? A.Yes.

Q.But it had never been detected? A. Not by any operator or the Deputies, no.

Q.Then if that be the position, that is if the goaf was the only source, it meant that all the methane that was coming out of that section was coming through A shunt, wasn't it? A. If the goaf was the only source this must be right, but if the miner face produced some it would not be right.

Q.But you have no evidence? A. .2 per cent would be way up in the returns. We have no evidence that went through anyway, except if it is read in the returns well back.

Q.But it was coming from 8 Right, not from anywhere else was it? A.Yes, but I can't say to you it was coming from the goaf either. It was only coming down the return airway.

Q. About 2/3rds of the way down p.357, I will refer you to what Mr.Menzies said. I said to him, "Q. Would there be any other source - we are dealing now with the present 8 Right - would there be any other source of methane other than goaf gases? A. Not according to the figures obtained on the intake areas, no methane on the intake area, so the goaf must have been the only source"? A. Well, this is what Mr. Menzies said.

Q. You say that is what Mr.Menzies said, but if he was right, the position was that the whole of the methane which was found in the return airway was coming through A shunt? A. No, what Mr. Menzies said was that there was no methane in the air coming in the intakes.

Q. Not according to the figures obtained on the intake areas, he said. A. That is right. There was no methane coming in the intakes, but he didn't know where it was coming from to get into the returns.

Q. Are you prepared to go this far and say that the major portion of the methane in the return airway was coming through A heading? A. No, I am not.

Q. Well, did you conduct any tests at all in 8 **Right** to determine whether methane was coming from any other part of it? A. No.

Q. Then you have no evidence to put before us that it was coming-- A. No But you asked me to say, and I say there are two possible sources, the goaf and the working place. .2 per cent. could quite easily be coming from the working place and none from the goaf.

HIS HONOR: Q. Undetected? A. It is .2 per cent. You would need a methanometer to even find it. It would come nowhere near that with his cap lamp.

MR.SULLIVAN: Q. .2 per cent. in the working place? A. No, in the return airway.

Q. But in the return airway it is being diluted by 28,600 cubic feet of air, isn't it? A. Yes, this is right.

Q. If it were in the working place it would not be being diluted by that much air, would it? A. No, it wouldn't.

Q. Not by half that amount of air? A. Well -

Q. What is the point of the fan in the working place? A. I would not know how it was being diluted. It is going down the return obviously, because somebody read it there. There are two possible sources, the working place and the goaf. Now I don't know where it came from.

HIS HONOR: Q. I suppose the real answer is, assuming there was some coming from the goaf, that you would not be able to say what proportion is coming from one and what from the other? A. That is correct.

Q. The working place may have an undetectable amount and the goaf may have a detectable amount, or vice versa? A. You do the survey with the methanometer or some instrument to tell you exactly what is happening.

HIS HONOR: Q.I thought there was some evidence of goaf gas, gas coming from the goaf beyond the extension in B heading. Would that not be reflected in the return airway? A.You would not read it on a methanometer. This was reported by, I think, Deputy Stewart as being noxious.

Q.He never reported it as being inflammable? A. No.

MR.SULLIVAN: Q.What happened when you were up there on 3rd November in the shunt, as I said before, was that a tight brattice sheet had been put across here and there was a bleed tube - that was there when you were there? A.Yes.

Q.Judging from your evidence yesterday you knew the amount that bleed tube was pulling? A. Not on that day I didn't.

Q.Would it have changed from what it was when it was set up and tested by Mr.Griffiths? A.I doubt it.

Q.It was a matter of about 1500 cubic feet? A. Somebody told me 1600 but that is the order.

Q.You said to us yesterday you thought that had been put in to ventilate the shunt; is that right? A. Yes.

Q.Not to suck off the gas, as someone used that term, but to ventilate the shunt? A. Yes, this is my understanding.

Q.Do you agree with Mr.Griffiths that apart from the bleed tube there was little or no air going into that shunt with the tight brattice screen? A. Yes, that was right.

Q.I assume what you were putting to us yesterday was that by the intake on the bleed tube taking from the shunt area at the back a quantity of 1500 odd cubic feet of whatever was in the shunt, it would be replaced by another 1500 of fresh air coming in the front? A.Yes, something like that.

Q.That is what you mean by using a tube to ventilate a shunt? A.Yes, this is about it - possibly something could come through the brattice, I would not know how much.

Q.Do you know how much methane o.2 per cent represents in an air volume of 26,800 cubic feet per minute? A.About two hundreths.

Q.52 and a decimal? A.Yes.

Q.So that whatever the source of the gas was 8 Right was making 52 cubic feet of methane per minute? A.Yes.

Q.If you wanted to find what it was making per hour you would multiply by sixty, wouldn't you? A.Yes.

Q.What I am putting to you is that 52 cubic feet of methane per minute were going into that shunt. I am putting that to you. Do you agree or disagree? A. I disagree. You put that to me before.

Q.You can indicate no other source where tests have shown any emination of methane? A.No, not where tests have shown - I can't indicate that was the only source either.

Q.Assuming 52 cubic feet of methane per minute were going into that shunt and 1500 odd cubic feet per minute of air were coming into that shunt through the bleed tube, you would get a methane percentage of over 4 per cent? A.I will take your word for it.

Q. Over 4 per cent. - about 4.5? A. Yes.

Q. Do you remember when the heading was set up, when the panel was set up by the Mines Department on 9th December last year the percentage of methane found in the shunt ranged from 2½ to 5 per cent.? A. Yes.

Q. Do you regard that as purely a coincidence? -

MR.REYNOLDS: My mathematicians tell me it is not over 4 - about 3½.

WITNESS: Whatever it is.

HIS HONOR: Q. Assuming there was 3½ to 4 or a little more per cent. would you expect that to be undetected by a deputy doing his job with an oil safety lamp? A. No, I would not have thought he would have a chance at all of missing it.

Q. If he was doing his job? A. If he did his job at all.

MR.SULLIVAN: Q. What I am going to put to you is that this goes back to the management. You are the one who had those figures of the methane content in the return airway, weren't you?A. Well, they are kept in a book in the under-manager's office.

Q. They are your responsibility? A. Well, they are my responsibility, true.

Q. You are supposed to look at them? A. Yes.

Q. You are supposed to look at the quantities of air going into the intake return? A. Yes.

Q. And even though you may leave the day-to-day decisions of what goes on in the colliery itself underground to your under-manager, nonetheless those returns are up there for the manager to look at in respect of each section monthly and form a view as to how the mine is going. That is right? A. Yes.

Q. You had these before you and you were having no reports of inflammable gas in or about that shunt? A. That is true.

Q. But you were having some reports of noxious gas? A. Yes.

Q. Some reports of noxious gas? A. Some.

Q. You knew of the existence of such an entity as Illawarra bottom gas? A. I knew such a gas existed, yes.

Q. You knew what it was? A. Roughly, yes.

Q. You have got a first-class certificate? A. Yes.

Q. You do a lot about gas in getting your first-class certificate? A. I do a fair bit- I am not an expert.

Q. You are examined pretty thoroughly on that? A. Yes.

Q. Incidentally, you are examined pretty thoroughly on ventilation? A. Yes.

Q. You said yesterday you were not a ventilation engineer - you are pretty close to it after you have done a first-class certificate? A. I managed to answer some questions.

Q. Particularly in relation to mine ventilation? A. I managed to answer a few questions at an examination. I don't know how that qualifies me.

Q.You seem to suggest the standard of the first class certificate is not sufficiently high to enable you - - is there a ventilation engineer attached to the colliery? A.Not as such,no.

Q.Anyone qualified as a ventilation engineer? A.No.

HIS HONOR: Q.Are you the man responsible? A.Yes, I am responsible.

MR.SULLIVAN:Q.You are getting reports of noxious gas. Your return airways showed 0.2 per cent of methane. You knew the general set up of the heading after 3rd November, at any rate? A.Yes.

Q.You knew that the occurrence of an ignition point in mines is very common, either from a cable or brakes heating or spark or as in this case, the jamming of foreign material in brakes? A.Yes

Q.Did you do nothing to investigate these reports of noxious gas other than write them down as being carbon dioxide? (Objected by Mr.Reynolds as to form)

Q.Did you do anything? A.Not about 8 Right. I did not consider that was a significant increase.

Q.You agree now it is? A.I don't know.what relation that had to it at the time. What was in the shunt was significant, obviously.

Q.You have had further information since when the panel was set up by the Mines Department? A. Yes, I saw the thing set up again.

Q.Looking back on it don't you think the doubling of the methane to a 52 cubic feet a minute make against the air volume was significant? A. Looking back on it it could have been due to gas coming through that shunt.

Q.It must have been due? A.I won't say "Must".

Q.Just before we adjourn may I ask you this: I am still not quite sure of the heirachy of command there because I have to go by the Act? A.So do I.

Q.There is yourself, and is Mr.Puddle - is he one of the one or more Under-managers nominated? A.He is the Under-manager.

Q.You have been speaking of an assistant Under-manager?A.That is right, we have two or three.

Q.He is not an Under-manager,is he? A.We have three people whom we have appointed as assistant Under-managers.

Q.s.5 says: "No more than one under-manager shall be nominated for any mine except with the approval of the Minister"? A.We have not nominated them, they are appointed as assistant Under-managers.

Q.You have spoken of him from time to time in the course of your evidence as if he also made decisions about day to day matters? A.Well, he would. He would make some decisions, yes.

Q.Relating to the carrying out of the Coal Mines Regulations? A.Yes.

Q.Without your approach to the Minister to appoint more than two? A.I do not know if it is without that approach. We have made an approach to the Minister about these people.

Q.But he is not - ? A.No.

Q.You are still keeping him on and giving him the athority of an under-manager? A. He does not alter anything that is required by somebody else under statutory duties.

Q. You suggested he ordered something about the putting up of the brattice sheet in No. 3 cut-through, did you not? A.Yes, he did something about that.

Q. Isn't that an interference with the ventilation? A. He was asked for labour to do the rendering of it.

Q. I will have to have it turned up, but I thought you put it somewhat differently, that Mr. Wright told Mr. Cambourne, was it, to do it? A. No, Charlie Stewart told him.

Q. But Mr.Wright told Mr.Stewart to do it? A. No, I think Stewart rang to Wright for labour and gear to do this job.

Q. I will have it turned up in the luncheon adjournment. A. You can have it turned up, yes.

(Luncheon adjournment.)

On resumption:

MR.SULLIVAN: It is p.647, Your Honor, that I am going to ask something about. We were talking about the role of Mr.Wright in the erection of the brattice in No. 3.

Q. Do you remember this question being asked yesterday:

"Q.Whose decision would it have been to arrange the set-up in this heading Mr. Lake was speaking about?"

I think Mr. Murray asked you this. Do you remember that question? A. Yes, I think I do.

Q. Then His Honor said, "Do you know it?" You said, "I know something of it. The deputy got in touch with Fred Wright, as I have been told later, and Fred Wright authorised the erection of it." A. Yes.

Q. That is in accordance with your recollection as to the facts, is it? A. Yes, that is about it, I think.

Q. Then you were asked further questions by Mr. Lee, who said, "Who is he?" You said, "He is in charge of that area, he is the assistant under-manager." A. True.

Q. It does appear, does it not, from those answers of yours that Mr.Wright is undertaking duties which would appear to be those of the under-manager as defined in the Coal Mines Regulation Act? A. Well, he assists the under-manager in the same fashion as an overman does.

Q. Are they under the Act? A. No.

Q. They are another "outside the statutory body" you have there? A. Yes.

Q. Are they taking decisions, making decisions as Mr.Wright did that devolve under the Act on persons classified by the Act as officials? (Objected to by Mr.Reynolds.)

Q. These overmen and assistant under-managers are employees in the mine? A. Yes. (Objection to last question further argued. Question allowed but to be asked without reference to the Act.)

Q. What type of decision does Mr.Wright make, may I use the expression, "off his own bat"? A. He would make a decision as putting up that brattice screen - the use of labour.

Q. That is administrative mainly? A. Yes - distribution of some of the equipment, locos and skips. He would be looking after certain general underground work in the way of development, timbering, falls and this sort of thing.

Q.Timbering? A. He does all this sort of thing.

Q.Tests for gas ? A.Yes, he does these.

Q.What about, say, overmen? What range? A. About the same.

MR.SULLIVAN: I will now return to the statement your counsel gave us yesterday.

HIS HONOR: Q.What is the distinction between an overman and, say, an Assistant Under-manager or Deputy? He seems to be something in between? A. The Deputy normally has charge of a certain area such as 8 Right. The overman may have charge of several Deputies who are in charge of districts plus other deputies who are doing other general work, repair work about the place so an overman is something of a senior Deputy.

Q.Like a leading hand Deputy? A. Like that. Assistant Under-managers do similar work with a higher status.

Q.Mr.Mahon has pointed out something to me. Is this the position: There is no classification under the Statute for an overman? A. That is true.

Q.Assume he is performing the function of a deputy - assume at times he does deputies work - ? A.He does not do work that would be normally done by a Deputy. We would have a Union dispute for a start. He is a staff man.

Q.Mr.Buck has made a suggestion to me: Is it a fact that you make a man an Assistant Under-manager to train him for the Under Manager's job? A.Quite correct,yes. We have a training programme or we ask people to come forward to be trained as officials and when they come up to the standard you give them some experience at this level.

MR.SULLIVAN: Q. Have you any training scheme for people who wish to become deputies? A.Only the normal tech.course. We select people from our mine - we ask some of the chaps if they would be prepared to come on to this work to study for the deputy's ticket and then they take up the normal tech.course. We allow them time away from work to go.

Q.Do you and your colleagues on the official side give them any training, say, in the testing for gas - take them to various parts of the mine? A.Yes, they do get that experience,yes.

Q.Do you - I am asking do you train them? A.I don't know exactly what each man gets. Usually you find they are experienced men you are putting forward - machine men - people who have had experience in testing for gas anyway.

Q.Do you think some such scheme such as the apprentice has in ordinary industry of being taught by his master should be introduced in the mines? From your experience? A. It has got a lot of merit,yes.

Q.You would be in favour ? A.Yes, I would be in favour.

Q.It would not interfere very much with the work of the mine, I take it? A. No, I don't think so.

Q.It appears that a foam extinguisher was brought to the pit - I mean the Bulli mine-from the Rescue Station. Is that right? A.Yes.

Q.This is a large,a rather large specimen? A. It is a bit bulky, yes.

Q. It does not appear to have got into action till late afternoon; is that right? A. That is right, yes.

Q. Do you think one of those should be part of the standard fire equipment of every pit? A. It could not do anything but good, I would think.

Q. You would think that was a good idea? A. Yes.

Q. That would save the necessity of waiting for it to come from the rescue station? A. Well, you save the time of bringing it from the rescue station to the pit top. You would probably have to leave it outside. You still have to get it underground.

Q. It would have to be taken underground on a locomotive? A. Yes.

HIS HONOR: Q. That in fact could be a significant time? A. Yes.

Q. Where is the rescue station? Bellambi? A. Yes.

HIS HONOR: That is not so far away.

MR.SULLIVAN: Q. About 4½? A. About that. It is not far from here.

HIS HONOR: Q. Say, for example, you have a coalmine at Kembla, it might take some time to get there? A. If you had to go through today's traffic it would take a lot of time.

MR.SULLIVAN: Q. Your own rescue squad, I take it up there, could operate one? A. I think so - without much instruction - I don't think they have actually operated these things, but I think they could without much instruction.

Q. Did you find this one that was brought in from the rescue station effective? A. Yes, I think it did everything we asked of it.

Q. It would apply to any sort of fire; gas, liquid or any sort? A. Yes.

Q. Is it roughly the same type that is used at aerodromes? A.I am not sure of the type used in the aerodromes - I seem to see fellows holding hoses and squirting a lot of stuff - this thing flows through a large diameter tube.

Q. However, it is your idea it would be a good thing to have one in every colliery? A. Yes.

Q. Have you a copy of your statement there? A. No.

Q. On p.617 of the transcript you said, "At the crucial point in this pillar extraction, the under-manager, whose province it was (he consulted with me from time to time but as it happened not on this particular point) decided to extract the pillar marked 11 on the coloured plan before opening the bleeder marked 13. From his experience with 10 and in the light of the roof difficulties which are obvious in the preceding pillars, this seems to me to have been a reasonable decision. I cannot say that, had he consulted me, I would have disagreed with his proposal nor do I say that this is the only view to take of the problem. There is nothing extraordinary about it as a problem. It is a common occurrence for positions to be reached, in practical mining, where this sort of problem arises." You then say, "Of course, there was a gas problem." You mean at or about the time? A. We knew the goaf had gas in it. That is what I mean.

Q. The position is that gas is only a problem if it is not sufficiently diluted and if it is getting into the working place? A. That is true.

Q. And it is the duty of anybody who was in charge there, in this case apparently Mr. Puddle, to ensure first of all it does not get into the working place? A. Yes.

Q. And, secondly, that it is diluted? A. Yes.

Q. At one stage you recollect from the evidence a piece of brattice was put up on the corner to ventilate the shunt? A.Yes, I heard that.

Q. No.2 heading had not been put in for any great distance then? A. That is right.

Q. But when that brattice was put on the corner, noxious gas was found in the working place? A. Yes.

Q. Shortly after that the brattice was taken down and later the bleed tube was substituted? A. Yes.

Q. The fact remains that gas in the working place causes a stoppage of production? A. Yes.

Q. But with gas in the shunt it is not necessary to do so? A. It would depend.

Q. What? A. Not necessarily, but it could.

Q. It could but not necessarily? A. Not necessarily.

Q. Whereas it necessarily does at a certain level in the working place? A. Yes.

Q. You have not yet, I think, given us a reason why B heading was not used as a shunt, all you said was it was desirable to have the shunt as near as possible to the face? A. It was used as a shunt until A heading became available.

Q. Was there any effect on production of having the shuttle car shunt in A rather than B? A. Yes, it is further to run, it must have an effect.

Q. I cannot quite see it. How does it affect it? Could you show us on the plan how that operates? We got to where the cross sticks are. A. (Witness goes to plan.) This car was shunting in A at this stage. This allows the other car to come to this point waiting for this fellow to come up to the face and this fellow is standing there and goes back up. If on the other hand he has to come to here --

Q. Your man has to go back there? A. This car has to wait further back up here somewhere while this shunting is done and this fellow has to travel further.

HIS HONOR: Q. When you say the other car comes back, you mean closer to what? Closer to C heading? A. Yes.

Q. Closer to the intersection of No. 2 cut-through and C heading? A. Yes.

MR.REYNOLDS: Q. The empty car has always got to be between the loading point and the shunting point and the further away, the further he has to go to the face? A. That is the essence of the problem.

MR.SULLIVAN: Q. That would mean, I take it, the amount of coal got out would be less over a given period of time? A. Yes.

Q. It was pretty clear, was it not, that as you were having no trouble with gas in B heading -? A. That seemed to be the case, yes.

Q. - if anything the goaf gases were being drawn away from the intersection of B heading and the goaf? A. If anything, yes.

HIS HONOR: Q. You were having trouble, though, with gas beyond the area of the cross sticks? A. I think this was while the extension of 2 was being driven. I think the cross sticks were not there during that period.

MR.SULLIVAN: Q. The extension of 3? A. 2, I think. The extension went through - the cross sticks went through during the extension of 2 cut-through, didn't they?

Q. Probably; I cannot say. A. Somebody may remember that. I think this is when they were put there.

Q. How does that bear on what His Honor asked you? A. His Honor asked me wasn't I having trouble with gas in B heading.

Q. Yes. A. As far as I know we were not. The cross sticks went there at a later date when we were shunting in A heading.

Q. The tendency of the gas in the goaf would be not to go into B heading? A. Yes.

Q. And therefore it would have been a much safer shunt? A. It is pretty obvious now.

Q. Even before, I am putting it to you? A. I would not have argued about it before. If I had thought that before, we would not have shunted there.

Q. But you did not have the opportunity, did you? A. Well, no, not really.

Q. Someone had made the decision to change the shunt from B to A to get rather more coal per shift? A. Yes, I would have anticipated that.

Q. To get more coal per shift out of the place? A. Yes.

Q. The pull of air was through B and C headings along No. 2 cut-through up B heading to the goaf and back down A heading? A. Yes.

Q. The main objective of mine ventilation is to bring sufficient air into the working place to allow the men to breathe, for a start? A. Yes.

Q. And the second is to dilute and render harmless goaf gases? A. Any gas that happens to be there.

Q. Particularly goaf gas? A. Not particularly, you have to do the same thing in solid working, you have to dilute gas.

Q. If I say "gas" -? A. Yes.

Q. The goaf is a well known source of gas? A. Yes.

Q. Do you agree with me it is fundamental in mining practice to ventilate the edges of the goaf? A. Yes, I think it is a good proposition.

Q. And the edges of the goaf here were not ventilated? A. In the light of what happened in the shunt?

Q. No, as it was when you saw it on 13th? A. No.

Q. The edges of the goaf were not ventilated? A. I cannot say that.

Q. (Approaches plan): Can you see it from there? A. Yes.

Q. You have got air coming up C - no - air coming up B. You have stopped C heading to direct the flow of air through No. 2 cut-through there and some of it is also going down as it is coming out from B heading as a result of the pull of the fans? A. No, it goes in under the influence of the main fan. It goes down to the work face under the influence of the small fan.

Q. Some comes up B? A. Some could get up there and round, yes.

Q. It comes round this edge of the goaf? A. Yes.

Q. And it could pick up goaf gas there? A. Yes.

Q. Indeed, there is a source of goaf gas insofar as there appears to be two small stooks, small bits of pillar? A. Those stooks were left in.

Q. They propagate methane? A. They are coal. They have probably got methane in them. They do not actually propagate it but they are coal.

HIS HONOR: Q. What is this term "stooks"? A. Stooks is a mining term for a small lump left, like that.

MR.SULLIVAN: Q. That stream of air would in the ordinary course be brought into A heading? A. Yes, what was travelling would come along A heading.

Q. Then you put a tight brattice which must have the effect of holding it back? A. Yes, it would restrict it, I don't know to what extent.

Q. Holding it back? A. Yes.

Q. That means that insofar as that goaf is being ventilated, the ventilation is blocked by this piece of brattice that is put up? A. Not entirely.

Q. Not entirely? A. No.

Q. It might have been better if it had been entirely, might not it? A. Perhaps.

Q. What I am putting to you is that set-up was contrary to basic mining practice which is to ventilate the edge of the goaf. A. I do not think it was a bad practice. If the system was handling the gas, there is nothing wrong with it, I don't think.

HIS HONOR: Q. You are asked is it contrary to mining practice to ventilate the goaf? A. No, I don't think so.

Q. Do you say it is not mining practice to ventilate the edge of the goaf? A. No.

Q. Do you say the edge of the goaf should be ventilated? A. I say the edge of the goaf could be ventilated despite the existence of the brattice screen.

Q. Was it in fact? A. We thought so, until the fire appeared.

Q. Until the fire. You tell me how it was ventilated if you had a bit of brattice stopping the flow of air to the edge of the goaf? A. It would not stop it entirely, I don't think.

Q.Your idea is to ventilate the edge of the goaf adequately - you don't pay lip service to ventilation? A. No.

Q. Would it be proper mining practice to provide proper ventilation to the edge of the goaf? A. Yes.

Q. The mere flow of air to the edge of the goaf and the prevention of it substantially from getting away is not ventilating the edge of the goaf? A. I have tried to say this depends how much air you are allowing to get away from it - if it is enough to do it--

Q. How do you tell? A. By normal testing, I guess.

Q. Assume proper tests as occurred in the simulated conditions for the fire showed gases were still present in substantial quantities, would you not agree that there was not adequate ventilation of the goaf? A. Yes, I would agree with that.

MR.SULLIVAN: Q. You saw this position on 3rd, was it? A. Yes.

Q. You actually saw it and had the opportunity of assessing it; is that so? A. Yes.

Q. You say the bleed tube was put in to ventilate the shunt?A.Yes.

Q. That was your view? A. This is what I thought was being done.

Q. I think it was Mr. Menzies who said he had never seen one used for ventilating the shunt before. Have you used them before actually as an adjunct to ventilation? A. Yes, I have had them on dead-ends before in various places.

Q. As a ventilating medium? A. Yes.

Q. What I am going to put to you is this: If they are being used for ventilation purposes, the object is they draw a certain number of cubic feet of air per minute from the dead-end? A. Yes.

Q. And that number of cubic feet a minute is then replaced by an equivalent amount of pure air from a source outside the dead-end? A. Yes.

Q. When you have used them for that purpose, have you not hung them over a bar approximately near the middle of the shunt so as to create the maximum area for the pressure differential at the mouth of the bleed tube to be most effective? A. It is dependent on the circumstances.

Q. One of those cases which would cause you to put it in some place other than that would be the existence of noxious or inflammable gas at a particular point? -

MR.REYNOLDS: He has not agreed with you it would be normal to put it somewhere else. I thought the question just asked assumed the answer which had been previously given was different. He said it would depend on the circumstances and my friend went on to say that one of the things that would make it different - with no normal established yet.

HIS HONOR: Mr.Sullivan meant: "One of the factors which may be different to the proposition I just put to you."

MR.SULLIVAN: That is what I mean, Mr.Reynolds.

Q. One of the circumstances that would cause you to depart from putting it in a central position higher up would be the presence of noxious or inflammable gas in another place; is that right? A. I thought Mr.Reynolds was objecting?

MR.REYNOLDS: The basis of my objection was that Mr.Sullivan assumed he had established a normal.

MR.SULLIVAN: I did not put that at all.

Q. I have suggested to you if you were ventilating in the sense of creating a situation where stale air in a dead-end is replaced by fresh air, you would put the mouth of the bleed tube over a bar near the top of the position so as to give its maximum efficiency? A. Yes.

Q. That is right, isn't it? A. Yes.

Q. Any other procedure would be a departure from that and would be dictated by special circumstances? A. By circumstances.

Q. Would one of those circumstances be the presence of noxious or inflammable gas in a particular area of the shunt? A. Yes, it could be.

Q. When you saw this bleed tube on the 3rd near to the brattice, didn't that put you on inquiry as to why it was in that position rather than central? A. No, it did not cause me any concern.

Q. Did it put you on inquiry? Did you say to yourself, "I wonder why they have got it there?" A. No, it did not cause me to do that.

HIS HONOR: Q. Did it cross your mind when you saw it there might be a specific problem of gas that was being dealt with by placing the end of the bleed tube there? A. Only that it was noxious gas. I knew that is where it would be, down near the tube.

Q. In other words, you thought there might be noxious gas there that the tube was being used to dilute? A. Yes.

MR.SULLIVAN: Q. Wasn't it a simple step to take from that to say that in view of the amount of methane in the return airways this noxious gas may contain methane? A. No, I do not think so. That 0.2 per cent. in the return airways is usual for every colliery I have been associated with.

Q. But coming through the shunt? A. I don't know that it was coming through the shunt.

Q. And you did not take any steps to inquire? A. Not about inflammable gas, no.

Q. Whether it was coming through the shunt. Returning to the statement you say, "Of course there was a gas problem." I take it a gas problem only exists when you are unable efficiently to dilute the gas? A. It is when it becomes a problem - what I mean to say there - and I think I said so earlier - was I knew there was gas in the goaf inby.

Q. You used the expression "problem" there? A. Yes.

Q. And you say, "There always is." A. Yes.

HIS HONOR: Q. In other words, you always have to cope with gas? A. It does not matter - when you go into the entrance of a coal-mine you have to consider there will be gas there. We do examinations of our main diesel gauge right outby.

MR.SULLIVAN: Q. Referring to 8 Right you say in this statement you did not mean there was a continuous gas problem in the sense of inability to dilute gas in 8 Right? A. I did not mean that.

Q. You went carefully with your words when preparing that statement with your solicitor? A. Fairly carefully.

Q. You missed that one. Did you hear the evidence that was given by Mr. Lake? A. Yes.

Q. That, I gather, you would take as referring to what happened in No. 3? A. Yes.

Q. (Approaches plan): No. 3 cut-through. The pillars which are marked 12 and hatched in yellow were still there at the time? A. Yes.

Q. When Mr. Lake went up there the brattice was put in the cut-through in A heading a distance of some 30 feet on the cut-through under the direction of the deputy who was there then? A. Yes.

Q. There, of course, you had your bleeder tube, didn't you? A. Bleeder heading, you mean?

Q. Yes, I am sorry. A. Yes.

Q. You had your bleeder heading there so your goaf edge was being ventilated? A. Ventilated differently.

Q.Completely ventilated? A.I would assume so.

Q.That was an entirely different set-up from the one of the extension of No.2 heading? A.Yes.

Q.And to repeat what happened in No.3 heading in No.2 without considering the difference created by the existence of the bleeder heading in No.3 was quite wrong, wasn't it? A. Oh, I don't know. It was certainly different. I would not know if it was quite wrong.

Q.At any rate you see no reason not to accept the evidence given by Mr.Lake that even had No.3 - (Objected to by Mr. Reynolds)

HIS HONOR: He can be asked whether he agrees with a particular face, but he cannot be asked whether he accepts the evidence.

MR. SULLIVAN: Q. Very well, do you agree as a fact with what Mr.Lake said. (Objected to by Mr.Reynolds; allowed). - that he was troubled by gas when he was assisting in putting up the brattice

HIS HONOR: I will not allow that because that is something he cannot even know about. If it is a common fact that both observed, then he can be asked whether he agrees.

MR.SULLIVAN: Q.Now, did you know of the existence of noxious gas in A heading inby No.3 cut through? A. Not to the extent that Mr. Lake described,no.

Q.But you knew of its presence? A.I knew of it,yes.

Q.Despite the bleeder tube? A. Yes, we knew we had this stuff in the goaf and it must be there.

Q.The other question is the matter of the files at the colliery. Mr.Lee asked you yesterday about a file that was produced and put in evidence here? A. A file?

Q.Yes, dealing with the previous approval for the putting in of auxiliary fans? A. Yes.

Q.I take it you have been handed or have seen a copy of this file which has now been tendered and is an exhibit? A.I glanced at it.

Q.Do you tell the Inquiry that before this Inquiry started you had never seen any part of this correspondence in the colliery office? A.That is right.

Q.No part of it at all? A. I hadn't read it, no.

Q.Well, had you seen it? A.No.

Q.You said you knew something about the requirements of the Department for the installation of auxiliary fans. Where did you ascertain those from? A.When I was at Kemira colliery, auxiliary fans were put in there and as under-manager I was handed a list of the Departmental requirements and told by the Manager to observe these. The same thing occurred at Appin colliery.

Q.You were an Under-manager in both places? A.Yes.

Q.When you took over the management of the Bulli colliery, from whom did you take over? A.Mr.John Carthew.

Q.And were these files in the colliery office, I suppose? A. They were in the clerk's office, yes, in the filing cabinet.

Q. You knew there were auxiliary fans operating there? A. In the mine, yes.

Q. And you knew they were normally only permitted by the Department in certain conditions? A. Well, I think the view of Mr. Ryan was that the Act did not require that we ask for permission before, at that stage.

Q. Was that your view? A. Well, we had not actively discussed it. The fans were operating when I came to the mine. The under-manager knew was he was doing with them. I did not go in and check specifically that they had all the permissions or anything else, I just -

Q. But it is your responsibility as manager, is it not, if the fans are not being operated in accordance with departmental requirements? A. Oh yes, I have a lot of responsibilities.

Q. And that is one of them? A. Yes.

Q. And whilst you knew fans were being operated there, you knew from your experience as under-manager that the Department normally laid down conditions as to their use but you made no check at all on that regulation at Bulli Colliery? A. No. The only thing I did was to look at the fans when I went into the mine to see whether they were operating on what I remembered of conditions before, and everything seemed to be in order as far as that was concerned.

HIS HONOR: Q. How do they differ from the requirements of the Department, do you know now? A. How do they differ - well, very little. I have applied recently since the fire for the installation of two fans and I have been given permission. Apart from two very small variations they are almost identical with other permissions. Other regulations that have been handed to me - whether they are permissions or what they are.

MR.SULLIVAN: Q. There were some quite important qualifications in this, were there not? For instance, that no further fans were to be installed without permission appears in this file somewhere? A. Well, I am told Mr. Muir said that somewhere.

Q. Well, do you doubt it? A. I don't doubt that he said it but -

Q. Yet these were installed without it? A. This is the point: whether he had the authority to say that.

Q. What you are putting to the Inquiry is that if an inspector gives you a direction in relation to a matter of safety, you reserve your right to question his authority? (Objected to by Mr. Reynolds; question pressed, allowed.) A. It is my policy and company policy that if an inspector asks for something, we do it.

Q. But you put it to His Honor a few moments ago that it was a question of whether Mr. Muir had the authority to say that? A. To say whether you could instal fans or not.

Q. Are you querying his authority? A. No, I am not querying it. He has the authority now, I know.

Q. As manager, were you querying it at the time? A. No, I did not query it.

Q. We will leave aside the question of whether he had the authority or not, but assuming he had the authority to do it, there was a requirement by the Department in existence when you became manager that you were not to instal further fans without permission from the Department? A. That is assuming he had the authority.

Q.Yes, but he had made the request? A. He had made the request to Mr.Ryan,yes.

Q.What I am trying to find out is whether it was ignored in this case because you did not think he had the authority or whether it was ignored because the persons responsible did not inform you of the requirements? A.Well, I did not know about the requirements, but I still don't think we just put it in there to ignore the Inspector. The view of my senior people was that he did nt have the authority to prevent us putting it in.

Q.It was deliberate, was it? It was deliberate policy of your senior people to say that he did not have the authority? A. The policy was there but nobody said when we grabbed the fan and took it in that we were doing this in ignorance of Mr.Muir. We had the fan in one part of the mine and shifted it over a little further.

Q.And introduced a second fan? A. And introduced a second fan.

Q.You did that with the approval of your senior people who did not think Mr.Muir had the authority? A.Well, I don't think my senior people knew about the second fan.

Q.But they knew about the movement? A.Yes.

MR.LEE: Just before Mr.McNally starts his cross-examination, it may be that now this question of authority has been raised Your Honor might see fit to have regard to Rule 3 as a matter of general interest at this point. It is at p.86 (read).

MR.SULLIVAN: Q.(By leave) A question on the splitting of this pillar. You went down that place with Mr.Victor Parkinson; you went down the extension of No.2 cut through about two days after the fire, didn't you? A. Yes, we did.

Q.And did you point out to him the position for the insertion of a vent tube in the vent tube going down to the face and a surveyor's peg on the wall about the middle of the pillar created by No.2 cut through, about here? (Indicating on Exhibit A)? A. I think I would have done. I can't recall exactly.

Q.There was a surveyor's peg? A.I think there was,yes.

Q.And did you say to Mr. Victor Parkinson it was intended to split the pillar here? A.No.

Q.Why was the surveyor's peg there? A.Possibly to indicate where they wanted the machines put in - where the Under-manager wanted the machine put in. It may have had some further use for him - I don't know.

Q.But you as Manager have to instruct the surveyor , do you not? A.On distances and widths of developments, yes, but once an area is developed and you are aiming for complete extraction, the ordinary splitting of a pillar would not be laid down by me.

Q.However, you do not dispute there was an insertion in the vent tube there and a surveyor's peg on the opposite side?A.No, I would not.

Q.But you do dispute saying that to Mr.Parkinson? A.Yes.

Q.As far as roof control is concerned, of course splitting at right angles to the extension of No.2 cut through was a much sounder proposition than splitting it lengthways in that area,wasn't it? A. No,it would have made your extraction more - you would not have

been able to operate with a bleeder if you did it that way, if you had gone across.

Q.That is right, that is what I am putting to you.

Q.Well, this is all cut but we had intended to split across anyway.

Q.You are saying you had intended to? A. We had not intended to do that. Is that all clear?

Q.No, I am afraid I am not clear. Would you show us on the map? (Witness approaching Exhibit A)A.It was never our intention to split there. We only intended to put the remainder of a shift in here and then to come back and split here.

Q.That is what I say to you; it would have made your roof control difficult in that particular section? A. I would not think so. It would not have made any difference.

Q.What sort of fenders would you have left? First of all, what size cut through? A. Where - here ?

Q.Yes. A. It would have been six yards, seven yards maybe.

Q.What is the width of that pillar? A.That is about 55 yards, from memory.

Q.And how would you have taken your lifts after that? A. Well, we would have holed and then lifted across here, right back.

Q.You say that was the intention? A. Yes, bearing in mind this was discussed with the Under-manager.

HIS HONOR: Q.Lifted on the goaf side? A. Yes, you have to start from there,

Q.Where is the ventilation there, doing it that way? .
A.Well, you would have your normal tubes down in the miner place and you have got a place behind you .

Q.You ventilate by tubes? A. Yes, similar to these (indicating) but then the next thing to do after having put that down and lifted out that lump would be to come down and put this across.

Q.Ventilation at right angles provides you with a bleeder, doesn't it? A. Through here, it would put you in an awful position down there.

Q.But if you split the pillar down there you have already got a bleeder in that area which is now the shunt? A. Your Honor has left me behind. If we split across there -

Q.I am not thinking about a bleeder tube, I am thinking about a bleeder heading? A.The way we intended to get a bleeder heading was to split down there. That would leave this behind, then come out No.2 cut through and hole across here again and then take this and then do our split again.

MR.SULLIVAN: Q. What you are putting is that you did intend to restore the system of bleeder headings that had been abandoned by Mr.Puddle? A. Well, once we didn't do it.

Q.That had been abandoned by Mr.Puddle on this instruction? (No answer)
HIS HONOR:Q. Is that an unusually long pillar you would be leaving there? A.No, I don't think so. It is what - perhaps 150 yards, this distance.

Q.There is a statutory requirement as to the size of pillars to be left. Do you know offhand what it is? A. There is a minimum only. It is a minimum under these conditions.

MR.SULLIVAN: Q.Before you go back to the box could you tell me this; Was there a surveyor's peg at the other point where you say - A.Here, - that I could not tell you.

Q.But you do know there was one at the other point? A.I remember looking at this because there were other reasons. (Witness back to box)

HIS HONOR: Q.Would you prefer a rest before you face Mr.McNally? A.No, I am quite all right, thank you, Your Honr.

MR.McNALLY: Q.Mr.Stone, I think you mentioned this morning that at some other colliery methanometers had been used for the detection of gas? A.Yes.

Q.Which colliery was this? A. Appin.

Q.And are these methanometers in common use for the detection of gas at that colliery? A.I carried one, and the overman. I was the under-manager at the time.

Q.Was the reason for this that at Appin colliery there is a problem with Illawarra bottom gas? A. There is a problem with methane.

Q.And was difficulty being had in detecting the methane by using the ordinary safety lamp? A. No, it was quite easy to detect, but we were having some difficulty with it coming in the intakes in small quantities. If you are going to find .25 per cent in your intake you will want a methanometer but we also use the methanometer to make sure of what we are getting. We used to do quite a lengthy observation every day to see just where gas was coming from.

Q.I think when you took over the managership of the Bulli colliery you knew that there had been problems with Illawarra bottom gas? A.No, that is not quite right.

Q. Well, what did you know about Illawarra bottom gas in Bulli colliery when you took over the managership in 1964, whenever it was? A. I do not specifically remember talking to anybody about it.

Q.When was the first that you became aware that Illawarra bottom gas was a problem in Bulli colliery? A. I would say about the 10th or 11th November.

Q.Since then have you become aware that Illawarra bottom gas had been found in the colliery prior to 9th November? A.Yes. In talking to various people, Mr. Puddle and one or two others, they said it had been found but apparently it was insignificant, somewhere.

Q.I think it had been found in the Old 8 Right section, is that so? A.I don't know that they - they said it had been found in the area near the fault near 8 Right section. If you come straight down the main road just below one of our underground bins, the fault is immediately in front of us there and somebody said it had been found on one occasion there. That is not too far from 8 Right.

Q.But it is fair to say that up till 9th November last year you had not personally directed your mind to any problem that might arise from Illawarra bottom gas? A. That would be right.

Q.And I think it is fair to say that this could be said of every-one associated with the mine? (Objected to by Mr. Sullivan)

HIS HONOR: Q. Are you able to answer that question? Are you able to say that everybody else knew? A. Not from knowledge, Your Honor.

MR.McNALLY: Q.I will put it another way: Do you know whether Mr. Puddle - perhaps he can be asked himself. Was there ever any instruction given by anyone to your knowledge to deputies as to means and methods of detecting Illawarra bottom gas? A.Not to my knowledge,no.

Q.I suppose you will agree that in the training of deputies and the lectures given to deputies with a view to obtaining their certificate, little or no attention is paid to the problems of Illawarra bottom gas? A.Well, from my memory, when I went for the course that would be right.

Q.And so far as you know things have not changed since then? A. Not as far as I know. It is a long time ago.

HIS HONOR: Q. Bottom gas has been around these mines all that time? A.Apparently,yes.

MR.McNALLY: Q.Nevertheless it is fair to say that a deputy at Bulli Colliery, neither in his training as a deputy nor aspart of his duties as a deputy at Bulli colliery, has much opportunity of learning very much at all about Illawarra bottom gas? A.That would be right.

HIS HONOR: Q.Don't they read? Don't deputies read? A. I assume so, Your Honor, yes.

Q.There is a chart that has been tendered in evidence here which refers to mixtures of methane and black damp? A. Yes, I have seen the chart.

Q.Specifically brought to the notice of people in relation to gases; you realise that is so? A. Yes, I have seen such charts.

Q.I suppose anybody who knows anything about gases, including deputies, - tell me whether you agree with this proposition or not -as a rule knows that black damp, Co2, is found down below because it is heavier than air and methane is found up high; is that right? A.That is correct.

Q.So I suppose if anybody, including deputies, knows anything about gases, they might wonder how you could get a mixture of these two gases when one is found up near the roof and the other is found down near the floor? A. That is right, they should.

Q.I suppose that might make any thinking deputy - when I say "thinking" I do not mean one who is capable of the deepest philosophical thought but one who is interested in testing for gas and so on - say "where do I find this mixture"? Do you agree with that proposition? A.Yes.

Q.And I suppose somebody would tell him "that is Illawarra bottom gas and you find it where the name says it is, down at the bottom." That would be so too would it not? A. I think so.

Q.Would you not agree with me that what deputies and other people have been testing for for years along the bottom of the old Bulli colliery, as Mr.Parkinson calls it, they have been thinking that what they have to test for down near the bottom is not bottom gas but CO2; is not that the real position? A. Yes,I think it is.

MR.McNALLY: Q.Putting it fairly, would you have been able to instruct deputies as to the manner of detecting bottom gas whilst using a safety lamp, before the fire? A. Well, I would not have been as clever as some people at it. I think I might have been able to do it, but I have not had enough experience - well, I virtually have had no experience in testing with the lamp for it.

Q.And I suppose this would apply to a high percentage of your employees who used the safety lamp prior to the fire in 1965? A. I think that is pretty right,yes.

Q.Incidentally, we know deputies use safety lamps and I think it is the policy of the company to supply safety lamps to miner drivers' A.Yes, they have a requirement to test, you see - machine operators.

Q.Whilst on that point, you know, do you, that the miner driver from about 5 a.m. on the day of the fire tested for gas in the shunt? A. I am not sure I know of that.

Q.Do you know of that or don't you? A.No, not offhand.

Q.In addition to the miner drivers I think it is fair to say that the overmen have safety lamps? A.Yes.

Q.And they carry these at all times? A.Yes.

Q.The assistant mangers have safety lamps and they carry them at all times? A. Assistant Under-managers, yes.

Q.Does the Assistant manager carry a safety lamp - Mr.Puddle? A. Yes, Mr.Puddle is the Assistant Under-manager. We have an Assistant manager.

Q.He also carries a safety lamp? A.That is right.

Q.And you yourself do at times? A. Yes, I alternate between the safety lamp or the methanometer - give them both a try.

Q.And prior to the fire all of these people at various times had tested for gas in the 8 Right section' A.That is right,yes.

Q.And would you agree that most of these people at various times had found noxious gas? A. This is the report I had anyway.

Q.That is from the Under-manager down, perhaps - including yourself? You did on one occasion find noxious gas did you not? A.That is right.

Q.And at no stage did anyone including yourself consider the possibility of that noxious gas being Illawarra bottom gas? (Objected to by Mr.Sullivan) A. Well, I didn't.

Q.Well, so far as you know? A. The reports indicated that they thought it was noxious gas.

Q.The possibility was never considered by you and it was never suggested to you that it was Illawarra bottom gas? A.No.

Q.In the light of the events that happened are you prepared to concede the possibility that what in fact was found over the months leading up to the fire was Illawarra bottom gas? A. I would think we must have had this, but what the composition of it was I would not be prepared to say.

HIS HONOR: Q.You think there were varying proportions of methane? A.I would think so from the way things have gone.

MR.McNALLY: Q.And had not been detected on the safety lamp? A. I think that is right.

Q.I suppose Mr.Wright, as the Under manager, thinks he is skilled in the use of the safet lamp? A.He is skilled.

Q.Are you confident with his methods of testing and the results? You did have confidence in him? A.Oh yes.

Q.What of the deputy, Charles Stewart? Are you confident in his manner of testing?

HIS HONOR: Do you want this witness to answer that, because I might ask another question?

WITNESS: I have accepted his reports as being true.

MR.McNALLY: Q.What do you say as to the manner of Mr. Stewart carrying out his duties generally prior to the fire on 9th November?

HIS HONOR: Q.Do you know, really know, apart from his reports? A.Only from his reports. On one occasion, at the time Mr. Murray asked me about, I remember Charlie Stewart examining while I was there. but even then I did not go and watch the details of what he had on his lamp.

MR.McNALLY: Q.I think then we can conclude this particular part of the cross-examination by saying everyone was surprised, including yourself and the Mines Inspectors, that Illawarra Bottom gas was in the shunt on that day; would you agree with that? A. I was certainly surprised.

Q.I do not think any complaints in fact had been made to the check inspector in relation to Section 8 Right before the fire so far as you know?A.So far as I know.

Q.As I understand it the Under-manager is required to go to each section of the mine as often as practicable? A. As often as he can,yes.

Q.And he is required, is he not, to report in a book? A.Yes. There is an Under manager's daily report book, a statutory requirement.

Q.It is not among those ? A.No, it is not amongst the subpoenaed evidence.

Q.Prior to the fire on 9th November, do you know that Mr.Puddle had actually been in that part of the mine, in the week before the fire? A.I can't swear to it.

Q.Incidentally, I think Mr.Wright is the Assistant Under-manager in charge of the day shift in 8 Right? A.Yes.

Q.Is he also in charge of some other section of the mine? A.Yes, he has a panel called Red panel which is some quarter of a mile away, and some odd people there - people doing odd jobs, put it that way.

Q.Do you know that it is his practice to spend half of his time in the 8 Right section and the other half in Red panel? A. Yes, something of that order. That is what he usually does, I think.

Q.So on the average, all things being normal, he is in the 8 Right section with Deputy Stewart for some four hours during the course of his shift? A.Wait a minute, it would be about three. He gets there about eight and he goes across to the other panel about lunch time or eleven o'clock.That is his normal routine.

Q. And during that time he is inspecting work and looking to safety? A. Yes, inspecting requirements as to future work and materials and labour and that sort of thing.

Q. I suppose it could be said that yourself, Mr. Puddle and Mr.Wright all knew of the conditions in relation to ventilation and brattice screening and elephant trunks - you all knew of those conditions prior to the fire occurring? A. Yes.

Q. Incidentally, I think you would agree that you are primarily responsible for ventilation of the mine, this mine? A. Yes.

Q. Would you agree with me that a deputy cannot interfere with that ventilation without reference firstly to the under-manager and subsequently to you? A. Not seriously he could not.

Q. I mean if we are driving headings and cut-throughs are being cut, it is normal for a brattice screen to be put up in each cut-through? A. Yes, some good screen.

Q. But when it comes to erecting a brattice screen as was erected in the shunt, that is not a matter for a deputy, it is a matter for an under-manager? A. No, I said before if the deputy was there and he considered he wanted it done, he could do it.

Q. But shortly after doing that he should confer with an under-manager? A. Well, he would - our standard practice is that he would, but if he did not see one he would do it anyway.

Q. Just to clear it up, I think you have agreed, have you not, that the arrangement, the brattice screening and the elephant's trunk, the ventilation system in the No. 2 cut-through was very similar to the ventilation system that had been used on the No.3 cut-through? A. Yes.

Q. There was a brattice screen there and there was an elephant's trunk used? A. Yes.

Q. In using this Exhibit JJ do you claim to know the exact step-by-step development of the mine or are you only surmising what it was from the plan? A. The only way I can do this is to discuss it with the under-manager and I discussed this with the under-manager and Fred Wright. That is how we arrived at the numbering on this.

Q. You do not know who made the plan, do you? A. No, not in particular. I think our central office might have done it or the prints, but we made this at the colliery.

Q. It was a joint venture? A. Yes.

Q. Prior to the fire I think the inspections of machinery, shuttle cars, and the completing of Rule 5 reports were carried out by the fitters? A. Yes. They still carry them out.

Q. I mean it was the fitter's responsibility before the fire? A. Yes.

Q. And was it the practice of the company for the fitter to make out these reports and for the deputy to rely upon the inspections? A. Yes, I would think so.

Q. And unless there was anything to the contrary, you asked the deputy to rely on the official inspections? A. Yes.

Q. You were also asked questions concerning the actual cause of the gas emitting from the goaf and you expressed the view that

in your opinion the fall in barometric pressure was perhaps not largely responsible for that? A.That is right.

Q.Was the fact that the gas was found in the shunt area for some days, perhaps even a matter of some weeks after the fire, suggestive that the barometric pressure had not played such an important part? Do you follow what I am getting at? A.Yes, I think I follow what you mean, but I don't know that that suggests it. But during the night of the fire the barometer was still falling and had the gas been coming out in any quantities we would have picked it up, I think.

Q.In fact during the night of the fire you only picked up gas in low quantities, did you not? A.That is true.

HIS HONOR: Q. Where were you testing for gas on the night of the fire? A.Well, the Mines Department Inspectors were assisting us but we were in the shunt area and around the goaf area.

Q.This is the night of the fire? A. Yes, the night of the fire.

Q.That is after the fire - you would not be there until then? A. Yes. During the night Mr.Longworth was with me and we found concentrations at points.

Q.There were small concentrations? A. Along rib sides and various points we had to deal with. There was nothing coming along in the general body of air.

Q.Would the fire remove what gases had been there? A. I think it would almost certainly have burnt up what methane was there at the time the ignition took place, but the point I would make is that the barometer was falling for quite a long time after this. It fell till some time during the night and we should have had quite a flow coming up the heading even then because we had the air coming around there.

Q.At that stage you should have had some coming up the heading but you did not have this brattice stopping across the shunt, did you? A.No, that is right.

MR.McNALLY: Q.Whilst on that, I think following the fire you paid some attention to just what gas was being found down there in the 8 Right section? A.Yes, well, we had the help of the Mines Department Inspectors. They were there almost continuously with us taking lots of tests.

Q.I think you had certain people on duty there watching the place? A.Yes, we had officials there round the clock.

Q.Do you still have them there? A.No, the area has been completely withdrawn.

Q.Up to what stage did you have someone there? A. It was over the weekend to clear up the loose material. I think we kept a 24 hour watch up to the Saturday of the next weekend. What was the 9th - the Tuesday was it?

Q.Yes, but you had people there up till 8th December, did you not, the inspection? A.Yes.

Q.And after that wasn't Mr.Cambourn there? A.Yes, while we had men working there we had a Deputy standing about.

Q.Did you actually go down there yourself at various times and test for gas? A.Yes.
Q.And you were getting methane in the initial period after the fire? A.Yes.

Q. You were using a methanometer then, were you? A. I took a lamp too.

Q. Were you getting it on the lamp? A. When we had the brattice screen re-erected I was.

Q. When you did not have the brattice screen, were you getting it on the lamp? A. No.

Q. What percentage were you getting on your methanometer at that stage - this is immediately after the brattice screen was taken down again? A. I remember readings of .8 per cent., .6 per cent.

HIS HONOR: Q. To what brattice screen are you referring? A. The one we re-erected in the shunt to simulate the conditions.

Q. What concentrations were you getting after the screen had been erected? A. You could get full concentrations. I mean you could take your lamp up to a decent concentration. I took the screen down rather smartly because the concentration was building up.

Q. In fact you could readily detect it on the safety lamp? A. Yes. This is why I said earlier that had these conditions existed when Mr.Stewart examined on the day of the fire, he just could not have missed this.

MR. McNALLY: Q. I suppose the same could be said of Mr.Walker? A. And the miner drivers - anybody at all.

HIS HONOR: The miner drivers are not testing for methane down at the shunt?

MR. McNALLY: It has come to my knowledge - (Objected to by Mr.Sullivan.)

HIS HONOR: There is no evidence that the miner drivers tested around there.

MR. McNALLY: Q. Following the fire I think the rescue team moved around the bottom of A, did he, through an entrance into the outby side of the shunt? A. Yes, they went down past the back.

Q. I think immediately that was done, instructions were given and the area was retimbered, was it not? A. Yes, it was strengthened up so that we could continue using that means.

Q. Would you agree that until that was done that area was not safely accessible? A. The corner of the pillar where those two stooks are would not have been safe in my opinion for a deputy to walk through. (Approaching Exhibit A): Mr.Ryan and people on the night of the fire found they way down here and around the goaf edge, this goaf which had fallen almost to the coal line. You could squeeze past it, but there was a lot of overhanging stone. It was not a spot I would like to have anybody walking through without proper support. That is why we put the timber there.

Q. Was it safe for the company's purposes for a deputy to go down the width of the goaf in B heading? A. Yes, I would have expected they could have gone to the edge of those two (indicating). That was quite safe. (Witness back to box.)

Q. But there was no safe access to behind the brattice in A heading? A. Well, put it this way: If I was going to use that track to examine, I would have had it shored up.

Q.Do you know whether Deputies have been instructed to look at the barometric pressure? You have not given instructions, have you? A.Not personally.

Q.You do not know whether anyone has, do you? A. No, I don't know offhand at the moment.

RE-EXAMINATION:

MR.REYNOLDS: Q. (At Exhibit A) You were asked some questions by my learned friend Mr.Sullivan about the situation with the A heading inby of No.3 cut through being used as a shunt? A.Yes.

Q.And it was suggested to you that at that point of time there had been a brattice stopping erected in A heading inby of No.3 cut through? A.Yes.

Q.And that the fans had been positioned similarly to the day of the fire and that there was a flexible vent tube going into the shunt? A.Yes.

Q.It was put to you that at that time there was a bleed tunnel in operation. Is that correct? A.Not while - not before 9 holed. That is where your finger is.

Q.That is right, there was no bleed there? A. Not until it holed.

Q.Not until it holed? A. That is right.

Q.And that shunt was only in operation until it holed, was it not? A.Yes. (Objected to by Mr. Sullivan as leading).

Q.When you answered my friend had you overlooked that fact when he put to you that when the one with which we are concerned, the extension of No.2 cut through was being done, there was a vital difference that in that case there was no bleed where there had been a bleed tunnel before? A.That is right.

Q.Had you overlooked that fact? A.Yes - I thought this was understood. We were driving a bleed.
HIS HONOR: Q.I suppose every time you drive a bleed you can't have a bleed behind it? A.That is what I assumed when I was saying it, Your Honor.

MR.REYNOLDS:Q.Might I refer to page 168 of the transcript which bears upon the suggestion put to you this morning that somebody - and this is how I understand the suggestion - either with or without your authority had interfered with the regulator so as to deprive 8 Right section of some measure of its air before the fire. You heard those suggestions put in questions before lunch? A. Yes.

Q.First of all have you any knowledge whatever of such a thing being done? A. No, none at all.

Q.I want to take you to page 168, an answer given by Mr. Longworth. It is the fourth question from the top and Mr. Longworth said this: "Q.On the top of the third overcast props had been erected and a brattice screen placed to be used as a regulator on the 8 Right split. According to a statement by Mr.Stone this brattice screen had been pulled down by the rescue team inspecting the return airways on Wednesday morning 10th November 1965. Cross sectional area above overcast sixty square feet velocity 850 feet per minute. Total quantity 51,000 cumins So that the ventilation system you have described was effective ? A.Yes." Do you remember Mr.Longworth giving that evidence?A.Yes.

Q. First of all, is it correct that you told him that the brattice screen had been pulled down by the rescue team inspecting the return airways? A. Yes.

Q. As far as your information takes you, when was this done? A. Yes, on the early hours of Wednesday morning.

Q. And would that have the effect of increasing very materially the airflow into the 8 Right section? A. Well, it would put it up quite a lot.

Q. From what to what? A. Well, it was 26,000 before. It could quite easily go up to the 50,000. It is the first split in the air off the main airways. You would get quite a large quantity of air.

Q. Had you ever had the matter put to you, before in the witness box, that there was anything significant about the reading taken by Mr.Longworth about [illegible] on the 9th November that the airflow into the 8 Right section was 20,000 cumins? A. Had I had it put to me before this morning, no.

Q. And have you had an opportunity since it was put to you to consider whether there were any other explanations as to why there was this apparent drop in the airflow? A. Yes, I had a think about it over lunch.

Q. Can you offer any other explanations apart from somebody interfering with the regulator? A. Yes. During the course of the fire, the early course of it, we heard some large falls occurring down below us. We were standing up on the loading point on C heading, but after the fire we discovered that the falls had occurred from B heading down towards A and round the corner and up over the face and they had severely restricted the airway. I think this also would have had a bearing on it and the air then had a path going over No. 2 cut-through and around a fall or round over the goaf edge and through this place Mr. McNally was just questioning me about, and that would have also restricted the airway. There was another point too. Mr. Longworth took his reading inby what was a pretty rough brattice screen across zero cut-through. There could have been air going through that in considerable quantity.

Q. You concede that you are not a ventilating engineer, but does your knowledge take you sufficiently far to be able to say that if you restricted the cubic measure of the conduit through which air is flowing at a point further away from its source, you will affect the rate of flow? A. That is right, of the whole area.

Q. If we accept the evidence of the inspectors, we find that subsequently Mr.Longworth found an airflow in excess of 28,000 and subsequently, as I have read to you, 51,000. Apart from your information as to the rescue team taking down a brattice, was there any interference with the regulators between 2.40 on 9th November and those times? A. No, that would have been impossible without a rescue suit and without a self-contained breathing apparatus because they had to go up through the smoke-filled returns.

Q. You could not get there to do it? A. No, because several people had looked in a trapdoor through the returns to see if they could get in there during the course of the fire, and that was impossible.

Q. As I understand your evidence, it is based partially on the proposition that there was never inflammable gas in the shunt reported to you? A. That is it, yes.

Q.Now supposing that you had had a report indicating the existence of inflammable gas in that shunt, would that have caused you to take any particular steps? A.Yes, I think we would have stopped using that as a shunt immediately. I don't think we would have continued with that.

Q.You gave an answer to my friend Mr.Sullivan concerning the file of correspondence and the reference in a letter by Mr.Muir that you should seek approval. Do you remember the document to which I refer? A.Yes.

Q.You indicated you had had some discussion with your senior people about that and they had expressed some view as to the efficiacy of that direction. Do you remember giving that evidence? A.Yes.

Q.What I want to clear up is that that conversation was before or after the fire? A. After.

Q.And there was no conscious decision on your part before the fire to defy any such departmental instruction? A.No, none at all.

Q.You were asked a series of questions about their having been at one time .1 per cent of methane in the return airway and at another time .2 per cent. Could you tell His Honor whether to a mining man those figures are at all significant? A.No. I think most mining men would be pleased if this is all they ever had in their returns.

Q.And would it affect that view that this was coming from an area such as the 8 Right area? A.No, I would have considered this insignificant even from the 8 Right area.

Q. It would not give you notice of any, what I might call abnormal conditions? A.No, I would not think so.
That amount is going up the up-car shaft, .2 per cent.

Q.How does this compare with the readings that might be found or are found at other mines on this coast and Appin? A.
Well, certainly it is much lower than Appin, and in mines of my experience it is by far as good, if not better.

(Witness retired)

(Further hearing adjourned to Thursday 3rd February, 1966 at 10 a.m.)

Chief Inspector of Coal Mines,
Mines Department, Sydney.

IN THE COURT OF)
COAL MINES REGULATION)
HOLDEN AT BULLI)

No. 1 of 1965.

BEFORE HIS HONOR JUDGE GORAN
ASSESSORS: MESSRS.MAHON and BUCK
Thursday, 3rd February, 1966.

IN THE MATTER OF AN INQUIRY IN PURSUANCE OF THE COAL MINES REGULATION ACT INTO AN ACCIDENT WHICH OCCURRED AT THE BULLI COLLIERY ON 9TH NOVEMBER 1965 AND ITS CAUSES AND CIRCUMSTANCES.

- - - - - - (PART HEARD)

HIS HONOR: Gentlemen, I have been conferring with my colleagues, assessors Messrs.Mahon and Buck, and it may be necessary later on for Mr.Stone to return to the witness box to explain certain matters.

MR.REYNOLDS: I will now call Mr.Puddle.

JOHN PUDDLE
Sworn and examined as under:

MR.REYNOLDS: Q.Is your full name John Puddle? A.Yes.

Q.You live at 5 Hill Street, Bulli? A.Yes.

Q.And you are the Under-manager at the Bulli colliery? A.Yes.

Q.You have had a statement prepared and typewritten as to your knowledge of this fire and the surrounding circumstances? A.Yes.

Q.That was prepared by Mr. Shelson, the company's solicitor? A. Yes.

Q.Have you had the opportunity to read a copy? A.Yes.

Q.And as far as you are aware are the statements of fact contained in it true? A.Yes.

Q.And the opinions you express therein are your own opinions? A. Yes.

MR.REYNOLDS: Your Honor, I propose to ask my junior to read the statement and then no doubt it can be incorporated in the transcript.

(Statement of witness, M.f.i.l, read by Mr.Westcott, as follows)

"I am the Under Manager at Bulli Colliery. I commenced work in mines in 1939. At that time I was employed at Steel Works colliery, Lithgow, was aged 16 years and commenced as a pit top boy. I worked at Steel Works Colliery doing shift work, wheeling, contract mining and in fact all duties around a mine. I went to the Technical College at Lithgow and in 1949 I obtained my Deputy's Ticket and also obtained a Rescue Certificiate at Lithgow Rescue Station. In 1949 I left Steel Works Colliery and went to Lithgow State Mine where I worked as a shift man timbering falls, contract mining. I obtained my Under Manager's Certificate whilst at the Lithgow State Mine. In 1952 I went to Steel Works Colliery as Under Manager carrying out general duties underground and in 1957 Steel Works Colliery closed. I came to Bulli Colliery in 1957 and was Assistant Under Manager, worked underground, then in 1959 I was appointed Under Manager at Bulli Colliery.

I have continued to work underground in charge of underground works up until the present time. I have been in every section of Bulli Colliery both old and new workings. I was conversant with the installation of ventilating fans in Bulli Colliery in 1959, was in charge of their installation and operation and had worked in the various working places where they had been installed. The fans were originally installed in solid workings and after the operation of the fans was tried and proved satisfactory they were gradually extended to use in pillar sections.

I have been on inspections with Check Inspectors and Mines Inspectors during this period and there has never been any complaint about the operation of the fans and I have never been instructed to stop or withdraw the fans. During my period as Under Manager I have never been instructed not to use the fans in any particular section of the mine. As Under Manager it was necessary for me to go on inspections by the Check Inspectors.

The system adopted since I have been at the mine was for Mr.Peckman, who was the Check Inspector up to 1964 to ring me the night before. He would say he would be up in the morning. If it was in connection with any particular complaint he would tell me what the complaint was and where we were going. If it was a routine inspection he would merely tell me that he would be up tomorrow, that it was a routine inspection or that there had been some complaints and he would not know until he saw the men in the morning specifically what the complaint was and when I would go with him on his inspection. Since Mr.Parkinson's appointment in November,1964 he rings the Manager and informs him he is coming and the Manager passes the information on to me.

Mr.Parkinson came on an inspection on the 9th November,1965. I met him at the pit top and he said that there ws a complaint about gas in the western returns. I had been in the western returns on the day previously, that is, the 8th November. I had inspected the workings, talked to the Deputy and the men in the section. No complaint had been made to me about gas. There was a complaint, however, about dust and that it was getting thicker. I investigated this complaint and found that the men were not using the equipment properly. There are water sprays on the machinery and the men were using the sprays as they cut the coal but not watering the place down before they started to cut. I instructed the men that they should water the coal on the floor and the face and keep it wet, however, they complained that if they did this the conditions became sloppy. I informed them that they could not have it all their own way, but if they did not water properly they would get dust. If they watered properly there would be less dust but the conditions would be sloppy. The men seemed quite happy.

Whilst I was in the section I tested for gas with an oil flame lamp. The working place, travelling roads to the face and the face to the belt were tested and I found no sign of noxious or inflammable gas. After this inspection I left and went about my ordinary duties. On the 9th after meeting Mr.Parkinson we travelled in together on the 7 a.m. transport. I questioned him about the complaints. The local Check Inspector, Ted Taylor, was with us and Mr.Parkinson said there was a complaint of gas and dust in wester returns. We went direct to western returns. After we got there the crew went in to the face and started work. The Deputy was there, his name was Doug.Harvey. I asked him how everything

was. He said "Everything is O.K." The three of us went into A heading. We watched a couple of cars being filled. The two Check Inspectors spoke to the men. We all tested for gas. Mr. Parkinson had a methanometer and I had an oil flame safety lamp and methanometer and no gas, inflammable or noxious, was found in the working place. We came back to C heading which was a standing place being roof bolted with a roof bolter. There was no gas detected with the safety lamp at the roof level, however, 1% to 2½% of methane was picked up in the cavities with the methanometer 20 yards inbye the roof bolter. I instructed the men to erect a brattice screen a few yards ahead of the roof bolter and to use the brattice screen as they progressed. The Check Inspectors were with me and nothing else was said. We then moved to D heading. We inspected D heading. In the general body of air there was no gas detected with the oil flame light. We tested the ribs at the roof level, however, twenty yards back from the standing place found up to 2% of methane at the roof level and over the roof bolter which was not working. There are two roof bolters in this section and I told them as I did in C heading to erect brattice ahead of the bolter across the heading so as to divert some of the air up to the roof and break up the layer of gas at the roof level. The men went away to get some brattice. I told Mr. Parkinson and Mr. Taylor that if the brattice was not successful in breaking up the gas what I would do was to reduce the air in one heading so as to give a greater quantity of air in the other quantity of air was. They seemed satisfied with this and we all returned to C heading to see what effect the brattice which I had said should be put up was having and as we were returning to C heading at 9.25 or 9.30 I got a message that there was a fire and I was wanted on the phone. Taylor and Parkinson came with me and I phoned and was informed there was a fire in 8 right. Parkinson, Taylor and myself immediately left and travelled straight to 8 right to see what was happening.

When I arrived at the phone at 38 at about 9.40 I spoke to the Manager on the surface by phone. I told him I did not have any information, that I was going straight to the fire and I would send the information out as soon as I could. He said he had arranged for rescue teams, they were on their way and should be here shortly. I arranged for a man to stay by the phone and I told him to keep the line clear between 38 and the surface so the rescue team could get in and the men in the mine could be taken out. Mr. Parkinson and myself proceeded inbye to the fire and met Mr. Stewart, the Deputy, and the Assistant Under Manager, Fred Wright, at the sweeps. I asked them where the fire was they informed me it was at the intersection of No. 2 cut through and A heading. They said that four men were still inside, Hunt, Smith, Murray and Stewart. There was a wall of smoke back to the sweeps along the road and the cut through. I told Wright to get brattice and tools, go to yellow panel trap door and see if there was any smoke going past there. I looked through the stopping at the sweeps and could see smoke. I attempted to get a brattice screen across a cut through at the sweeps which is known as A cut through. The smoke was so dense that it was impossible to get the brattice up in the cut through so I decided to erect the brattice across the intersection at an angle and try to push the smoke back until I got it back far enough to enable me to get a brattice screen up. Bu putting it on an angle I could force the air into the smoke and gradually work our way in.

I sent J. Brown, Mechanical Engineer, to get pipe fittings, tools and hoses to fight the fire so that we could tap into the 2" water line and as we got to the flames

spray water on it. I also got the men that were there to clean up around the sweeps so as to make a fresh air base for the rescue team. This was to be the point from which they would move into the fire. The Assistant Under Manager, Wright came back with brattice and tools and told me the smoke was in the return at yellow panel trap door. He also told me that all the men from the other panels were on their way out of the mine and that it was expected the rescue team should arrive shortly. I told him to go to phone 38 and to arrange for the transports carrying the men to be held at 38 and at a point where Cliff Smithers was in 4 North until the rescue team went past and then to let the men proceed out with permission of traffic control. I continued with the work in the section and shortly afterwards the composite rescue team arrived at the sweepe. They had equipment. It was not a rescue team from the Rescue Station as they had not yet arrived. I joined the team, put on the equipment and we started to move in towards the fire. We could not get in because of the smoke, even with our apparatus and we had to retreat back to the fresh air base. We continued with the rescue operations until we were able to get at the seat of the fire and I remained with these operations until 1.30 a.m.

So far as the working conditions in 8 right are concerned I was in charge of these workings and we drove three headings into the solid coal and when these headings had been completed we drove off these headings to the left.

Our method of work in this particular Section was that after the headings were driven we drove off the section marked No. 1 on the plan and after completion of No. 1 we split the pillar and drove along the space marked 2 to the bore. We came back and drove into the pillar and took the small piece marked 2. We then extracted the 11 yellow pieces marked 7. We drove 3 and tried to hole through into No. 1. We were unable to hole through so we withdrew and then cut the section marked 4 and again we were unable to hole through. We then withdrew, came along No. 1 and attempted to hole from No. 1 into No. 4 and were successful. (5). We then withdrew, took the coal out of No. 1 (light blue) then withdrew back and cut from No. 1 into No. 2 marked 6 on the plan. We then moved back and took the coal from the break through between No. 1 and No. 2 (6) and then took the coal out marked 8. We then moved outbye and cut the place marked No. 9 and holed through into No. 3. We then drove a place from No. 9 to No. 1 parallel to A Heading and then took the coal marked 10 from the pillars. We then moved into the pillar No. 11 and withdrew the coal and we then went into the two pillars marked 12 and took whatever coal we could out of here. We then drew back and commenced to cut this working place where the accident occurred.

We had previously had trouble in 2nd North G panel where we had been making pillars of 33 yard centres and 66 yards long. G panel was within about 200 yards of the zone of the same geological fault as determined the terminal point of the headings driven in 8 right. In G panel it had been difficult to split the pillars and retain the roof. It had been decided to make pillars 40 yards by 66 yards to enable safer splitting which would also have the advantage of allowing direct wheeling.

As appears from the coloured plan, the situation was so bad in the yellow portion number 7 that we could not take adjoining lifts and had to leave fenders between lifts and also to take some short lifts. This is undesirable (but sometimes unavoidable) because it leaves coal unextracted

with resultant roof stresses which complicate the extraction of coal not only in the panel being worked but in neighbouring areas to be worked in the future. In the third lift in the area numbered 7 there was a roof fall at the face which buried the miner and a shuttle car. We had difficulty in splitting the pillar numbered 4 to such an extent that we could not use the cut through. We had to abandon the place marked 3 without holing. We could not hole in the position marked 4 and had to return down the place marked 1 and hole into 4 by driving the small portion coloured red.

We then drove the place marked 6. From our experience with the pillars numbered 4 it was clear that it would be of no use to try and split the pillars numbered 12. Roof stresses developed in pillars tend to concentrate towards the centre and although it is practice to split the pillars we did not think it practicable in the case of 12. This left us with no direct wheeling road and we had to wheel around corners, a situation which was forced on us by the very bad roof conditions. In the pillar marked 10 conditions were a little easier and I formed the view that it would be desirable to extract pillar number 11 before driving number 13. This meant that during extraction of 11 there would be no bleeder to the goaf. This was undesirable but, on the information available to me at the time, I formed the view that this was preferable to the risks involved in the hazardous roof conditions which we had encountered and which I expected to be reduced if we extracted 11 as soon as possible while the coal was green and before it could begin to crumble. I believe that view to be reasonable in the circumstances.

I believe (and I think this also was reasonable) that the ventilation problems arising from the absence of a bleeder could be overcome until better roof conditions were encountered and a bleeder could be restored. In order to do this I obtained a T-piece of vent pipe and two lengths of bleed tube from Western Returns and arrange for a further piece of bleed tube to be obtained. This was installed over the place marked 9 by Deputy Stewart on my instructions. At some time after 9 holed, the bleed tube was taken down as being no longer required in that position and, when 13 was being driven and the miner had moved into the place, the bleed tube was re-installed over 13 in the position where it was on 9th November. The reason for the original installation was that I had detected noxious gas but no fire damp in A Heading inbye of 9.

I believe that the bleed tube was adequate to handle the gas situation which, in my own knowledge of the area and on the Deputy's reports, could reasonably be expected to obtain inbye of 9 and later, inbye of 13, i.e. in the shunt. I did not believe that there was any real danger in the shunt. Only noxious gas had been detected and it was dealt with when found.

In pillar extraction in 8 Right, it was the practice to shune in B Heading until the development to the left had been driven far enough to enable convenient access to A heading and then to shunt in A Heading. There are two reasons for this. One is that for efficient working it is desirable for the shunt to be as near as practicable to the working face. The other is that the maximum length of cable which can safely be wound on the drum of a shuttle car is 150 yards. The distance from A heading to where the goaf would hole requires 135 yards of cable. The extra length to B Heading is about 45 yards.

It was my intention to hole the working face in 13 into the goaf. There is no undue pressure of gas in the goaf and on

holing there will be no gush of gas and no danger of the ventilation system being overwhelmed. When about to hole it is practice to make a test hole and see what gas flow results. There being no undue pressure, the gas in the goaf will seep through the hole at a speed dictated by atmospheric pressure and the ventilation system and in effect it will be drawn out by the circulation of the air. There is no reason why it should not be dealt with without difficulty by an efficient ventilation system. The Deputies are told what to do, that is that immediately on holing the miner should be withdrawn and the face vacated to enable the process of ventilation to take place. This process has been carried out numerous times in 8 Right and in other places in the mine, although in the presence of a bleeder.

It is our practice, after splitting a pillar to extract the coal in lifts along the goaf edge and my intention was that, on the next shift after holing, the miner would be moved to an appropriate position in A heading and the pillar split of roof conditions allowed. This would restore a bleeder and we would then have extracted the inbye section of the pillar. The T-piece in the gent tube in the extension of No. 2 cut through was placed there on my instructions so that, if we holed during a shift, the work of that shift could be completed by taking coal from opposite that point. At no time did I intend to split the pillar opposite that point.

I understand that it had been suggested that on splitting a pillar, coal might be extracted by taking lifts towards the goaf. While this has not been the practice, I see no objection to it. It involves holing into the goaf up to four times each shift. There is nothing extraordinary or hazardous in this. I had been in this section on numerous occasions prior to the accident and the working conditions were quite normal and there was no trouble with gas. There had been some reports of noxious gas but on my inspections this was well controlled by the ventilating system. The general system of ventilation and work in this particular place is the same as had been used in other sections throughout the mine.

I do not attempt to justify the method adopted by me as being the only one which could have been adopted. In view of the very real and immediate hazards created by the roof difficulties encountered and the necessity which is always present to reduce known risks to a minimum, I felt, and still feel, that on the information then available my duty was to take the steps reasonably open to me to make the roof conditions as safe as possible without depriving the panel of a system of ventilation adequate to deal with known and reasonably likely conditions. I also conceive it to be my duty not to waste coal and to extract all coal that is reasonably accessible.

In my experience an important function of an Under Manager is so to control operations as to maintain an equilibrium between the problems of ventilation and roof control. There can be mutual inconsistency between the optimum solutions of the two problems and a balance must be struck. In some situations ventilation may be the major difficulty and, where roof conditions are good, some concession in roof control may be able to be made in order to overcome it. In 8 Right I believed the opposite to be the case. We had serious roof problems but ventilation had been normal. I believed that, in the interests of safety, ventilation could make some concession to roof control. I therefore formed the conclusion that, for a short time only, the bleeder from the goaf could be omitted. This appeared to be working satisfactorily and I believe that it would have continued to do so had it not been for a build up of gas which must have either been
very sudden or escaped detection."

HIS HONOR: Is there anything further you wish to ask the witness?

MR.REYNOLDS: No, Your Honor.

CROSS-EXAMINATION:

MR.LEE: Q.Having not had trouble before with the ventilation system you thought you could make a concession to ventilation in favour of roofing and roof difficulties? A. A compromise, yes.

Q.And that was a considered decision on your part? A. Of all the conditions taken in, yes.

HIS HONOR: Q. Of all the conditions taken in that was a considered decision? A.Yes.

MR.LEE: Q.You then I take it addressed your mind to all the conditions which you thought would be relevant in making a decision as to whether a concession to ventilation could be made? A.Yes, what I thought of, yes.

Q.Up to what point of time do you say you adhered to what we have called here the bleeder tunnel system by reference to the map? A.We adhered to the bleeder system up until we extracted the coal in 11, I think it is.

HIS HONOR: Q.You departed when you started to extract coal from 11? A. Yes.

MR.LEE: Q.So that 7,8, and 10, as indicative of the areas between the various cut throughs, were all taken with the bleeder tunnel system in operation? A.Yes.

Q.In those areas did you have roof difficulties? A.Yes.

Q.In which area or areas did you have most roof difficulties? A.Roof difficulties were troublesome right throughout the whole period and the worst conditions, the conditions we got less coal out of, which will be seen from the plan here, were the areas where we could not get in to get the coal at all - not with safety.

Q.7 and 8? A. These areas up in here.

MR.REYNOLDS: We cannot see.

WITNESS: 7 and 8.

MR.LEE: Meaning 7 and 8 by way of general description of the area.

MR.REYNOLDS: Yes.

MR.LEE: Q.You had real trouble in there, did you? A.Yes.

Q.When you came to 10 the problem was not so great? A.No, that is so.

Q.When you took 11, just to get the fact as we know it now, the problem again was not so great there? A. Yes.

HIS HONOR: Q.That means not so great? A. Not so great. We had a greater percentage of extraction in 10 and 11 than any of these areas worked.

MR.LEE: Q.As events have turned out the really serious roof difficulties occurred in the earlier development and conditions did improve as the work went on? A.No, I do not think they did.

The conditions of our headings themselves, A, B and C had been left standing and the areas that had been worked and left standing showed the greater degree of - they deteriorated more and showed greater signs of becoming more difficult to work so that I do not feel that the actual roof conditions in 10 and 11 were materially different from the area of 8 but I do think getting the coal out from a newly driven heading before the heading had time to deteriorate had a big effect on the amount of coal that was extracted from these subsequent areas.

Q.I understand precisely what you are saying, but I just want to get the facts, you see, and what I did suggest to you was, that as events turned out roofing difficulties did decrease as the work went to the left? A.Yes.

Q.And in fact I am not including in that no.11, I am suggesting No.10 was easier than 9 and 7, and that is so as a fact, is it not? A.Yes.

Q.The worst difficulties, to put it simply, were in 7 and 8? A. The difficulties we encountered in 7 and 8 were overcome by our method of subsequent working in 10 and 11.

Q.Now, when you got to 10 you had some experience with the roof difficulties and you decided that those difficulties might be dealt with more easily if you immediately extracted No.11 without the putting in of a bleed tunnel, is that the position? A.Yes.

Q.In your opinion,what time factor was involved in putting in a bleed tunnel, or would have been involved? A.It would have involved somewhere round about, you could say five or six working days.

Q.How quickly do the roof difficulties that are created in one section manifest themselves in another; would you tell us something about that? A.I am not quite sure what youmean.

Q.What I am trying to find out from you is that you took this step as one of expediency and time, to use a legal phrase , was in your view somewhat of the essence, Would you tell us what was the significance of time ?What might have happened in 5 or 6 days in this area No.11 that would not happen if you took it out straight away? A. Well, we had found that the guttering along the driven headings was to such an extent, after we came back to them and this would be a period of it could have been a fortnight or more - if you look at the plan you will see that the area we extracted in No.10 was actually extracted by driving a split parallel to A heading and to the left of A heading from 9 back through to 1.

Q.From 9 back through to 1? A.Yes.

Q.Ultimately through to 1? A. This one down here (indicating) . We drove back to here. It is not shown on the plan.

Q.Would you indicate so that His Honor may follow that? A. Yes. It is from this heading here, a split across to here so that we would have a freshly exposed roof in the place we drove to extract the subsequent lifts of the pillar.

MR.SULLIVAN: Could the witness mark it on the plan that has been tendered, just lightly in pencil?

HIS HONOR: Q.Would you care to do that, please? A.Yes.
(Witness marks on Exhibit A.)

J.Puddle,xx.

MR.LEE: Q.You have just marked on the plan the passage that you drove through to 1? A.Yes.

Q.You were going to tell us in effect why that was done? A. It was driven so that we would have a heading that had just been greenly driven. What I mean by green, it had just been formed, so that the subsequent roof stresses that had shown themselves in previous headings would not have time to develop and cause difficulty in getting the lifts away from this heading in the extraction of the pillar of coal. This had been proved successful in No.10 in this area here, or actually 10 in the lower part that came through was extracted from the split and not from 3 heading.

Q.In other words you took the lower part of 10 first? A.We took the lower part of No.10 first and then we took out the rest of it, the top part of it from A heading.

Q.And when you came to 11 you took out the lower part of 11 first? A.Yes and worked our way back through here.

Q.I wanted to follow the procedure you adopted so that we could understand it all. I do not think you have yet quite answered my question as to just what significance the delay of five or six days would have upon conditions that would be in existence and perhaps occur in 11 while the delay is taking place? A. When we extracted the last of the coal out of the top of 10, the area around the intersection of No.3 cut through and A heading started to show signs of weighting and this was supported by additional sets of timber etc., but the weight was still coming back on there and in my opinion it would have been a problem to get back into that heading at all had we dropped out even for a week, with the weight that was showing at this time.

Q.When you say it would be a problem to get back into that heading, to which one are you referring? A.No.9

Q.Do I understand you correctly: Did you take a view then that unless you did what you did do you might be precluded from getting the coal out of 11 and the adjoining area? A. That was a possibility.

Q.Was it a very high one or just a remote one? A.We would have lost some coal if we had lost that intersection there.

Q.I want to be quite clear on what we are seeking to have explain to us. You see, you made a decision to do a certain thing? A.Yes.

Q.And that decision was one which dispensed with the bleed tunnel system that you had had in operation before? A.Yes.

Q.I want you to tell us now if you can add anything further to what you have already said which in your view justified that dispensing. Is there anything else you want to tell us? A.There may be something I have missed but generally that was the reason for doing this. The other reason was of course that we had had no problems of ventilation up until this time. We had handled all our ventilation quite satisfactorily for the working of the area.

Q.Leaving out the last aspect for the moment and I can assure you I will come back to that, would it be fair to put to you that one reason why you dispensed with the bleed tunnel system was because of a fear that if you persisted with that system you might lose some coal? A.I think that I have already indicated this

by saying that the reason for doing this was to try to get a greater extraction of coal consistent with safety.

Q.What area of coal did you think you might lose if you spent the five or six days putting in the bleed tunnel? Can you give us an idea in quantity of area ? A. Well, it would be hard to define really what you would lose, but judging from the reaction of these headings down here (indicating) and to try to get this coal out again in successive lifts in a heading that had deteriorated, then you must lose coal. I don't know the percentage or anything else, but I do know that the difficulties of taking off successive lifts from the side of a heading under a broken roof is considerably harder and more difficult in all aspects to get into, and you do of necessity have to leave coal there to support parts of this so your extraction of coal must be less than if you took off successive lifts or, as we call them, open-ended lifts.

Q.You realised of course that in dispensing with the bleed tunnel system you were dispensing with something that firstly had worked quite well for you in the early development? A. I know we had worked with this.

Q.And it had worked well? A.Yes.

Q.And secondly, in dispensing with it, you were dispensing with something which in itself could be expected to be a very desirable thing in the system of ventilation? A. It could be of some assistance in ventilation,yes.

HIS HONOR: Q.Of some assistance? A.Yes.

Q.Is that the highest you put it? Is that your highest method of putting it - you really say it could be of some assistance? A.I can't really say how much assistance a bleeder could be.

Q.Well, is it not a fundamental principle of ventilation to have a circulation of air through a gassy area; that that is the most satisfactory way of either diluting it or getting rid of the gas? Isn't that fundamental? A.It is a solution but -

Q.But is it not the fundamental principle of circulation, that to get rid of gas you circulate the air through? A.Yes.

Q.And is not the bleed tunnel , a name that has come to be used in this inquiry, the system of circulating air to get rid of gas . A.Yes, it will get rid of gas.

Q.You decided that in the interests of production you would dispense with it in this case; isn't that the case? A. Partially - in the interests of safety and production.

Q.In the interests of safety you dispensed with it, is that what you are telling me? A.Yes.

Q.Would you tell me why it was in the interests of safety to dispense with the bleed tunnel? A. Because it was reducing the exposure of the men in these panels to the bad roof conditions.

Q.Safety as far as the roof conditions were concerned? A.Yes.

Q.You preferred to take a risk on the side of ventilation - A.I didn't prefer to.

Q.But that is the decision you made?A.Yes.

Q,You say you had a choice, to get less coal and keep the ventilation adequate,or probably reduce the ventilation, concede some

of the difficulties in that ventilation and get more coal out; that is the choice you made? A. Yes.

MR. LEE: Q. When you say that you addressed your mind to the safety of the men as far as roof conditions were concerned and considered that, are you not really saying, however, that what you were addressing your mind to was the likelihood that it might be unsafe for the men to work in the particular area because of roof conditions and therefore there would be a loss of coal, that that was the safety factor you had in mind? A. There would be a loss of coal and also with the loss of coal, if you are breaking away lifts from a standing heading under bad roof then the safety problem becomes one again. It is one that can be handled but it is not a desirable one if you can avoid it.

Q. It is one that can be handled, and can be handled to 100 per cent. effectiveness, is it not? A. I don't think so.

Q. Because you do not permit the men to work unless the roofing conditions are 100 per cent. safe, do you? A. No, they have to make it safe.

Q. They have to make it safe and that means they are approaching a problem of which they are aware and the extent of which they are aware, and they deal with it? A. Yes.

Q. And either it can be dealt with or it cannot be dealt with with safety? A. Yes.

Q. What I am suggesting to you is that the decision you made when you talk about taking into account the safety of men in the roof conditions was that what was concerning you was that the roof conditions might be unsafe so that the coal could not be won and you decided to adopt this procedure? A. Sir, I would refer you back to this other part down here where we had made partial extraction. We had worked this before and at no place did we work in a condition that was unsafe.

HIS HONOR: Q. Would you please repeat that? A. I said that we had extracted the coal in the inby areas but at no time had we exposed or known that men were working in unsafe conditions. We don't allow men to work under unsafe conditions in the first place, and in the second place I don't think the men themselves would work under unsafe conditions.

MR. LEE: Q. That is what I put to you, or I was trying to put to you: It is difficult from my point of view and difficult from yours, but I was suggesting to you that when you spoke about having regard to a balance of safety, to men working under unsafe conditions, affected by roof conditions and the ventilation system, when you struck the balance in your mind it was not that you were thinking that men were working in unsafe conditions, in the roof conditions; it was that you were thinking the conditions would be unsafe and would prevent the men from working if you did not do what you did? A. Partially, but I would like to qualify that by saying that while they do work in safe conditions they don't work under unsafe conditions, then the risk - not the risk, but the mining conditions at the point where you are breaking away under a bad roof, then that is more hazardous than it would be breaking away under a clean roof.

Q. That is a point of time that has arrived and they are warned of it, aren't they, the unsafe roof condition? A. Yes, they would either be warned of it or see it themselves. They are experienced men.

Q. Have there been many accidents in collieries to your knowledge in recent years because of unsafe roof conditions and men being ...

A.I know of none because of unsafe roof conditions but I do know of a fatality at our mine only 18 months or a little more away, a man was killed in a fall of roof stone in pillar extraction.

Q.However, no doubt the condition exists as you have put it to us. Your decision was to dispense with the bleed? A.Yes.

Q.And by dispensing with the bleed you achieved an advantage from the point of view of early extraction of No.11? A. Yes.

Q.And that early extraction in your view was justified because it assisted roof conditions? A.Yes.

Q.To put it another way, it prevented deterioration of existing roof conditions? A.No I would not accept that, I would say it prevented deterioration of roof that would have subsequent - had it not been attacked at that particular time.

Q.What it did was then prevent deterioration, unnecessary deterioration, you say, of conditions which would develop if the early extraction did not take place? A.That was my thoughts.

Q.With that in mind you then, I take it, weighed up the evidence as to how the ventilation system would stand up to dispensing with the bleed tunnel. That was a factor? A. Yes.

Q.You took it consciously into account? A.Yes.

Q.You said to yourself, I gather, well, we have had no problems so far, it should work? A.Yes.

Q.Did you at that point of time know inflammable gas had been found at various places in the workings that had been developed? A.It had been reported,yes.

Q.Did you know that noxious gas had been found at various places in the development? A.Yes.

Q.So you were aware of the presence of both inflammable and noxious gas in this area? A.At different times. When I saw that, I had no previous knowledge of having a mixture of noxious gas and methane.

Q.Quite so. You certainly knew of the existence of inflammable gas and of the existence of noxious gas in this area? A. Yes, it had been detected.

Q.And the set up which you used had,as far as you could tell from the reports of the deputies and your own knowledge effectively dealt with those gases? A.Yes.

Q.And then you were going to change that system, you decided to change that system?A.Yes.

Q.Just take your time if you would and tell us why the fact that the ventilation system up to that point of time had effectively handled the gas that might be there and that was, there could be any justification at all for you concluding an alteration of the ventilation system would not affect the gas position? A.In driving of No.9 the set up was there from the time No.9 started to break away from A heading, this was on the fifth of the tenth and I was in this panel on this morning and there were noxious gases rising along A heading and being diluted before they got up to the miner. I myself tested this area and could find no inflammable gas either in the miner place or in A heading inby of 3 cut through. 728. J.Puddle,xx.

HIS HONOR: Q. What did you test with? A. I tested with an oil flame safety lamp.

Q. Not a methanometer? A. No, I did not have a methanometer with me at that stage. It was at this stage that the brattice was erected across A heading inby of No. 3 cut-through to contain the noxious gas on the goaf side of it.

Q. Where? A. This first brattice was put inby of No. 3 cut-through on A heading in towards the goaf area from the 9 cut-through which was in fact being driven by this stage.

Q. Is that a similar piece of brattice as was in existence in A heading at the time of the fire? A. Yes, Your Honor, as a matter of fact I believe the piece of cemented brattice which has been referred to in the Court here is a piece of the brattice that came off this previous screen.

Q. You believe then that the brattice that was in the shunt area after the fire was cemented? A. There was a piece of brattice which had been cemented on this previous stopping.

Q. What do you believe happened to it? A. It had been recovered, brought back up and erected.

Q. What happened to it? A. In the new shunt inby of 2.

Q. Which would mean the brattice we are talking about was in fact cemented brattice? A. There was a piece of cemented brattice. It was not all cemented brattice. The complete screen inby of 3 cut-through would not have been the complete screen that was inby of No. 2 but part of the screen that was inby of 3 formed part of the screen erected inby of No. 2.

Q. You mean it was pieced together in some way with part of it being cemented? A. Yes.

MR. LEE: Q. You say you had done this, put a piece of brattice up inby of No. 3 cut-through in the earlier development, and I take it you are saying it worked there - "the system we used"-? A. Yes.

Q. "And therefore we will use it in No. 2"? A. Yes.

Q. When you introduced it - earlier on - did you regard it as experimental? A. No.

Q. You had no bleed there, did you? A. No.

Q. So you were dispensing with the bleed? A. Yes.

Q. And you did not regard it as experimental? -

MR.REYNOLDS: Are you talking about 3 now?

MR. LEE: Q. Yes. The earlier one? A. Yes.

Q. You did not regard it as experimental? A. No.

Q. You did not consider you might have to determine whether it worked satisfactorily, as you could not assume it would? A. I did not assume it would.

Q. Did you, in No. 3, give any special direction or take any special steps to make the deputies alive to the fact that this had to be treated with some caution? A. Not with caution, but it had to be regularly inspected to make sure there was no noxious gas coming through the brattice and fouling up that shunt.

HIS HONOR: Q. Was that an instruction you gave to all the deputies that were working there? A.I gave the instruction to the day shift deputy and also to the afternoon shift under-manager who would pass it on to his man and also the dog-watch deputy. I have spoke to him about this area in here.

Q.So the deputy you spoke to was Mr.Stewart, the day shift deputy? A.Yes.

Q.Mr.Cambourn ? A.No, I don't think I spoke directly to Mr. Cambourn. I spoke to Mr.Egar.

MR.SULLIVAN: Was it Walker?

HIS HONOR: Q.Did you speak to Walker? A.I think I could have. I could not swear - it is more than probable.

Q.There is no doubt each deputy had been given the instruction specifically to test around this area? - - -

MR.McNALLY: With respect,Your Honor how could this witness answer that? He has passed messages on to people.

HIS HONOR: Some he has told directly.

Q.There was no doubt in your mind as far as you were concerned you had been certain , as far as you could do it, that direction had been given to the deputies? A.Yes.

(Short adjournment)

MR. LEE: You told us you did give directions in regard to testing at No.3 cut through, do you remember that? A.Yes.

Q.To whom did you give the direction? A.Charlie Stewart.

Q.Anyone else? A.I would not swear to this but I do think I spoke to Charlie Walker about it and the other one was Fred Wright.

Q.He is the Under-manager? A. The assistant under-manager on day shift and it was passed on to Don Egar and through him to Bill Cambourn.

Q.What direction did you give? A.That the whole of the area must be inspected regularly making sure that the shunt was kept clear.

Q.You see, the deputies had certain obligations to make tests in any event? A.Yes.

Q.Did you give any instructions to the effect that they were to make more tests than their regular tests? A.No, I don't think so, but that they were to keep an eye on this area , on the shunt and B heading also.

Q.As you understood the regulations how often ordinarily could you expect deputies to make an examination for gas? A. In the working face they would at least make inspections, at the face, every two hours of the working shift, they would make at least one inspection of the accessible places in the - near the area and possibly two.

Q.During the shift? A.Yes, during each shift.

HIS HONOR: Q. How many times would they normally test around the area of the shunt? A.I would say they would test at least twice a day -per shift. 730. J.Puddle,xx.

Q. Twice a shift? A. Yes.

Q. They would do that normally? A. Yes.

Q. So as far as you were concerned, normal tests should have revealed the presence of gas which normally might be there; is that right? A. Yes.

Q. And they would do that without any special instructions, would they not, the deputies, test those places without any special instruction? A. I would expect so.

Q. Tell me why you thought it necessary to give special instructions as you have described? A. Because I was aware of the fact there were noxious gases behind the brattice screen in A heading and it would be necessary to make sure at no time this was coming through the screen or the screen was rearranged to allow the stream of gas into the shunt.

Q. In other words, when you put that brattice screen up, you knew there would be noxious gas behind the screen? A. I knew there would be a strong possibility of noxious gas behind the screen, yes.

Q. Did you think of any other way of dealing with this than leaving the screen there and getting them to test it? A. I am not quite sure what you mean?

Q. Could you think of any other way of dealing with noxious gas than just leaving the screen there and having them test it? A.No, I thought we were dealing with--

Q. For example, did you consider the possibility of not having the brattice stopping there at all? A. No, I don't think I really considered that because of the fact that to have air coming round this corner of No.3 cut-through in A heading it would have to traverse, to go back up along A heading, which had a goafed-out edge and any fall in this area, as I said before, this area was heavy on this intersection.

Q. Which intersection? A. The intersection here of No. 9 drivage and A heading but if a fall had occurred on that and blocked that area off, then it would have been impracticable to make an inspection in that area anyhow so that you would not expect a deputy or anybody else to go into a position that was unsafe to make a test for gas.

Q. Why leave the brattice screen? What is the purpose - brattice stopping, I mean? A. The brattice stopping is erected for the purpose of forming a shunt of fresh air so that the shuttle car could be shunted here prior to going into the working face to pick up coal.

Q. You formed a shunt. You say you formed it in fresh air. Where is the fresh air? By putting a stopping across? A. The fresh air would be coming in along the main intake airways of B and C and traversing down along No. 3 cut-through and part of that would be diverted into the shunt itself.

Q. You think by putting a stopping there you would divert air into the shunt? A. No, not by the stopping, by putting the spiral tube into the place.

Q. The spiral tube. I see. You say that, plus the stopping, or that alone, would bring air into the shunt? A. Both. The idea was to stop any possible flow of noxious gas getting inby A heading and all the air itself would be drawn into the spiral tube after coming down along No. 3 cut-through and into the shunt.

Q. So that the sole purpose of the stopping was to prevent gas from coming out of the goaf? -

MR.REYNOLDS: No, Your Honor, he did not say that.

HIS HONOR: I am asking him.

MR.REYNOLDS: Your Honor said "So".

HIS HONOR: I will withdraw the word "So".

Q. Is this the fact: that the sole purpose of the brattice stopping was to contain the gases in the shunt? A. To contain--

Q. In the goaf, I am sorry? A. To contain the gases in the goaf to the extent that if any came through the brattice at all it could be handled with the ventilating appliance there in the form of a spiral tube.

Q. Is this what you say: You used two things, a stopping to contain the gases in the goaf, combined with a spiral tube to take any leakage away? A. Yes.

Q. That is the position you put, is it? A. Yes.

MR. LEE: Q. I take it from what you have just said that you considered the quantity of gas coming from the goaf was in such a proportion that stopping was necessary? A. Yes, I thought it was.

Q. You felt firstly that gas might come from the goaf; that is the first thing? A. I knew there was gas coming up along A heading, as I said.

Q. And (2) you felt it was of such a quantity that it had to be kept back and a system devised which would be effective to deal with what might come through? A. It had to be controlled, yes.

Q. You would not maintain, would you, that to contain gases in a goaf right alongside a working area is good mining practice - to contain them? A. No, the actual gases were not contained - they were not sealed in.

Q. But it was quite obvious to you that you were inviting a build-up of gas behind the brattice? A. That could happen, yes.

Q. It was quite obvious to you you were inviting such a build-up - I am not saying it would happen but you were inviting it? A.It could happen, yes.

Q. In the light of all that has happened now would you agree that it was not good practice to seek to contain the goaf gases? A. The events that unfortunately happened show the gases that I was dealing with, or thought I was dealing with were not the gases that were responsible at the time - the gases that were present at the time of the ignition.

Q. You are not suggesting you would have run a risk that a great build-up of noxious gas would come through this brattice and that that would be all right? A. I did not expect a big build-up of noxious gas to come through the brattice.

Q. What reason did you have to assume, if you thought that only noxious gas was there, you would not get a large quantity of noxious gas coming through? A. Because I had erected the brattice stopping to stop this.

Q. But you are not suggesting that noxious gas has more difficulty in getting through a brattice screen than noxious gas mixed with methane, are you? A. I didn't quite catch that.

Q. You are not suggesting that noxious gas alone has more difficulty getting through a brattice than noxious gas mixed with methane? A. No. I am not quite sure that the permeability of either gas is relative to one another or any screen or stopping at all.

Q. Let us go back to what I was seeking to ask you. I asked you whether in the light of the events that happened you would think it was good mining practice to contain gases in a goaf and your answer was "We know now that the gases we were dealing with were different from the ones we thought we were dealing with," but I think you did maintain that they could leak through? A. There would be a slight leakage in every stopping put up. There must be some slight leakage.

Q. Do you consider now in the light of what happened it was not good mining practice to attempt to virtually contain gases in the goaf? A. If the same situation was there now, I think from experiments which have been carried out later that the way to ventilate that A heading was far more satisfactory by putting a screen across the cut-through in 2 and dragging the air down the inby heading of No. 3 cut-through.

Q. You thought you were dealing with noxious gas? A. Yes.

Q. And you erected a screen to contain it? A. To keep it out of the shunt.

HIS HONOR: Q. To keep it in the goaf - that must be the same, must it not, because it is not a diverting screen, is it? It is a stopping screen; that is so, is it not? A. Yes. Actually it was - it didn't seal the goaf area off.

Q. Not completely, but it stopped, didn't it - it substantially sealed off the goaf gases and kept them in the goaf, didn't it, some being allowed to seep through? A. Yes, and had the build-up become higher I imagine it would have raced back up into B heading itself and the flow of air from A heading around B heading would have been picking this up.

Q. I suppose in the light of what you now know it would have been better to get it into B heading and along No.2 cut-through rather than leave it in the shunt? A. Yes.

MR. LEE: Q. Let us look at it in the light of what you knew then. I suggest what you did was to put up a stopping to contain gases and just took a punt that gas of a quantity that the ventilation system could handle would be the only quantity that would come through? A. No, I don't agree with that.

Q. You tell us then what you had to justify a view that a large quantity of gas which the ventilation system could not handle might come through? A. Because in the previous workings in the area right back to this point the whole of the ventilation system had been all right. We had handled any problems that might have arisen from day to day quite adequately with the ventilation system as it was. Our quantity of air going into the panel had not increased or diminished and I thought that this current or quantity of air that was floating around this panel would still be of the same type as it had been previously.

Q.But this was the first time in the whole of the development that you had ever adopted the device of putting up something to keep gases back, wasn't it?A. In this panel,yes.

Q.Well, that is what I say. What was it that made you think that the gas you didn't know about but which you thought might be noxious gas that was contained in there would always be of such a quantity that the ventilation system would be able to handle it? A. This was the reason for keeping an eye on the inspections, to make sure it was kept this way.

Q.But when you asked them to keep an eye on the inspections, you did not ask the Deputies to test, for instance, every hour in the shunt, did you? A.No.

Q.Well, once again did you not, to use an expression I have used, take a punt that the quantity coming through would be such a quantity that the ventilation system could handle? A. I thought that the requirements I set down should adequately cover the situation as I saw it at that time.

Q.I do not want to press it any further than need be, but do you not agree now that you made an assumption as to the likely quantity of gas that would come through upon no reasonable basis at all? A.No, I don't agree with that. I had plenty of reason, I thought, for assuming what I did.

Q.Then I will have to ask you again: What was it that made you think, having stopped off the goaf gases virtually that the quantity that might come through was such that the ventilation system could handle? A. Because it had proved it had done this. It had in effect done this.

Q.But you are saying now that for a week after the development went on down there, or I take it for some weeks while the development went on in No.11, the system worked. That is what you are saying, is it not? A.Yes.

Q.So is this the process of reasoning, that you put up the system in the first place without any knowledge of what you might expect from it and it worked for a couple of weeks and you thought it was in order? A.I don't know that it was without knowledge of what might happen. The fact that the screen was put up there was to hold back the noxious gas. The spiral tube was put in the shunt to keep the shunt clear. Inspections were made around the area with a view to making sure that the ventilation system did not become fouled up.

Q.Before I leave this point I will ask you this again: One of the things you said was that the brattice screen was put up to hold back a quantity of noxious gas. May I ask you what quantity? A.I could not say.

Q.It was a pure guess that what was being held back would not come through in quantities the ventilation system could not handle, wasn't it? A. I don't think so.

Q.Let me go to No.2 cut through -

HIS HONOR: Q.Before you leave that matter, your method of dealing with it is by brattice screen and spiral tube and inspections? A.Yes.

Q.Routine inspections? A.Yes.

Q.It being stressed to the deputies that the routine inspections must be maintained, is that right? Is that putting your position fairly? A.Yes, I think so.

Q. We will now deal with what you would expect to occur from the use of a spiral tube and the stopping. Now did you believe that the spiral tube ventilated the shunt? A. Yes, I thought so.

Q. What is the width of the spiral tube? A. There were two widths of spiral tube.

Q. The end near the shunt; what is the width of it there? A. 14 or 15 inches, I think.

Q. And what is the width of the shunt? A. The width of the shunt would be approximately 20 to 21 feet.

Q. How much air would you expect to flow through into the shunt through the normal ventilation process? A. Through the spiral tube?

Q. No, through the airway created by No. 2 cut-through? A. There would not be very much go into the shunt under the influence of the main fan or the auxiliary fan that was ventilating the miner face only.

Q. There would not be much going in? A. No, not very much.

Q. So you would not get very much ventilation in the shunt itself, would you? A. You would get more ventilation of the shunt itself when the actual place was moving and by the movement of the shuttle car in and out of the shunt.

Q. All that does is to push air backwards as it goes in and let it expand as it comes out? It is not a method of ventilation, the shuttle car, is it? A. No, it is not a method of ventilation and it is not accepted as such.

Q. So you would get very little air going into the shunt, you will agree with that? A. Yes.

Q. You would get a withdrawal of air from the shunt where 14 or 15 inches of ventilation tube made contact with that air? A. You would get movement there, yes.

Q. Would you not agree with this: You would get a fairly substantial velocity of air moving at the mouth of the ventilation tube which would get slower and slower the further you went away from the mouth of the ventilation tube; is that right? A. That would be quite reasonable, yes.

Q. If that is the case, will you agree with this proposition, that the mouth of the ventilation tube would be most effective on any gas that was immediately near it? A. I think so, yes.

Q. We have had evidence, have we not - were you present, or do you know of it - that one method of dispersing the gas when it was found was to move the elephant's trunk as it was then called over the gas so that the gas immediately below it flowed into it. I think you will agree that that tends to substantiate the proposition that you would get your greatest removal of gas at the mouth of the elephant's trunk or bleed tube or ventilation tube, as Mr. Stone calls it. Is that so? A. Yes.

Q. Assume then that the bleed tube is placed in a position which is near the brattice and perhaps over to one side of the shunt rather than straight in on it, as the evidence seems to show it was here; would you not agree that by being left in that position you might well remove the gases immediately near the mouth of the ventilation tube but leave a pocket of gas in the corner of the shunt? A. I agree with that.

MR.LEE: Q.And of course you could not foretell in advance just where, from which part of the brattice, the gas would come through if it did come through, could you? A.Not really. You would assume that as we were doing with noxious gas that had been detected up to that time, if it came through it would come through on the lower part of the brattice screen, the stopping.

Q.You say you would expect it down at the floor? A.Yes.

Q.On either side? A. Possibly on either side or the middle or anywhere? A.

Q.Well, there is no guarantee it would come out right at the mouth of the tube? A.No.

Q.When you came to put in this system at No.2, I take it that you put it in because it had worked in No.3. Is that really the reason? A.No, actually. I did not actually instruct the installation of it in No.3.

MR.REYNOLDS: Q.In No.2? A.In No.2. I understand it was put in for pretty much the same reason as it was installed in No.3.

MR.LEE: Q.You did not give any instruction about what was to be put in? A.No specific instruction about this, but I found out about it almost immediately after it had been installed and I thought it was all right.

Q.One of the reasons you gave His Honor as to putting up the brattice as a stopping in No.3 cut through was that you were concerned about what would be the effect of a fall on the right hand side as shown on the map? A.In No.2 cut through, I think. I am sorry, maybe -

Q.You said in No.3 one of the reasons you were concerned about putting the brattic in the stopping was a likelihood of some fall which I thought you indicated to be to the right of No.3 cut through and that would block off the air completely. A. I may be wrong in this, but I think what you asked was : Don't you agree, words to this effect, it was far better to ventilate down through No.3 and along A heading in place of this -

Q.I don't want to interrupt you, but in answer to a question either from His Honor or myself you said that one of the reasons you put the brattice in the shunt area was because you were concerned about a fall taking place. Do you remember

MR.REYNOLDS: The witness gave that answer about being concerned with a fall in reference to some other subject matter. He is suggesting my friend is in error and is seeking to tell him what he was asked when he gave that answer.

HIS HONOR: My recollection is that he was referring to the earlier use of the brattice.

Q.Is that so? A. I think it was in reference to No.3 and why the stopping would be used there instead of ventilating round the edge of the goaf.

MR.LEE: Q.That is so, and one of the reasons you gave - I may be wrong - is that you referred to the possibility of a fall. Am I correct? A.Yes.

Q.And I understand that was one of the reasons which induced you to decide to put up a brattice in that position? A.No. Actually, I think we have jumped out of sequence somewhere and in reference to this, as I say, when I found out about it, it was very soon after the erection of it -that was one of the reasons why I

would not have done the ventilation round the edge of the goaf. One reason why I would have thought this would be a far better solution than ventilating round this corner of the pillar.

Q.Well, when it was put in in No.2 was there a problem of a fall or a likely fall anywhere that was going to make the putting in of the brattice in A heading a desirable thing? A. Well, the area down inby here -

Q.Just answer Yes or No if you would. Was there any problem of a fall when you came to put it in in No.2? A.No, I don't think so.

MR.McNALLY: I may confuse things further, but I understood the earlier evidence was that the possibility of a fall was not the reason, the witness said, for putting up the brattice but the reason why the extension of No.2 was not done there.

HIS HONOR: We were then talking about two things, the brattice and ventilating the edge of the goaf, and that is when it came about. I do not think it has anything to do with that.

MR.LEE: Q.In No.2 there was no problem of a fall that would preclude you from ventilating the goaf edge? A.I wouldn't know.

Q.Well, you thought there was one in No.3, did you not? A. No, I did not say I thought there was one in No.3.

Q.In other words, it did not enter your calculations at all when you erected the brattice that there might be a fall which might make ventilation around the goaf edge inappropriate? A. What I did say was that if you ventilate around the goaf edge then you would have to make it so that it could be inspected. Even down in here you could see the position of coal being extracted in these areas, and if you are going to maintain this as an intake airway then it must be inspected. And it is not very common practice to take the full volume of air over the goaf edge because it is not reasonable to have conditions there where you can inspect.

Q.The mystery may deepen but I thought you said that the significance of a fall was that you were going to block off the airway. If need be we can have it turned up and read. Did you not say that, that the significance of a fall would be that you would have the airway blocked up and that was a good reason for not ventilating where you might ultimately find yourself blocked up? First of all, did you say it? A.I may have but I don't think so.

MR.REYNOLDS: I do not think he did.

MR.LEE: Q.I could be quite wrong but I think I am not. I understand you then say that the system went up at No.2 without your knowledge, but when you became aware of it you approved of it? A.Yes.

Q.Well, did you give any instructions in No.2 as to the tests or anything of that nature to be taken? A.No. I did not add to the tests that had already been taken on the driving of No.9.

Q.You thought that having had experience in one area you could rely on that in the next area? A.No. The deputies and the officials in charge of this area were the same people who were in charge of the area when the previous place had been done and they realised that the conditions were the same there as they had been previously.

Q. But I am asking about you; not what they realised but what you realised, you see. Were you prepared to assume that because it worked in No.3 therefore it would work in No. 2? A. Yes.

Q. You took no further steps in the matter at all by way of extra precaution against gases coming in from the goaf? A. No additional precautions, no.

Q. Well, no precautions? A. I did not add any additional precautions nor did I say not to carry out the tests or anything else.

Q. You at all times were conscious it was noxious gas you were dealing with, so you thought? A. Yes.

Q. And is not this the position, that the shunt in A was of a somewhat different grade altogether at No.2 cut-through than it was at No.3? A. I believe, yes. I do think it was steeper there. I hadn't actually seen the surveying figures on this, but -

Q. Wasn't this the position, that the shunt in No. 2 was of a grade where any gases coming in from the goaf must lie behind the brattice and build up because of the up-grade of the shunt? A. To my recollection the grade between 2 and 3 was dipping in towards the face area at a greater rate than the grade from 3 to 4 on A heading.

Q. In answer to the precise question I am asking you, wasn't this the position, that the shunt area in No. 2 cut-through had a grade which meant that if noxious gas came in from the goaf it would tend to build up behind the brattice rather than go down a grade into the working areas? A. The full dip of the seam in this area is this way -

Q. Mr. Puddle, you know the shunt area in No. 2? A. Yes, but the shunt was at a higher level than the brattice screen inby of A heading.

Q. We have all been over it and we know the dip was down to the goaf? A. Yes.

Q. I am suggesting to you that any gases that came out from the goaf would have to travel uphill to get to the goaf? A. Yes.

Q. And that was not the position at the shunt of No.3, it was still dipping inby of 3? Was not the position in 3 that the tendency was for the gas to come out from the goaf and go downhill to the brattice? A. I could not tell you that. I would not understand that at all.

Q. When you erected the brattice in No. 2 cut-through, did you or did you not take into account the grade leading to the goaf? A. No.

HIS HONOR: Q. You were mindful all this time of the possibility of noxious gases, is that right? A. Yes.

Q. Is there any particular danger in a shuttle car working in a shunt in noxious gases? A. Other than the effect it might have if it was present in sufficient quantities to cause physical discomfort to the people who would be exposed to it.

Q. The only man would be the shuttle car driver, would it not? A. Yes, he would be in the shunt.

Q. He would be in the shunt only such time as he took to back in and come out again? A. Yes.

Q.And the action of coming in would tend to swirl the gas around away from the shuttle car driver himself, would it not? A.It would cause turbulence in this area,yes.

Q.It would tend to push it away from him? A.Yes.

Q.So it would not have very much effect unless it was in very substantial quantities, on the shuttle car driver? A.No.

Q.And then of course if it did affect him in any way, he would immediately report it? A.Yes.

Q.You correct me if I am wrong but is not this the position: From the point of view of those in control, and I am talking about deputies and yourself or any assistants who may be there, looking at the situation and expecting only noxious gas, it was a risk worth taking to keep production going to run a shuttle car in and out of the shunt, since it was only a shunt and not a working place and since if it became substantial in volume you would expect the shuttle car driver to report it. Is that the position? A. No. It was actually a part of the working area and as such had to be kept clear and this is fully understood by all the people in the place but -

Q.I know what the Act says and I know it is understood. I am now talking about the practical situation as it exists when the work is being carried out, that the working place you are talking about here is a shunt where only a shuttle car goes in and out and there is only noxious gas in there. You see, you started off with the assumption, did you not, that the gas in there is noxious? A.Yes.

Q.Getting down to realities, is not that the practical position? A.The area -

MR.REYNOLDS: May I say this,Your Honor: I think what is troubling the witness is that the word "risk" has been introduced by Your Honor. Would Your Honor put it that it was a course worth taking?

HIS HONOR: Q. A course worth taking that in fact if noxious gas alone is there, then because there is not much risk, it is a course worth taking? A.Yes.

Q.That is the practical position, is it not? A.Yes.

MR.LEE: Q.Did you yourself at any time give any consideration in Section 8 Right to the presence of bottom gas? A.No.

Q.I take it you knew it had been found in other parts of the mine? A.Yes.

Q.And you knew then that it could be found elsewhere? A.It could be found elsewhere.

Q.And you had no reason to assume that it might not be found in 8 Right? A.None at all.

Q.I suppose you just relied entirely on the deputies in that regard? A. No, I tested it myself.

Q.Where did you test in 8 Right for bottom gas? A.I tested in 8 Right for bottom gas on the 5th of the 10th for sure and that was the time that this No.9 was being driven, and I could find no trace of CH_4 at all.

Q.Where did you test? A.I tested in A and also back at the

intersection itself and the miner had broken away approximately 10 yards away around the miner face itself and at no place in all of these areas did I detect CH_4 with the oil flame safety lamp.

HIS HONOR: Q. The oil flame safety lamp - you did not use a methanometer? A. No.

MR. LEE: Q. When you tested on that occasion for bottom gas was that because you were somewhat concerned about the efficacy of the system that you were putting in in No.3 cut-through? A. No. Any time I find gas anywhere in the pit I try to find out for myself just what it is. I try to make up my mind on this.

Q. So may I take it you tested on numerous other occasions for bottom gas? A. No - I have tested before but how many times I could not say. It is a rarity, not a common occurrence in our colliery.

Q. However, you tested for bottom gas at a point which to all intents and purposes was a replica of what was done in 2 cut-through? A. Yes.

Q. And you tested for it there because you had found noxious gas? A. I tested the whole area once I had found noxious gas to see what it was or wasn't.

MR.REYNOLDS: Does my friend mean when testing for bottom gas, a specific test, or whether it is this witness' practice to test for gas?

HIS HONOR: I assume he carried out a specific test, bythe witness' answer. To test for bottom gas means that to me.

MR.REYNOLDS: I thought there may be a misconception.

HIS HONOR:Q. What is the position? A. I actually tested for both bottom gas and for methane.

Q. In other words, you carried out specific tests for bottom gas? A. I found the noxious gas on the floor level and coming back through there and even in this, where it was coming back round, it was becoming slightly diluted and you could hold your light and maintain your light at testing level and I could still not detect methane on the oil flame safety lamp.

Q. You used an oil flame safety lamp but you did not use a methanometer, you told me? A. Yes.

Q. You have seen areas where you thought, I do not say you suspected bottom gas, but you thought it wise to test for it there? A. Yes.

Q. And you carried out tests with your oil flame safety lamp specifically for bottom gas and you found none? A. I found bottom gas all right. I know it was there but I also tested for inflammable gas and I could find no trace of inflammable gas.

Q. You found bottom gas? A. Noxious gas.

Q. Do you know the difference between what we have been calling bottom gas here and noxious gas? A. Well, I don't think it would be very much. I think it is something I should try to straighten out, but with bottom gas I refer to that as a gas that is deprived of oxygen and is heavier than air and lays on the floor, on the lower part of the seam, and does not contain inflammable gases.

Q.Does not contain inflammable gases? A.Yes.

MR.REYNOLDS: It is a question of terminology.

HIS HONOR: It is exactly contrary to what we have been talking about here.

Q.Have you ever heard of the term bottom gas applied, or Illawarra bottom gas? A.Yes.

Q.Have you tested for Illawarra bottom gas? A.Yes.

Q.In your mind, what is the difference between Illawarra bottom gas and bottom gas, if there is any difference? A. Well, there are two places I can say I have tested and found it on an oil flame safety lamp and in both places it was detected down near the floor and it was present with CO2, and you could detect the CO2 by smell, and you could also detect CH_4 in the mixture on the oil flame safety lamp.

Q.In other words, you understand Illawarra bottom gas to contain CH_4? A.Yes.

MR.LEE: Q.When you tested for bottom gas what were you testing for?You said you tested for bottom gas? A.I tested for both CO2 and for fire damp.

Q.And for fire damp, together? A.Yes.

Q.So when you made your tests for bottom gas you made a test which you now know to be a test for Illawarra bottom gas? A.Yes.

Q Is that the position? A.Yes, it would be.

Q.In other words, you tested for inflammable gas at the floor? A Not at the floor level, no, because it was CO2 at the floor level right at the face. This was where I detected noxious gas and for the floor level inby there it would have extinguished the lamp.

Q.Well, did you test for Illawarra bottom gas at lower levels than the roof? A.Yes.

Q.And you found noxious gas? A.Yes, I found noxious gas.

Q.Was that a routine procedure that you adopted? I mean did you simply test for the inflammable gas at lower levels than the roof because that is what you always do, or because you suspected it on this occasion? A. No, I was not quite sure what was in it and I tested to see if I could find out what was there.

Q.You were conscious of the goaf being immediately nearby? A.Yes.

Q.And you did not know what was in the goaf? A.No.

Q.You suspected the gas that had come out which you had found and observed as noxious gas.....? A.Yes.

Q.Might have methane in it? A.That is so.

Q.And so you tested for it? A.Yes.

Q.You got no result? A.Not for the inflammable gas,no.

Q.Did you tell any of the deputies at any time to make a careful test for methane in the noxious gas? A.They did - no,I did not tell them specifically.

Q. You yourself thought, "Well, here is a situation with the goaf there and we do not know what is in the goaf, careful testing for bottom gas, as we now know, ought to be made"? A. Noxious gas had been in this panel for quite some time - (Interrupted).

Q. Please? A. Did I instruct anybody?

Q. I said, you thought the goaf was there and lacking knowledge as to what was in the goaf, thought it was right and proper and necessary to make a certain test as to what the gas in fact was that was found? A. Yes.

Q. You saw the necessity to make careful testing for bottom gas? A. Yes.

Q. Because of the lack of knowledge as to what the gases were in the goaf? A. Yes.

Q. But you did not say to any of the deputies "We have a goaf here, we do not know what is in it, make sure in all your testing you test for bottom gas"? A. They had also been testing - (interrupted)

Q. Did you say it? A. No.

Q. You want to say they had already been testing for it? A. Yes.

Q. Did you see them? A. I saw Charlie Stewart test the gas.

Q. Whereabouts? No. 3 or 3? A. I could not tell you the exact position.

Q. I am more concerned with 2 and 3? A. I could not tell you. I don't think I saw him testing No. 3.

Q. Did you see him test No. 2? A. This is the one inby here?

Q. The one we are talking about, that is, where the fire was. A. No. 2 cut-through, no.

HIS HONOR: Q. I think you were interrupted by Mr. Lee. Was what you wanted to say that noxious gases had been found in considerable quantity for some time? A. No, what I wanted to say there was, noxious gases had been detected in this panel prior to this incident and it had been the practice for testing for both, noxious gas, and inflammable gas is also tested for by the deputies.

Q. Is that because you suspected there might be Illawarra bottom gas there? A. No, it is part of a routine inspection.

Q. It is routine - to inspect for Illawarra bottom gas? A. Yes, it was.

Q. It was routine to do so? A. Yes, you were finding noxious gas in the bottom and also testing for CH_4.

Q. With an oil safety lamp? A. Yes.

Q. Did anybody ever take a methanometer and have a look to see if there was any fire damp present in the noxious gas? A. I know of only one time when the methanometer was used in inby work of 8 Right and it was not used by me, it was used by Fred Wright. He tells me the reading he got there was in a pillar lift and as far as he could remember it is somewhere round about in this area here (demonstrates) in the headings themselves down inby of 6, these splits that have gone through here and his reading on the M.S.A. was 0.2, as far as he can remember.

Q.That is the only occasion you can recall a methanometer being used in this particular section? A. In the working area,yes.

Q.Tell me why it was not used on other occasions. Is there some reason for it? A. No, the only reason I can suggest is we had not found CH_4.

Q.So you decided there would not be any there? A.Well, that is it,yes.

Q.MR.LEE: Following His Honor's line of thought, did you always know the methanometer would give you readings which the safety oil lamp might not? A.Yes.

Q.You always knew that? A.Yes.

Q.So that the significance of the methanometer as a testing device compared to the oil safety lamp was known to you? A.Yes.

Q.You did not see any necessity at any point of time to bring it in and use it? A.No.

Q.May I take you to another matter altogether now, that is this: You say you were going to hole into the goaf at the extension of No.2 cut through? A.Yes.

Q.That procedure could have been adopted by just going straight out, making a slight - I withdraw the word "slight" - making a right hand turn and holing the goaf? A. From where?

Q.On the extension, it could have been done by just going out, turning right and going into the goaf? A.Yes.

Q.In fact what was done was to go out and before going very far right start extracting the coal from round about the very end of the extension? A. What is your question again?

Q.What happened was instead of going straight out and turning right the work stopped for some time at the end, as we see it, on the map? A.Yes.

Q.The coal was taken out from there? A.Yes.

Q.And the time that that coal was taken out could, and I am putting it purely hypothetically, has been used up in getting the job done of getting through into the goaf and creating a bleeder tunnel? A.Yes.

Q.What do you say was the reason why that was not done? A. The instruction on doing the job, the instruction that was then given was this: Others had to hole into the goaf, that is the original drivage on the inby side. The panel is double-shifted and the Deputy on afternoon shift had completed this up here on the Friday, he had completed the drive there slightly behind where the face is shown now but he had got this far on the Friday night previous to the incident and on inquiry he said he thought this No.3 was being driven down 30 yards away from the goaf.

Q.I think you will have to show it to His Honor and then to us. He thought what? A. He thought this split came down, instead of coming down opposite here, was coming down 55 yards away - he thought it was coming down approximately 30 yards away from the next line.

MR.McNALLY: Q.That is Cambourn?A.Bill Cambourn,yes.

MR.LEE: Could he show us,Your Honor.

Q. Would you do that again? A. Mr.Cambourne who was the deputy on afternoon shift, in charge of production on afternoon shift, thought this distance between 3 and 9 was somewhere round about 30 yards and not 55 yards, as it actually was.

MR.REYNOLDS: Q. Do you mean 9 and 13? A. Yes.

MR. LEE: He thought it was 30 yards instead of--

HIS HONOR: 55 yards.

MR. LEE: Q. That is the difference between the extension to No.2 cut-through at its end and No.9 tunnel? A. Yes.

Q. He thought the distance across there was 30 yards instead of 55? A. Yes.

Q. What happened then? A. He thought, by measuring the distance he had already drove, he assumed he had missed holing through by coming into the coal again so they came out and word was left for the dogwatch to drop this machine back to the previous place, to come through the No.9 and form the holing.

Q. In fact he had not made a mistake, had he? I mean, he made a mistake, but if he continued on the way he was going, he would have holed into the goaf? A. Yes.

Q. That was rather a very clumsy mistake, wasn't it? A. It was a mistake.

Q. A very clumsy one? A. I think it was an honest mistake by the person concerned.

Q. He thought a certain distance was 30 yards instead of 55. That is what you have said, isn't it? A. Yes, that is right, but he had not been told it was 55 yards across here,apparently, and he thought this was coming through at the same distance as this previous one here.

Q. We only want to know, but when a person in charge of the operation, such as this one - doesn't he have a plan or survey marks or something, or a measurement that will help him? A.There is a plan to the same scale as this in the crib room of every panel and the workings are marked on this.

Q. It may be beside the point somewhat - (Objected to by Mr.Reynolds.)

HIS HONOR: The position is the company has put forward a certain plan of development which is being challenged -

MR. LEE: Tested, Your Honor.

HIS HONOR: I think once evidence has been given, then, if it is allowed to be given and one assumes it is relevant, one has to assume the testing of it is relevant and that is the basis upon which I allow it.

(Luncheon adjournment.)

MR. LEE: Q. Can you tell me how far out the drive towards the goaf had got before Mr. Cambourne decided he may have made an error? A. It was driven round there somewhere about 35 or 40 yards, I believe.

Q. 35 to 40 yards from the actual -? A. Straight road, yes.

Q. Did he report the mistake to you? A. No, how I came to know about it--

Q.He did not report it to you? A. No.

Q.Before he brought the miner back to another position were you advised by anybody?A.In the first place Mr.Cambourn didn't bring the miner back to the other position but I had not been advised.

Q.On information you have when he decided he had made a mistake where did the miner go to? A.The miner came back to start a place adjacent to the one that had already been driven.

Q.Was that place continued on out - worked out? A.It had not worked out, it was still being driven to hole into the goaf.

Q. How much time was the miner occupied to your knowledge from the time Mr.Cambourn brought it back to where it started and then he decided no mistake at all had been made? Firstly, you say he did not move it at all? A.He would have brought it back from the immediate face area but he did not bring it back to the position where it started on the following shift.

Q.How did that come about? A.The production shift finished underground at 10 o'clock on Friday night and the machine would have been drawn back under the safety of the supported roof which would be a few yards outby of the face and then on the dog watch or night shift on Sunday night,the preparation and maintenance shift set up the machine in the new position.

Q.How far was that new position from where the miner had been working at the place? A.It would be somewhere around about - it was 40 yards back to the heading itself, say, and outby along the heading perhaps nine or ten yards.

Q.It was put there on the Sunday night at what time?A. Between 11 o'clock Sunday night and 7 o'clock Monday morning.

Q.It continued to work then all through Monday? A.Yes.

Q.And the fire occurred on the Tuesday morning?A.Yes.

Q.Did Mr.Cambourn to your knowledge before the fire realise he had not made a mistake, at any time? A.Yes.

Q.At what point of time would you say it was apparent no mistake had been made? A.I did not say no mistake had been made.

Q.At what point of time,to your knowledge, did Mr.Cambourn decide he had not made a mistake? A.On the Monday afternoon when the day finished at 3 o'clock and came to the surface Fred Wright the assistant under-manager spoke to Bill Cambourn on the surface at that time.

Q.Tell us about that? A.He said - this is the reason he used - this is his thoughts - that he had missed the place and he left instructions for the maintenance shift on the night shift on Sunday night to bring the machine back.

Q.On the Monday he told all this to Fred Wright? A.Yes,on the Monday afternoon,yes.

Q.So this mistake that was made then took up really, I suppose, a couple of days of working? A.Yes.

Q.Am I to understand that Mr.Cambourn, having decided he made a mistake, did not have to go to anybody, his superiors, and point it out to him and have it checked - he just took it on his own course to lay out the workings of the miner from then on.

A. He knew the plans of the place and this is the usual way, that the day shift production is followed by the afternoon shift production, and each in turn, knowing the ideas of what was to be done, depending on the actual position of the place at the time the afternoon shift finished, and they would pass the information on to the night shift preparation to carry on with what work was necessary to follow on the plan.

Q. Mr. Wright, as far as you know, did not know anything about this mistake till Monday? A. Monday morning.

Q. If it be the fact Mr.Cambourne did think he did make a mistake, was there anything to stop him just driving down at an angle bringing him towards the goaf he thought he had missed instead of bringing the miner back and starting off another lift from underneath? A. No.

Q. There is nothing to stop him just continuing to cut down and out to the goaf, if he thought he had missed the goaf?A.No.

Q. But he decided to adopt a course which meant time being spent travelling out over an area which had already been travelled over by the miner further up? (Objected to by Mr. McNally)

Q. You have told us to get from where the miner was placed after the mistake was discovered out to where it finished before the fire took, in effect, all day Monday or from 11 o'clock Sunday night? A. It was done in the normal time to do a shift like this which is a preparation shift and the men employed on this shift, it is their work to set the place up for the following day's production.

Q. How long would it take in your opinion, when Mr.Cambourne made the mistake, to just turn down and go into the goaf? A. Mr.Cambourne did not go back into the place till the following afternoon. There was an intervening production shift between Friday and Monday afternoon.

Q. Did it take coal from the end of the extension of No. 2 cut-through? A. No, it didn't.

Q. It did not have anything to do with it? A. No, the miner, as I said, was set up back on the succeeding lift.

Q. How long, in your opinion, would it have taken the miner to turn down from where Mr.Cambourne decided he had made a mistake into the goaf? A. Had he turned down at right angles to it again, he would have missed the goaf because he would have been travelling parallel then to the previous heading.

Q. I am suggesting he makes a turn which takes him into the goaf? A. I would not be able to say accurately, I would say somewhere round about 10 yards.

Q. The way in fact it was done, what distance did the miner cover to get out to where it ultimately finished up? A. It was in - I think it was in 45 yards.

Q. Along that extension of the cut-through is a T-piece let into a vent tube? A. Yes.

Q. Do you know when that was put there? A. Not exactly, no.

Q. When you were in the mine, while the extension was going on, was that T-piece there? A. It was there but I did not see it.

Q. Was this say, about the Wednesday or Thursday of the week before the five? A. Somewhere round about that time.

Q. Did you give instructions for it to be put in? A. Not direct instructions; indirectly, yes.

Q. Is it not your ordinary position to give instructions as to how a development of that nature shall take place? A. Yes.

Q. You say you did not instruct anybody directly to put the T-piece in? A. Yes.

Q. But indirectly you did? A. Yes.

Q. What do you mean by that? A. I mean it was decided--

Q. You decided, I take it? A. Yes, that upon the holing of the place into the previous lift which could have happened anywhere in the production shift and the time involved in drawing the machine back up into A heading and resetting it up again to produce coal, between 2 and 3 heading and the split that was the next place to extract the coal in this area, would have taken somewhere around three, possibly four hours, and the idea of putting this place here was to allow the completion of a production shift and for the moving of the machine back between 2 and 3 cut-through on A heading to take place on the maintenance shift, the dogwatch.

Q. Had it been intended to split the pillar across of course a T-piece would have been put in? A. Yes.

Q. In fact, in the two previous, 10 and 11, you had, as you drew this morning, driven a split here from 9 into 1? A. Yes.

Q. And had taken in each case the bottom pillar out first? A. No, I did not say that - if I did, I am sorry. I said we took the bottom part of 10 out, that is the bottom side here first of the split, then we took that part out and then we came back into 11 and took it out.

Q. And in each case before the back sections of the pillars were taken out, the front sections were taken out? A. Yes.

Q. The T-piece happened to be in a position down this cut-through - how far down the cut-through was it? A. Approximately 50 to 55 yards.

Q. Do you agree that the longer the cut-through, the greater the roof difficulty? A. The longer the roof is left to stand, the conditions of the roof become deteriorated.

HIS HONOR: Q. You were asked is it not a fact the longer the cut-through the greater the difficulty with the roof? A. Yes.

MR. LEE: Q. You were concerned with roof difficulties in this particular area? A. Yes.

Q. To have taken a cut-through from A heading parallel with the existing extension of No. 2 cut-through to the end of the working where the miner was would have been to have created a cut-through which would be some 100 yards or so long, wouldn't it? A. No, they are only 66 yard pillars.

Q. We have a scale map here and it can be checked. What you would have done, you say, was to cut through from A heading parallel to the extension to No. 2 cut-through and split the pillar in that fashion? A. Yes.

Q. That, of course, was creating greater roof difficulties than if you split the pillar across? A. It would have been open for a day, maybe longer, if split across.

Q. I did not ask you that. A. It could quite possibly be but I do not think the time would have been sufficient to have caused this.

Q. You have maintained that it was the intention of the company to create a bleed by driving this extra cut-through, extra cutting, from A heading up? A. Yes.

Q. That is what you say. Had you split the pillar across, of course then the subsequent working of that area would have meant that the conditions of ventilation pertaining as we know them to have pertained would have been in existence during the whole of the workings? A. Yes.

Q. (Approaches witness): Is that plan to any extent at all accurate as to the definition of the area at the end of the extension of No. 2 cut-through? A. Not accurate, it represents it roughly, but it is not accurate.

Q. The drive where my finger is, upwards towards the end of the actual working, would that be approximately the angle of the drive? A. I don't think it would be that - I don't think it would be round that far, I think there was a smaller stook left in here. It was at an angle.

Q. Do not let me mislead you: The drive from where my finger is to the end of the working itself, it would have been at some such angle as is shown there? A. Roughly that angle.

Q. If Mr.Cambourn made the mistake he said he did up here in thinking he had gone past the goaf, could you explain why the drive would be upwards towards the existing area rather than straight down, if he made a mistake? Why would he drive back to the very area which he thought was past the goaf? A. Mr. Cambourn did not drive this, as I said before. This was started off on the Monday morning after we found out the machine had been brought out. We still wanted to hole down as close to the end as we could and so there was a small piece of coal left on this intersection here to hold, support this intersection that was formed, and we still wanted to get through in this area here, and that was the reason for driving it this way.

Q. Do I not understand when the workings got to a point where my finger is--? A. Yes.

Q. Or thereabouts, Mr.Cambourn rightly or wrongly decided he had gone too far. Is that right or not? A. Yes.

Q. What was done thereafter was that instead of - firstly, we know he did not strike downwards to pick up the goaf which he thought he had passed? A. No.

Q. What in fact was done was to strike upwards in the actual workings to the area which Mr.Cambourn thought was past the goaf, wasn't it? That is what was in fact done? A. That is what Mr.Cambourn thought was past the goaf, yes.

Q.Well then, somebody discovered the mistake when this portion here was driven into? A.Yes, that was known on the Monday morning.

Q.So the mistake was all known about on the Monday morning? A.Yes.

Q.Why didn't they just do the 10 yards straight into the goaf? A.The reason for not doing it straight into the goaf was the fact that the machine had been brought back to the new lift, the new drive-through. The vent tubes were withdrawn out of the previous drive and that area had been centre legged - additional roof supports had been set in the previous drive-in.

Q.In other words it would have - A. It would have taken some time to go into that area.

Q.It would have held up production to have carried through at that point of time the company's intention of creating the bleed into the goaf? A. To go back into that previous place,yes.

Q.Of course, if there were no problem of ventilation in this area one method of getting out this pillar would be to start taking it out downwards from the top? A.That is a possibility.

Q.Was that what the company was doing? A.No.

Q.Were you aware of the requirements of the Mines Department in relation to a bleed tunnel in respect of pillar extraction?A.Yes.

Q.And may I take it that you were aware of the company's file on the matter? A.No.

Q.How did you come to be aware of the department's requirements? A.I was at the colliery right from the period of the installation of the first auxiliary fan at the colliery and the subsequent requests or instructions from the Mines Department were passed on to me by the previous managers.

Q.I see, so you knew that there had been discussions then, I suppose between Mr.Ryan and Mr.Muir which had resulted in, shall we say, a system of a bleed tunnel being devised? A.Yes.

Q.And you were always aware of the importance of the bleed tunnel, were you not? A.Yes.

Q.I think you indicated earlier to His honor - I may have misunderstood you - that you really did not think , however , that the bleed tunnel was something of vital importance? A.Well, what I realy meant - that is the wrong impression - was that the bleed tunnel must be of some assistance there, but it cannot be relied upon all the time nor can implicit faith be placed in a bleed tunnel.

Q.You need a bleed tunnel and proper ventilation, don't you? Those are the two things? A.Yes, you want proper ventilation.

Q.And proper ventilation with a bleed tube, a bleed tunnel from the goaf, and there should be no problems? A. Proper ventilation and you would have no problems left.

HIS HONOR: Q.You installed the fans did you, or directed the fans be installed in A heading? A.Yes.

Q.Did you direct their installation? A. That the fan had to be used in 8 Right?

Q.Did you direct it? A.Yes.

Q. Leaving aside any question of whether you were in breach of the Department's rules or otherwise for the moment - that will be argued later by somebody, no doubt - did you supervise the installation of them? Did you inspect them after they had been installed? A. Oh yes, on inspections of panels of the colliery, not on every inspection of every panel would I look at the fans, but -

Q. On this one you did look at the fans, did you? A. Yes, I had a look at the fans in this section.

Q. Would the brattice that was erected at the fan be described as a tight brattice? A. No.

Q. What would you say about the brattice? A. Well, it was not a thoroughly properly erected screen inasmuch as it was loose. It was across the heading on the props and on the lower part of it there was a flap brought back allowing an opening in the screen which is alongside the fan.

Q. That flap though was only in use on certain occasions, was it not? A. Yes.

Q. Is this not the position, that when you put a brattice screen across a return airway, and that is what you have done here, and it is not a completely loose screen or a screen that allows air to fully pass through, you are blocking off some of your flow of air through the airway, are you not? A. Yes.

Q. Will you not agree that the screen that you put up there round those fans was in fact such a screen, that is one which to some extent at any rate cut off the flow of air to the area? A. To some degree it would restrict the flow of air through the return airway.

Q. And you of course are aware of the principle on which the fan system operates? A. Yes.

Q. I think you will agree that one of the fundamental principles is that for a fan to be effective you must have more air coming through the system than is taken out by your fan? A. Yes.

Q. That is right at the bottom of things, is it not, the ventilation by fans? A. Yes.

Q. Are you now able to tell me what volume of air you had going through your return airway, other than through your fan, that is through the fan duct? A. Roughly, the fan pulls a varying quantity of air depending on the length of duct on the fan. The longer the length of duct the greater the resistance so the less quantity of air, but the fan itself with a few yards of tubing on it should pull somewhere between 12 and 13 thousand cubic feet of air per minute whereas when it reaches the face down here it is within about 135 yards altogether, 140 yards, it would be pulling somewhere in the order of say 7 or 8 thousand. The quantity of air passing through the district was in the order of something between 26 and 30 thousand cubic feet per minute so by subtracting one from the other, even allowing for leakage by outby stoppings behind the fan, I would expect there would be somewhere round about 15,000 going alongside the fan.

Q. 15,000 cubic feet going alongside the fan; 12 or 13 thousand going through at the fan? A. Yes, somewhere about that. I haven't measured it.

Q.You have not measured it; this is a calculation - A.On measurements that have been taken of the vent tube and back outby on the return airway, but not at the fan itself.

Q.The further you extend this steel vent tube in towards the face, in other words the further you extend the face, the longer the vent tube has to be; is that agreed? A.Yes.

Q.And therefore you are going to get less air from the fan; that is the position, is it not? A.Yes.

Q.And you reach a stage at some point of time when you have got a dangerous situation ? A. If you keep extending tubes on this, you must have.

Q.What have you done to meet that dangerous situation which you might well reach if work had proceeded as it was going to?A.It would not have happened inside of the distance we were travelling - that is inside of the 150 or 160 yards from the fan to the hole-in and the limitations placed by the provisions of permission to install the fans are that normally you do not extend 200 yards of tubing on the fan. If you want to exceed that , then you must have permission from the Department.

Q.These fans are stopped over the weekend, are they not? A. Mostly,yes.

Q.What about on his weekend? A.Yes, they would have been stopped at some period.

Q.When would they have been started again? A.I am not quite sure, but the earliest they would have been started would have been somewhere round about 3 o'clock on the Sunday? A.I don't know if it was started at this time or not.

Q.It would be 3 p.m. on the Sunday or later? A.Yes.

Q.There is a provision, is there not, that once a fan is stopped you cannot start it until you get out of the area all gas? Is that right or is it not right? A.Inflammable gas.

Q.All inflammable gas? A.Not all inflammable gas. I mean, if you entered an area and detected some methane of a very low percentage on a methanometer, .2 or something like this, which is in the order of things that are coming off in a working place, and this is going through the fan at any time, but where gas can be detected on an oil safety lamp then that area has to be cleared before the fan is started.

Q.Now, who was responsible - who would be responsible for the performing of that operation, the clearing out of all inflammable gas before the fan was started? A. The Deputy in the section who went into the panel.

Q.Who was there just after 3 o'clock assuming they were started then, on the Sunday? A. There would be a night shift deputy. Who it would be I could not say at this stage. If it was 3 o'clock this is actually in overtime before the normal start of the dog watch shift which is 11 o'clock, but assuming it would be 11 o'clock then it would be the deputy in charge of this panel who would make the inspection of the face.

Q.Who would he be? A.Well, I think it would be Charlie Walker at this time. There is a Deputy assigned to each district o each shift. In his absence his position is filled by another Deputy.

Q.Is there any record made of the clearing out of gas before the fan is started? A.There was no indication that general rule 4 gas had been present before the fan was started.

Q.What is that? A.As far as I can recall there was nothing reported of gas being found in this position.

Q.So again you are relying on the Deputy's report that no gas was found, but does it say under what conditions the fan was started? A. No specific report in regard to this.

Q.This is the position, is it not, that if in fact there had been undetected inflammable gas in the area that had not been got out without the use of the fan - that is what you are supposed to do, is it not? A.Yes.

Q.To get it out in sections out of reach of the fans? A.Yes.

Q.If there had been such gas there and it had not been got out without the use of the fans, from the time the fans were started on the Sunday afternoon or later until Tuesday morning when this fire occurred there could have been a build-up of inflammable gas which had not been removed entirely by the fans; would you not agree with that? A. It is possible, yes.

Q.And assuming that the deputies were looking for methane only in the form in which it was separated from carbon dioxide, it is quite possible for a deputy to miss the presence of such methane? A.Do you mean if he were testing for methane?

Q.If he was testing for methane alone and not methane mixed with anything - in other words for Illawarra bottom gas - he could easily miss the Illawarra bottom gas, could he not? A.Yes.

Q.And if the deputy was not too worried about the presence of carbon dioxide, blackdamp, there would not be such a worry about starting up the fans before the inflammable gas had been removed? In other words if he thought he only had carbon dioxide he would start up his fans, wouldn't he? A.Yes.

Q.And leave whatever pockets remained that the fan could not remove? He would leave those behind, would he not? A. Yes. The air current itself would more than likely clear the air though. There would not be very much left after the fan had started.

Q.But if you had a pocket in the shunt - that is possible? A.Yes.

MR.LEE: Q.There are a few other matters I quickly want to ask you about. As far as the fans were concerned they were introduced, were they not or the reason for them in the mine is to deal with dust? A.That is one of the reasons.

Q.You of course used them on two occasions at least we know of to ventilate a shunt?A.Yes.

Q.Originally though the auxiliary fans came in to deal with dust, is not that so? A. They came in to improve our position with ventilation.

Q.I see, not specifically directed towards dust? A. As part of the ventilating problem. There was dust as well as air in to the face itself.

Q.Before this fire did you have any precise information as to the effect fans may have in creating an area of reduced pressure from one point to another point? Any precise information? A.No precise information.

Q.And before the fire did you have any precise information as to the effect the erection of the stopping in A heading might have in creating an area of reduced pressure from one side to the other? Any precise information? A.No precise information.

Q.So that as far as the placing of the fans was concerned, you never considered that had had any special significance? A. The placing of the fan at the position in No.2 had no special significance in regard to what?

Q.In regard to any adverse effect on the ventilation? A. I didn't think so,no.

Q.There is a barometer in your office, is there not? A.Yes.

Q.And do you study it? A.Occasionally,

Q.Do you take any notice of what it says to you? A. I have a look at it and it passes the thought that if the barometer is dropping, the atmospheric pressure is becoming less so that there could possibly be some effect on it, but there would have to be a substantial drop in the pressure over a period to affect this.

Q.To worry you? Is that because of some precise knowledge you have of this matter or is it just a guess on your part? A.No. I have done a little bit of ventilation calculation and the theory behind the means by which the gas will expand in the goaf and spill back out due to the atmospheric pressure becoming less.

Q.From what you have said am I to understand you would need to see some very substantial drop before you would take any extra precautions as far as gas from the goaf is concerned? That is your view? A.Yes, there would have to be a substantial drop.

Q.And you maintain that view at this instant? A. To have any real effect on the gases in the goaf as at 8 Right,yes.

Q.So may we take it that as far as you as Under-manager are concerned, should the barometer drop say a quarter of an inch in eight hours, you in the future will not take any additional precuations in respect of goaf gases? Is that the position? A. No additional precuations to what we have done over the past years.

Q.In other words you do not place much importance upon the effect of reduced pressure upon goaf gases, do you? A.Yes.

Q.You do? A.Yes.

Q.But you would discard a quarter of an inch barometer drop as being of any significance? A.Over 8 hours?

Q.Yes. A.Yes.

Q.Did you hear Mr.Donegan give his evidence? A.No.

Q.And it has not been brought to your attention that a calculation has been put before this Court showing with some precision the probable quantity of gas that could emerge from the goaf with a drop of a quarter of an inch in 8 hours? A.No.

Q.No one has drawn your attention, as the Under-manager, to the fact that there has been a claim put to this Inquiry showing that some thousands of cubic feet of gas may, by reason of a quarter of an inch drop in barometric pressure, be emitted from a goaf? A. No.

Q.So I take it you would still continue on in your position as Under-manager with the notion that it would need to be a very substantial drop before you would take any notice of it?A. Before I would pay particular significance to it, but if what you say is correct I would have to check this, but I feel -

Q.You feel what, Mr.Puddle? Do you know anything have you any precise knowledge of the effect of a reduction in pressure on the goaf gases? A. I know the general formula of the expansion of gases.

Q.You know that if you get a barometer drop the gas in all probability will expand? A. In all probability.

Q.That is a law of physics, isn't it? A.Yes.

Q.And does your knowledge go past that general proposition? A. Well, I have worked on calculations of this kind.

Q.Do you feel you are in a position as under-manager of this colliery to tell His Honor that from your experience one need not be concerned about a drop of a quarter of an inch in barometric pressure over a period of 8 hours? A, I would say what I thought, that a drop of a quarter of an inch over 8 hours and I come back down to it again, it is what - .3, no, .03 of an inch in one hour. It would be very hard to pick up on a barometer let alone -

Q.A continuing drop - you know it became half an inch in some slightly longer period? A.Yes.

Q.Could that in your opininn have any significance on the emission of goaf gases? A.It could have some significance.

Q.Do you say it would need to get to half an inch before you would worry? A.No.

Q.I will put it directly to you: Is not the attitude of yours that you do regard the barometer as a rather useless piece of equipment around the mine? A.No.

Q.You feel it has some good purpose? A.Yes.

Q.But it has to be a very obvious and noticeable drop before you would take any steps to do anything about it; that is your view? A.That has been the practice up to this stage.

Q.In view of what I have said to you, I take it you will at least reconsider the position even if it does not mean that you alter your view? A. I definitely shall.

Q.The barometer is in your office, is it not? A.Yes.

Q.Are persons entitled to walk in and out of your office at will? A. At changes of shifts the office is open.

HIS HONORQ.What about at all times? The Act says "A conspicuous place"? A. It is conspicuous. It can be seen from outside the building through an open window.

Q.An open window?A.No, a clear glass window.

MR.LEE: Q Can you see through the window at night? A.I haven't tried it.

Q.I do not want to be facetious but I want to point out the fact that the drop did take place at night time? A. All deputies know where the barometer is placed in my office. It is placed alongside the window and they can all have a look before they go underground.

Q.Have you got the under manager's reports that are required to be made, I think it is each week, is it not, as to gas in the mine? A.Each week?

Q.Well, I am asking you. Perhaps I am wrong? A.I think perhaps you are. I don't really know what you are getting at.

Q.Is there not a requirement that the Under-manager has to keep a report or something as to gas? A.There is a monthly report required by the act on return airways.

Q.Is that the only one the Undermanager is concerned with? A. On gas?

Q.Yes. A.Anybody, if he finds gas himself, must report it on the day it is found.

Q.But you keep the returns? I want to get it right: Do you say you keep the reports of gas in the return airways? A.Yes.

HIS HONOR: Q.Yesterday we heard from Mr.Stone, or the day before, and this may almost save Mr.Stone from coming back and might clear it up - you remember there was a story about 60,000 cubic feet of air missing. Do you remember that? A.Yes.

Q.Mr.Stone told us yesterday, "We have found it again," but he did not tell us, I suppose because nobody asked him, where it had been found. What had happened to that air, do you know? A.What we did do after finding this significant drop was to make a complete inspection of all ventilation appliances and regulators etc. right throughout the area concerned and places were cleaned up. Some brattice stoppings were tidied up. There was one brattice stopping with a break in it and that was repaired. After doing this we found that our air came back into the place, not through any restriction in the air when we allocated it but due to the conditions in the airways the ventilation was affected.

Q.In other words you say it was merely something that occurred through a leakage in the stoppings?A.Accumulated leaks, not only in one stopping but a couple there - one of them was badly knocked about and there was a doorway that had been knocked a little bit out of shape by some transport going through it.

Q.Over what period did this occur?A. The air did go down suddenly over a week, I would say, yes, at the face. This is what actually happened. The reason for it going right down I can't tell you, but this is what we did which brought the ventilation back to normal again.

Q.I had thought on the evidence that you lost 60,000 cubic feet of air, you would have discovered the loss fairly suddenly. In other words that here for some unaccountable reason you had lost this. Now the picture you have painted, unless these things occurred suddenly also, the stoppings and the other sealing, is that it had suddenly been lost through these leaks, if I may put it that way. May it not be that you are already losing air through those because they had been defective for some time and that there is some other reason for losing the 60,000 cubic feet? In other words the 60,000 cubic feet you got back, you did not get back by sealing these things but that was an extra 60,000you had lost and you had still lost the original 60,000. Has that crossed your mind at all? A.No, the total quantity leaving the mine had not altered very appreciably as far as we know.

MR.PARKINSON: Q.You do not only agree, or you do not only recognise the importance of the bleeder heading in this particular type of ventilation, but you agreed with that particular matter, did you not? A. That I do agree with the bleeder system of ventilation?

Q.Yes. A.Yes. 755. J.Puddle, xx.

Q.Is it true that the only objective of the bleeder heading is to bleed off goaf gases into the return airway as quickly as possible? A.Yes, that is one of the reasons.

Q.That is the fundamental objective of the bleeder? A. Yes, without gases coming back into the working places.

Q.You stated about these roof conditions. It is not unusual is it, to be confronted with bad roof conditions when you are approaching faulted country? A. No. We found bad roof conditions under these circumstances.

Q.But it is characteristic in mining, is it not, when you are going on to a fault that you can get bad roof conditions. A.It is possible.

Q.And would it not be reasonable to assume you would get bad conditions coming away from the fault, retreating in pillar extraction? A. It could be.

Q.And is it unusual to have bad roof conditions in pillar extraction generally? A. Varying degrees of roof conditions. You have varying degrees of roof at all times in all solid working.

Q.But you have had bad roof conditions in pillar extraction before at Old Bulli, have you not? A.Yes.

Q.These conditions you say you have encountered in retreating from the faulted area and commencing the pillar extraction, would you say they were abnormally bad roof conditions? A. They were as bad as I would like to see.

Q.Well, they were as bad as you would like to see them, but would you say they were abnormally bad roof conditions? A.There are worse roof conditions in our normal working at the moment, in the average working at the mine.

Q.Do you mean the average pillar extraction? A.Both solids and pillar extraction,yes.

Q. What was so abnormal about these conditions that you have not encountered in Bulli colliery before? What were the really bad conditions in this particular area? A.The immediate roof of shales became weakened and fretted after being exposed for any length of time at all. Fretting would take place between the ends of the supporting timbers and the rib vein, then getting into the coal itself from these headings presented a problem of support. Well, these are the roof conditions I referred to. The roof conditions were not good in there. They were conditions that could be readily seen from the extraction that has been practised on the plan.

Q.Well, you say these conditions gave you some concern in relation to the safety of the men? A. Both production and safety.

Q.Did you discuss this particular problem with the manager? This was a serious problem, wasn't it?A. I thought I had but apparently I hadn't.

Q.Well now, it is a serious problem, Mr.Puddle? You are the Under Manager. Surely you would know whether you discussed this particular question that was creating a problem for you? Surely you would be able to tell us whether you discussed it with the manager or whether you did not discuss it with the manager? A.I am afraid I can't.

HIS HONOR: Q. I think your answer was that you thought you had but you have now found out you have not?A.That is right.

Q.Does that mean you cannot tell us one way or the other or does it mean you are now saying you are satisfied that you had not discussed this with the manager? A. Yes, I am satisfied I could not have discussed this with the manager.

MR.PARKINSON: Q. Did these abnormally heavy and bad roof conditions restrict production in any way? A.Yes.

Q.And I would suggest to you it would substantially reduce production? A.Yes.

Q.I would also suggest to you that it would result in substantial losses of coal? A.Yes.

Q.Through the inability to extract? A.Yes.

Q.And you did not discuss those particular points with the manager? A.Are you referring to the entire area or just to the driving of 13 on this plan we have here?

Q.I am referring to the lines of pillars that were attempted to be extracted prior to the dispensing with the bleeder heading? A.Oh yes. The conditions down here had been discussed with the manager.

Q.You had discussed those? A.At some previous time when this work was going on in here,yes.

Q.Was the question of the restriction of production discussed with the manager or was it raised with you? A. I wonder if you would ask that again.

Q.Was the question of the reduction in production in these particular pillar areas discussed with the manager by yourself or was the matter taken up by the manager to you? A. It would have been discussed with the manager. Over what period or what time I could not say.

Q.However, you had a problem here that coal production was being restricted and that there was an inevitably apparent loss of coal that could have been extracted. Do you remember when you were on the coal, digging coal? A.Yes.

Q.How far were you permitted to be in front of your timber? A. I think in the steel works it was 6 feet.

Q.How far are they in front of that timber now when they are extracting pillars with continuous miners? A. In a minor place that has roof that can be controlled and safely supported from the jacks, they would be somewhere round about 15 feet from the last bar to the face when the bar is erected.

MR.REYNOLDS: I suppose this will be connected with the fire shortly Your Honor?

MR.PARKINSON: I can assure Mr.Reynolds it will be connected with the fire.

Q.Would you attribute the fact that the last support to the face was somewhere in the vicinity of 15 feet to being responsible for some of the roof conditions you described in this particular pillar area? A.No, As I said before, where the 15 feet space is left is where the roof indicates that this space can be left.

Q.Well, if these conditions are so bad would you say it is very good to ask men to work in these conditions where they have exposed roof up to a distance of 15 feet? A. Where the conditions were bad they were not working with an exposed area of 15 feet. The ribs of the place were cut out and the bars were extended in closer to the face by tramming the machine in, by cutting the wings out of the place, so that the machine could move forward, set up a bar, and the machine comes back out and takes a centre piece in, keeping your timber then somewhere about 11 feet from the face.

Q.But all this took time,didn't it?A.Yes.

Q.And this was responsible for reduced production? A. It would, slightly. This would be slight, not very -

Q.Yes, and that is when it was decided by yourself that something had to be done about this? Was it yourself who decided that something was to be done about this? A. Yes, I decided that something had to be done about it, yes.

Q.Did the manager tell you something had to be done about it? A.No, I can't recall this. I don't recall any general instruction that I had to do something about production in this panel.

Q.And was this point of time then that you decided you would dispense with the bleeder heading? A.This time, as I explained before, the heading, I wanted to try to extract there, it was still green and still standing whereas the other headings we wanted to attempt to extract from and had not been successful had been standing for some period, and in view of the fact of successfully taking the lifts off the split between 3 and 1 and down into the left hand side of the area marked 10, had shown an improvement in the extraction that was experienced on the inby piece of coal and had led me to the assumption that we could expect better roof conditions by taking out successive lifts from a green or practically new driven heading.

Q.But is it not a fact that according to this plan here - and if I accept these markings, and I am not too sure that that is what they intend to portray - in No.10 you experienced better roof conditions there than you had been experiencing in the previous lines? A.Not better roof conditions. I thought I explained this to Mr.Lee before. The roof conditions, the actual roof was still the same,but we experienced better control of the roof by taking the coal out quickly.

Q.But had you not driven a bleeder heading during the process of the extraction of that particular line of pillars? A.Yes.

MR.LEE: By the particular line of pillars, that means No.10, does it?

MR.PARKINSON: Yes, No.10.

Q.You had driven a bleeder heading up to that particular one?A.Yes.

Q.The conditions had improved in the extraction of that particular pillar No.10, as compared with the others? A.Yes.

Q.Now, if conditions had improved and you were retreating further from the fault, would it not have been reasonable to assume that those roof conditions could possibly get better? A.No. In relation to the plan itself my answer would have to be in this vein, that the major geological fault that you assume and I assume would have some effect on the roof in this area ran approximately along at this angle here (indicating) so that this area of coal marked 12 would be approximately in the same distance from the fault as the

coal formed by the driving of 13 and our experience in trying to get the coal out of 12 was that the conditions there were no better than they were inby or down here. Our attempts here would meet with very little success.

Q.The fact remains that as a result of this problem that confronted you - restricted production, not extracting to the maximum possible - you decided that something had to be done and you had these bad roof conditions and your decision was to dispense with the bleeder heading? A.Also, with the safe working of the area,yes.

Q.But that was your decision, to dispense with the bleeder heading? A.Yes.

Q.You have already told Mr.Lee have you not, that you had a knowledge of the correspondence of the contents of the correspondence that took place between Mr.Ryan who was the manager in 1960/61 and Mr.Muir? You had a knowledge of that? A.Yes.

Q.And you had known from your own knowledge that it was agreed by Mr.Ryan, by the Mines Department, that bleeder headings must be driven? A.Yes.

Q.In the light of that experience of your own, and you were the Under-manager from 1959 onwards, would you not say that this was a change of a major character that you were considering, the dispensing with of the bleeder heading? A. Just where are you referring to now? The dispensing of the bleeder heading when I was driving 13?

Q.Yes. A. I was driving a bleeder heading in driving 13.

Q.But then when you decided to dispense with the driving of a bleeder heading, right from the first time you decided to dispense with the driving of a bleeder heading, there was no bleeder heading in the extended No.2 cut through? A. There was no pillar extraction in the extended No.2.

Q.There was no bleeder heading in the extended No.3 cut through? A.No.

Q.Then when did you decide to dispense with the bleeder heading - at what point of time? A.When we extracted No.11.

Q.When you extracted No.11, you decided then after that to dispense with the bleeder heading? A.Not after that, but to dispense with it on this one occasion.

Q.On that particular occasion. Well now, didn't you think that that warranted discussions with the Manager who in his evidence yesterday said he did not know anything about this correspondence? He had never been advised or informed; that is the correspondence with Mr.Muir and Mr.Ryan? A.I am a little bit lost.

Q.You agree with the significance of bleeder headings? A.Yes.

Q.You agreed to dispense with the bleeder heading, did you not? A.Yes.

Q.Did you discuss that with the manager? A.No.

Q.Did you hear the Manager say yesterday he did not have any knowledge of the correspondence that has passed between Mr. Ryan and Mr.Muir in connection with bleeder headings in 1960-61.

Q.Didn't you think then, for you to make a decision to dispense with bleeder headings was a decision of a major character that should have been discussed with the Manager? . (No Answer.)

MR. REYNOLDS: There is a perfect non sequitur there, Your Honor.

MR. PARKINSON: Q. Well, we will forget about the correspondence. You knew about the correspondence, did you not? A. Yes - what correspondence?

Q. Then do you not agree with me that to dispense with a bleeder heading, in the light of the experiences that have been revealed at this Inquiry, was something of a major change? A. There was a change, yes.

Q. But would you not say it was a major change? A. There was a change on the ventilation of that particular -

Q. For instance, the Mines Department said bleeder headings had to be driven, did they not? A. Yes.

Q. And the management at that particular time agreed with the Mines Department, didn't they? A. Yes.

Q. And now you, as an under-manager, are saying in 1965, "I am going to dispense with this particular method." Don't you think that that was of major importance? A. It was a decision that I made, yes.

Q. Well, don't you think it was a decision or at least it was a problem that could have been discussed with the manager? A. As I said before, I thought I had discussed it with the manager.

Q. So you are accepting full responsibility -

MR.REYNOLDS: I only say this in the interests of saving time, but I suggest to Mr. Parkinson does he not think he ought to ask the straightout question, whether the witness thinks he ought to have discussed it with the manager?

MR. PARKINSON: Q. I just want to find out who was responsible for this particular decision and who is accepting full responsibility. Now, I understand, Mr. Puddle, that you are accepting full responsibility for this particular decision? (Objected to by Mr.Reynolds: allowed.) A. It was my decision to take the coal out of 11 without a bleeder heading being used.

HIS HONOR: Q. Was it your independent decision to do that? A. Well, I was the senior fellow who made the decision. It was after general discussions in the panel itself and with Fred Wright, and after careful consideration of all the features appertaining to the case we decided - I decided we would try this.

HIS HONOR: That is your answer, Mr. Parkinson.

MR. PARKINSON: Q. You have already agreed that the objective of the bleeder heading, its fundamental task, was to bleed off the gas from the goaf into the return, have you not? A. Yes.

Q. What alternative method did you devise to compensate for the dispensing with the bleeder heading? What alternative method? A. The method I have already outlined with the ventilation of setting the fan up here, having a spiral tube over into the shuttle car shunt to handle anything that might leak through the brattice stopping that was erected at the back of the shuttle car shunt, and also by making sure that the ventilation was maintained down past this area, that inspections were regularly carried out and the intake airways were kept clear as well as the working place itself.

Q. You have already told us there were fairly substantial quantities of coal being left that could not be extracted in the

previous workings? A.Yes.

Q.Would this be a fairly substantial basis for emissions of methane?A. It could be - not from the remainder of the coal that was left in the No.1 seam I wouldn't think. We had found very little gas in the working of the solid places - in isolated cases small pockets of gas had been found, reported and adequately dealt with. It is possible, as I said before that due to the irregular extraction of the seam itself the resultant stresses set up in the floor and roof might have released gas from the near proximity. This I would not know. This would be back in the goaf area and would be just conjecture on my part.

Q.Would you agree that the further you retreated the greater the expanse of goaf, the greater the possibilities of gas emission from the goaf? A.Not before this I didn't. As I said before we had no indication at all from any reports that inflammable gas was being given off from the goaf.

Q.When did you first become aware of the brattice screen which was erect inby of A heading and No.3 cut through intersection? A. On the 5th October last year.

Q.Was that the day when the brattice screen was erected? A.Yes

Q.Evidence was submitted here that it was shortly after crib time that day that Mr.Lake, I think it was, was approached, was told to take his tools up to this particular area as it was urgent. Do you know anything of that? A.No, I could not say in regard to the exact wording of the message that was given. It was not given by me to him.

Q.Did you go to this particular area at the particular time of the erection of this brattice screen? A. I was in there at the time of the erection of the brattice screen.

Q.Would you say it was a matter of urgency and necessity for that particular brattice screen to be erected at that particular time? A.It was extremely desirable.

Q.Why was it extremely desirable? A. Noxious gas was rising along A heading from inby the goaf area. The timber itself was placed in A heading inby of No.3 cut through to be used on the support of the miner face being driven down No.9 and the gas was in there and the erection of the stopping itself was to stop the flow of the gas up here and that is why it was put there, so that it would restrict the flow of gas and consequently seal back what it could, in addition to which I omitted to say before, a screen, a diverting screen, was placed, erected, to scoop up some air out of 3 and take it over to where the timber was and where the men would be working and this was the reason for it, to stop the flow of two great a quantity of noxious gas into the place itself.

Q.Have you any idea what may have happened had that screen not have been erected?A. I know it was happening before it was erected.

Q.To what intensity was the gas emission at that particular place? A.It could be readily detected in the shunt area itself, in the area where the stopping was put up. At this time this was not the shunt. It was readily detected

inby from the place and as you came out to the intersection of 3 and A heading, then it became mingled with the air coming down there and was no longer detectable other than by smell. You could still get a trace of smell there.

Q. (Approaching Exhibit A): At that particular time I suppose No. 3 was precisely the same as the position in No. 2 here?
A. Yes, we still have the goaf inside they are driving.

HIS HONOR: Mr. Parkinson, would you mind taking the coloured plan on the board there and pinning it horizontally? I think that will help us all very much.

MR. PARKINSON: Q. So the situation at that particular time, assuming this is the No. 3 extended cut-through, the air was coming in A and B heading, a certain amount of air would be going around the goaf edge? A. Yes.

Q. But not sufficient to dilute the emission of gas you found? A. Yes.

Q. Your idea was to put the brattice screen across A heading?A.Yes.

Q. Now, this was also done in the extended No. 2 cut-through?A.Yes.

Q. Why couldn't the brattice door, or a brattice door, be placed on the inby side of the intersection of B heading and 2 cut-through and have forced the air then around the goaf edge? Why could not that have taken place? A. Actually the same as I answered this morning.

Q. Why could not a brattice door have been placed across there? -

MR.SULLIVAN: Between A and B heading?

MR. PARKINSON: This is the inby side.

HIS HONOR: The part on the plan marked JCMSCB and "fans", is that what you put?

MR.PARKINSON: Yes, what I would term on the inby side of the intersection of B heading and No. 2 cut-through.

Q. This would have been the normal method of mining, wouldn't it? The normal method of ventilation to have put the brattice door there and force the air around the goaf edge down there and into the working place? A. No.

HIS HONOR: Q. Is there anything wrong with this suggestion? A. As I said before, this morning, if you remove a brattice door or screen in the cut-through suggested by Mr.Parkinson, then you have an intake airway going back around the goaf edge. Well, there is nothing really wrong with this - it means you have to keep this airway open and have it inspected, and as you are going around the goaf edge - I had no idea what the conditions were in the goaf.

Q. Does it interfere with this system of work in that your shuttle car can't come past? A. It has to come past. You can have two forms of screen: You can have a hanging flap screen, with flaps of brattice like a curtain which the shuttle car can go through and push aside or you can erect a wooden framed brattice door supported on hinges.

HIS HONOR: I see. Mr.Parkinson spoke of a door, and I just did not understand it.

Q. The shuttle car could go through that and come back? A. What it would entail would not be very much, you would have to keep somebody there to open and close the door each time the car went past.

Q. Your chief objection is not that it interferes with the shuttle car's progress but creates a problem of the ventilation of the goaf edge in that they are not areas which can be inspected and they should be inspected? A. It is quite possible there would be areas you could not inspect in this area down there, yes.

MR. PARKINSON: Q. Let us assume the brattice door had been placed across there - that was accessible, wasn't it? (indicates) A. To that point, yes.

Q. That point would have been accessible? A. We are talking now of which one?

Q. Extended No. 2? A. No, it was not accessible down there,(indicates).

Q. Do you mean you could not have got in along A heading to the goaf edge? A. You could have, yes.

Q. So it was accessible to the goaf edge there, wasn't it?A.Yes, accessible there, yes.

Q. The only thing is that you say it may not have been accessible from there to there? A. Yes.

Q. But you would have still been able to inspect that particular goaf edge which was the main goaf edge as far as the ventilation system was concerned? A. It was the edge of the goaf, yes.

Q. So it was accessible? A. No, it says, "An intake airway shall be accessible at all times and shall be inspected."

Q. If your airway is coming around here, if there is anything between there and there, surely it will register there when it comes into A heading, wouldn't it? A. That might be right, yes, it would.

Q. So you would have been able to check it there? A. Yes.

Q. And it would have been taken away in the body of air down along the working place, and the only thing you would have had to be concerned with was that 1¼ was not down there? A. I was never concerned with 1¼, we never detected any at all.

Q. That is all you would have had to be concerned about? A. No, I was also concerned if noxious gas was present in sufficient quantity - that can cause concern.

Q. Were you concerned about it when you put a brattice screen across there? A. I was concerned about it, yes.

Q. Would you like an occlusion in your circulatory system the equivalent of an occlusion, a blockage, that you put in that ventilating system there? A. On that one part you are talking about, but that was not in the main circulating system, the main circulating system was left right open in 8 Right panel. The main circulating system, the main circuit of the ventilation was still left open in 8 Right.

Q. The main ventilation was still down there with your method, (indicates)? A. Yes.

Q. What about the dilution here? A. There was no dilution at that point.

Q. What caused you to make the decision to put the brattice screen up in No. 3? A. The same reason as I put - that is where I put the screen up.

Q. Because there was more gas there than you wanted? A. That is right.

Q. And the only way you tried to dilute that gas was by erecting the brattice screen? A. Which proved successful.

Q. Which proved successful? A. Yes.

Q. Did you at any time go inby side of that brattice screen in No. 2? A. No.

Q. It was never ever inspected? A. No.

Q. Isn't it an accepted mining fact, and isn't it mining regulations that you should wherever possible examine the goaf edge? A. We do examine all available places. All places which are available for inspection are inspected.

Q. But isn't that the Act? A. That you have to go to the goaf edge in every place?

Q. Yes. A. No.

Q. In what conditions wouldn't you inspect the goaf edge? A. Where you could not reach it or it was not safe to get to the goaf edge.

Q. What prevented you getting to this goaf edge; was it unsafe or was it man-made by the erection of the brattice screen? A. It was unsafe by the condition of the roof to reach this point by coming down 3 cut-through, you could not get down there through A heading. There was a brattice screen across. The screen was put up there to stop the noxious gases coming through and if you were going to break through the stopping and keep going in there to make inspections, then the derangement of the screen all the time and also allowing the purpose of the screen, the brattice screen was erected there, to be interfered with, it would be deranged and possibly allow a leakage.

Q. Assuming there was an accumulation of gas behind that brattice screen, how did you intend to get rid of it? A. By the circulating current of air that was passing through 8 Right, the main circuit of air passing through this way and coming back down there (indicates).

MR.SULLIVAN: We cannot see.

HIS HONOR: Turn round slightly and tell us. A. I am now dealing with the part of 13, the intersection of 2 cut-through and A heading. Noxious gases were coming up here, and having a screen between this area and this - the reason I have explained the screen was erected and why it was made as reasonably leakproof as possible --

MR.SULLIVAN: Q. You mean the shunt, do you? A. Yes, in the shunt. Do you want me to go to the board?

MR.PARKINSON: Yes.

WITNESS: The brattice screen was erected in this part here.

HIS HONOR: Perhaps you could do it on the major section?

WITNESS: Very well. The screen was erected here. It was made as leakproof as practicable by cement-rendering. The ventilation of this was through the spiral tube that rose from the main auxiliary fan line and came over to this. This made a standing place and this point was ventilated by air drawn in from the main current entering the section along B and C headings, and then, this position had been adequately met with, it was adequately ventilated there - gases that had been detected even in this shunt had been got rid of - this area here was clear, the shuttle car roads were clear, our working face was clear, our return air clear and our shunt, on inspection was clear. So this is why I say the ventilation in 8 Right was, up to this time, adequate.

MR. PARKINSON: Q. Why were these cross sticks erected? A. Because on drawing out from the inby pillars marked 12 there had been some gear left in here, some 2 inch pipes, a grease gun,

some fittings that had to be recovered. Fred Wright had seen the deputy, Charlie Stewart, going down here and getting this out that morning, and afterwards, or some time after, he had seen him, and he asked him did he get them out, and he said he had been down there to take the fellow in and found that noxious gas down here. Fred Wright came back and had an inspection of this area and did a check in there and subsequent to this, on the same day, Mr.Stewart took the fitter into this area and recovered these bits and pieces that had been left in the goaf. These cross sticks were erected by Charlie Stewart at the time he discovered the gas on the edge here.

HIS HONOR: Wasn't there some evidence by Mr. Walker, the deputy, who said he did not inspect beyond the cross sticks?

MR. PARKINSON: That was Mr. Walker.

MR.REYNOLDS: The witness is dealing with the time prior to the erection of the cross sticks and how they came to be erected.

MR. PARKINSON: Mr.Stewart indicated he had found gas here and that was one of the reasons why the cross sticks had been erected.

HIS HONOR: That is really what the witness is saying.

MR. PARKINSON: Q. If gas was found here with the lay of this particular country would not it be natural to assume there was gas there also from there into the brattice screen? A. It could be - I don't know what height this gas would come up - but we did not discover it at this end of B heading in this area at all.

Q. Say the screen is across there, there is the length of this heading from there to there, to the goaf edge? A. Yes.

Q. If gas is found at this goaf edge at B heading and the lay, the fall, the natural fall in C, wouldn't it only be natural there would be gas at this point of C (indicates)? A. No. You have this fall into the seam in that direction. There would be gas back up along here - in what position I don't know - this area has not been inspected, but this was inspected.

Q. Assuming there was gas there, how are we diluting that particular gas? A. There was air still coming roung this way.

MR.SULLIVAN: There is a brattice stopping there.

WITNESS: I agree, but a brattice stopping loosely erected does not necessarily stop circulation of air.

MR. PARKINSON: Q. You do not agree with another witness who said the amount of air going around there would be almost infinitesimal? A. Yes, I would agree with this, because this stopping was properly erected and was a good type brattice screen, as against this one.

Q. How are we going to get rid of that gas? A. By the air going through here and diluting it again through this point.

HIS HONOR: Can we get this onto the notes?

MR. PARKINSON: I think Mr. Puddle said that by reason of the fact that some air was coming up C heading around the goaf edge into B heading back into No. 2 cut-through - is that so?

WITNESS: Yes, joining up to the main current of air.

MR. PARKINSON: Then I asked what happened to any accumulation of gas on the goaf edge in A heading. How was that diluted? A. That was diluted by air coming along C heading, going around

the back of this pillar and coming back up B heading and joining up with the main current.

HIS HONOR: Q. The area behind the stopping back to the goaf edge, how was that being ventilated? A. It was not being ventilated at all - very, very weak - there would be a very slow movement of air through there, or gas.

MR. PARKINSON: Q. It was not being ventilated, was it? A. Inby behind the brattice screen, no.

Q. And it was not being inspected? A. Yes, that is correct, it was not.

Q. So no one would know what was behind there? A. No.

(Further hearing adjourned till 10 a.m. on Friday, 4th February 1966.)

Anderson

IN THE COURT OF)
COAL MINES REGULATION)
HOLDEN AT BULLI)

No. 1 of 1965.

BEFORE HIS HONOR JUDGE GORAN.

ASSESSORS: MESSRS.MAHON and BUCK.

Friday , 4th February,1966.

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IN THE MATTER OF AN INQUIRY IN PURSUANCE OF THE COAL MINES REGULATION ACT INTO AN ACCIDENT WHICH OCCURRED AT THE BULLI COLLIERY ON 9TH NOVEMBER 1965 AND ITS CAUSES AND CIRCUMSTANCES.

- - - - - (PART HEARD)

JOHN PUDDIE
On former oath -
Cross-examination continued.

MR.PARKINSON: Q. What was the width of the pillar that was to be extracted? A.Which pillar that had to be extracted?

Q.Off No.2 cut through? A.No pillar was to be extracted off 2 cut through at this stage. After the split?

Q.No, before the split (indicating on Exhibit A). What was the width from there to there? A.The centres there would be somewhere round about 55 yards.

Q.So that would be approximately 47 to 48 yards of coal. Is that 55 yard centres? A.Yes. It was 55 yard centres between 2 and 3 cut through.

Q.So it would be approximately 50 yards of coal? A.Yes, approximately 45 to 50 yards.

Q.And what distance had the machine traversed in extracting the first lift? A. As I said yesterday to Mr.Lee, somewhere round between 35 and 40 yards, I thought. I won't guarantee this, I haven't measured this myself.

Q.Now I put it to you this way: If you had been the Deputy and you knew that there was 50 yards of coal and you had extracted 35 yards of coal, would you have automatically withdrawn the machine on the understanding that you had by-passed the goaf?(Objected to by Mr.McNally)

HIS HONOR: I take it it is asked on the basis that there may be such evidence. I will allow the question.

MR.PARKINSON: Q. Maybe I will put it a different way. I am at a loss to understand this particular question of this mistake. If there is 50 yards of this lift to be extracted and the machine has traversed 35 yards, would it not be logical to assume that you would expect another 15 yards of coal? A. You are asking me if I would expect this?

Q.Yes. A. Yes.

Q.Would you have thought you had by-passed the goaf until you had traversed at least 50 or 55 yards? (Objected to by Mr.McNally; allowed)

Q.Would you travel 50 or 55 yards before you would become concerned that you had by-passed the point of 50 yards? A.Yes.

Q. Would it be the Monday morning that you read the reports of the afternoon shift deputy of the previous Friday? Was it the Monday morning you first knew the machine had been withdrawn from the first lift? A. On the Monday morning I knew of this for the first time.

Q. Was it indicated in the report the machine had had to be withdrawn? A. No.

Q. Did you look upon it with some degree of urgency of the necessity to hole into the goaf? A. We had to hole into the goaf - it was necessary to hole into the goaf on subsequent operations of this area of coal, yes.

Q. There was a certain degree of urgency in the necessity to hole into the goaf, wasn't there? A. There was some degree of urgency.

Q. Bearing in mind we had not any bleed heading? A. No, we had no bleeder heading. We were actually driving the bleeder heading.

Q. There was an urgency to bleed into the goaf? A. There was a need of a hole into the goaf, yes.

Q. Were you particularly concerned when you learned of this situation on the Monday morning? A. I was concerned, yes, to the extent I found out just what the position was down there, and as I have already previously said for the machine to have been set up outby of the previous drivage and to put the machine back into the place it had been in would have entailed at least a couple of hours work and in view of this I thought by keeping a good eye on the ventilation by following our normal checks on everything else around the place this would go through and hole the goaf quite successfully from where it was rather than go into the previous lift with this loss of production time.

Q. When you learned of this particular incident of the machine being withdrawn on the Monday morning did you then immediately proceed to 8 Right section? A. No.

Q. When did you go there afterwards, after learning the machine had been withdrawn? A. I was not in the section at all.

Q. That day? A. No.

Q. And this was the day preceding the fire? A. Yes.

Q. Had that goaf been holed there could have been altogether different results, couldn't there? A. Yes, quite possibly.

Q. Did you think Mr. Cambourn had miscalculated the distance travelled in the first lift? A. He had not miscalculated - (Interrupted).

HIS HONOR: Let us clear it up before you answer that, to everyone's satisfaction, including Mr. McNally's.

Q. From what source did you get the information on which you rely that it was Mr. Cambourn who had made a mistake? A. Mr.Ryan who was the overman in charge of the night shift when he came to the surface at 7 a.m. on Sunday morning spoke to me in the report room and in general discussion of the colliery itself he said the machine was now set up where Bill Cambourn wanted it set back up on the previous Friday night and this was the first indication I had of the machine coming back and this is the way I got the information.

Q.In other words, was it put to you as a mistake of Mr. Cambourn? Is that the position? A.It was Mr.Cambourn's direction to draw the machine back. He actually left a note for Mr.Ryan to draw the machine back.

Q. To draw the machine back? A. Yes.

MR.McNALLY: Before the matter is allowed possibly to go any further surely we must have evidence .

HIS HONOR: Is Mr.Cambourn available now?

MR.McNALLY: I believe he can be here at short notice.

HIS HONOR: Are you suggesting Mr.Cambourn did not make a mistake?

MR.McNALLY: No - my instructions are these - if Your Honor looks at JJ the previous width of the colliery between the headings - they are not as wide as the width of the colliery between the headings on the plan JJ Numbered 13 and 9. Roughly speaking they are 30 yards.

HIS HONOR: Do you mean the distance between No.13 and 9?

MR.McNALLY: Was greater than the distance between for example, 9 and 3.

HIS HONOR: You say it is different?

MR.McNALLY: Yes.

HIS HONOR: It looks it in the plan.

MR.McNALLY: Having proceedid 30 yards a difficulty arose, my instructions are, with the car cable.

MR.PARKINSON: This is precisely what I want to come to.

HIS HONOR: Let Mr.McNALLY have his say.

MR.McNALLY: Might I check on one aspect: He had at this stage completed the shift, that is the afternoon shift on the Friday. I am instructed that this situation had arisen and he at the same time thought they were near holing through because of the size of the previous pillar width.
He telephone Mr.Don Egar who, as I understand, is the Assistant Under-manager on that shift and he sought instructions from Mr.Egar and was told to leave a note for the night shift Deputy to bring the miner back to take off another lift.
True enough there is a mistake by Mr.Cambourn in that he thought they were nearer holing through than they were but he sought instructions and it was not his decision, I am instructed, to bring the miner back, but he was instructed to do so.

HIS HONOR: He was instructed by whom?

MR.McNALLY : Mr.Don Egar, the Assistant under-manager.
On my instructions it is normal to have the night shfft, the non production shift do as much moving as possible. Those are my instructions. Mr.Cambourn can be called.

HIS HONOR: It may be we will require evidence from two witnesses if this is challenged in any way.

Q.Do you know anything to the contrary of this? A.With regard to the shuttle car cable, I have not heard of this before, and , in regard to the statement that Don Egar was contacted before the move was made,I have heard this later but very much later and I would say it would be only in the last week and a half I have

heard this part of it.

HIS HONOR: Is Mr. Egar available and is Mr.Cambourn available?

WITNESS: Mr.Egar is on holidays, Your Honor

MR. McNALLY: I think Mr.Wright may know something of this.

WITNESS: Mr.Egar started his holidays a week last Monday, and I assume he will be off three weeks.

HIS HONOR: I do not know whether anything will turn on whose decision it was that was made but we had better try to get this. At any rate, Mr.Cambourn will be available.

MR. MURRAY: It is one matter to say whose decision it was but perhaps the reason may be of some significance. Your Honor has to determine what is the factual truth and we are not building a house of cards because this witness has already given what he understood to be the position and he was cross-examined on the basis that Mr.Cambourn made a mistake. Mr. Parkinson wishes to clarify a matter which he regards may be of assistance and it is on a completely unsound basis. Mr. Puddle is telling us what someone told him, that he believed someone had made a mistake. All these plans which we are relying on as being to scale all vary. For instance, JJ and the one below it are different entirely in the angle and the distances, and if one goes to the development plan, this is different still.

HIS HONOR: The evidence adduced from this witness was based on hearsay but was allowed without objection on the basis that it was not to be challenged. Now that it is challenged it may be we cannot rely on the evidence. The problem is as simple as that. You perhaps have rightly said the question of who made the decision is not so important as to how the decision was made.

MR. MURRAY: My instructions accord with those of Mr. McNally and it does appear the decision was made for a number of reasons: The possibility of an error because of a misjudging of the size of the pillar being created was one thing ; the question of the cable was another, and the question of the work which would be available for the next production shift also was a factor and it was because of all these reasons on my instructions the miner was shifted at the direction of Mr.Cambourn, who may have left a note, but with the approval and at the direction of the staff.

HIS HONOR: May I put this question to counsel for their consideration: Is there any other significance other than if this decision to shift the miner had not been made, the goaf would have been holed some hours sooner and it would have actually been holed at the time the fire occurred so it is at least possible there would have been no fire. Is there any other weight to be attached to this than that?

MR. McNALLY: There is another matter, Your Honor. At this stage there was only one shuttle car working, the other one was being repaired so production was proceeding at half pace, anyway. I do not know whether that affects the issue at all.

HIS HONOR: An allegation hasbeen suggested against certain officials of the company that by worrying about production time that would have been lost, and therefore the amount of coal which in fact was won but may have been lost by going straight through to the goaf, they endangered the safety of the men by not going straight to the goaf. That seems to be a suggestion. What weight should be attached to the suggestion is another matter. Whether it is a question of hindsight or foresight is really part of the question for me. A number of things might

have been done which obviously the company could not have foreseen and no blame could be attached to the company for this - when I say "the company" I mean the various persons responsible and the officials. Is the matter of such vital importance to my finding that we should really carry on with the investigation or does it become a subsidiary matter?

MR.REYNOLDS: Your Honor knows my position. Ultimately I will be saying to Your Honor that all Your Honor could say, properly, in a report of this matter, was the mine management stated the intention was to hole into the goaf. It has been claimed that that was not so. Your Honor could not, in my ultimate submission, determine that question of fact for several reasons -

HIS HONOR: On the evidence available?

MR.REYNOLDS: Yes, it will be my total submission that Your Honor in an investigation does not determine disputed issues of fact. This is fundamental and I shall develop my argument at the appropriate time. I will develop that at such time as Your Honor thinks it is appropriate to do so. This is not a matter on which Your Honor makes findings at all, Your Honor is charged with the duty of making a report in exactly the same way as a Mines inspector. He puts before the Chief inspector and the Minister what the facts are said to be and leaves the determination of the issues of fact to the proper tribunal who is charged with the responsibility of deciding one way or the other.

HIS HONOR: What is the proper tribunal?

MR.REYNOLDS: It could be in this case a Magistrate before whom the company was prosecuted, it could be a Judge and jury in a civil matter.

HIS HONOR: I am not concerned with prosecuting.

MR.REYNOLDS: No. I do not want to deal with it now.

HIS HONOR: The difference between a Mines Inspector and myself is that the Mines inspector does not hear evidence on oath and I hear evidence on oath.

MR.REYNOLDS: If Your Honor looks at the Act, Your Honor is not required to hear it on oath. Your Honor may, if Your Honor sees fit, require somebody to verify their statement by Declaration. I only mention this as a thought.

HIS HONOR: It has to be cleared up very soon because the question for me is whether to leave aside this process in which I have been indulging for some weeks of hearing, that is, trying to find out who is telling the truth in the matter.

(During the further argument on the questions raised the witness was stood down. His Honor stated he would hear Counsel before determining the matter and would have the argument recorded)

MR.REYNOLDS: I have dealt with the civil aspect. Now, whether the company has been guilty of any offence, whether a breach of the Act or otherwise, should not be subject of any finding by Your Honor because the proper tribunal to determine that is a quasi criminal tribunal where a company or a person is charged and has the benefit of all the safeguards with which Your Honor is so familiar which the criminal law allows.

Thirdly, if there is any question of general culpability or a higher plane in respect of the death of these unfortunate men, then that question would be determined by a criminal court with the same safeguards and the same onuses which the criminal law allows. If Your Honor were to make what might be called findings, of course it is perfectly obvious that those findings bind nobody. A finding in a legal sense is something which inter-parties has a binding effect. If Your Honor found as a fact something, or found as an ultimate conclusion from the facts a certain thing, that of course finds nobody. It can be used in no other court. If Mr.Sullivan instituting proceedings on behalf of the widows were to seek to prove that Judge Goran assisted by two assessors found that so and so, that would obviously be in admissible.

HIS HONOR: You do not need to argue that aspect. I accept that.

MR REYNOLDS: It is just a step in my argument, Your Honor, and I would like to start with the more obvious things first. Then Your Honor agrees with me - I would not doubt Your Honor agrees with all the propositions I have put so far. The question then is: What is the proper scope of an investigation which is being held by Hour Honor, because we must never lose sight of the fact that the Act charges Your Honor to conduct a formal investigation. That is what it is, and the answer to that question must be found in a consideration of the legistlative context in which Your Honor is charged to carry out this formal investigation. The Act says that it is a formal investigation which must be held in open court and it culminates in a report. It does not say that Your Honor shall hear the evidence on oath. It specifically does not say that. The section itself, s.31, Your Honor will see in s.31 3(d) Your Honor is there given a power which is not given to a mine inspector. In S.31 3, Your Honor is invested with all the powers given to a mine inspector in s.27. Your Honor can go into a mine, Your Honor can say "look, I want to ask these questions of you because I believe you have been employed in this mine within the last month", and the person is bound to answer Your Honor. He cannot claim privilege. He is found to answer, but any answer to Your Honor under that compulsive power could not be used against him except in proceedings for perjury on what he has said and that is a similar procedure in a Royal Commission. Your Honor gets those powers under s.31 [illegible] addition, Your Honor is given the power to make that man, or any man, because Your Honor has the additional power of summoning any person unconnected with a mine to come here. The mine inspector is limited to people who worked in the mine or he finds in the mine, but Your Honor is given the power to summon any person whether connected with a mine or not, to come here. Your Honor could require that person, under s.31 3(d), to sign a Declaration of the truth. I only make that observation to say that Your Honor is not required by the Act to take evidence on oath.

HIS HONOR: Would you say I am not permitted?

MR.REYNOLDS: No, I do not say that. I say it carefully: Your Honor is not required to, so Your Honor is not bound to the curial process as we understand it, but you are bound to do what you do do in open Court, because the Act says so in mandatory terms.

HIS HONOR: Everything except the report?

MR.REYNOLDS: That is right, but Your Honor, to use the words of the Act, in conducting the operations, they must be in a public forum so that the world and the press may know what is going on. I suggest that is the kernel of the existence of s.31; one of the kernels. Perhaps it is trite to say this, but it is an investigation following which Your Honor is bound to report as to the causes and circumstances, and in addition Your Honor has the additional power of adding observations. In our submission the whole purpose of the power conferred upon the Minister by s.31 is related primarily to publicity, that is a hearing in open Court. It also can be related to the necessity to invoke the additional powers conferred by sub-sec. (3)(a), (b), (c) and (d) of s.31. It also may be considered necessary that somebody outside the industry should conduct the investigation. One might think that these are the matters which may impel the Minister to exercise his power under s.31 - publicity, the use of powers which are beyond the powers of the mine inspector, whether the Chief Mines Inspector or otherwise, and thirdly the desirability of an independent person conducting the Inquiry. Indeed, it may have been thought that if you are going to have a public inquiry it needs a person with legal training, such as a Judge, to conduct and preside. That may well explain why the choice, as Your Honor put to me before, of a judicial officer. It may be thought that a mines inspector may not necessarily have the training and capacity to conduct public proceedings, no matter how skilled he may be in the investigation of mine accidents in the ordinary way.

It would seem that the Act contemplates three types of investigations into a mine accident and I would call them a routine investigation, a special investigation, and thirdly a judicial investigation. But they are all investigations. May I draw Your Honor's attention to the legislative provision relating first of all to what I have called the routine investigation into a mine accident, and that is contemplated by s.27(1)(b)(ii) - (Read). Those are exactly the same words as in what is committed to Your Honor. Your Honor has to state in your report, to ascertain the cause and circumstances of any accident at a mine. I would hope that would be a routine report in a mine accident where a person is or is not hurt - that is not confined to cases of death or bodily injury. Then the Act goes on and gives the Minister another discretion under s.30 - (read). That is a special report, and then we come to the type with which we are concerned, the third type, which for convenience I would describe as a judicial report.

All those reports arise out of a ministerial inquiry. I would submit with complete confidence that the mine inspector has no power or authority to make findings of fact. I would equally submit that when it is not a routine report but merely a special one asked for by the Minister in the case of personal injury, that is the same inspector carrying out the same task but under a specific request of the Minister, and he as such has no power to make findings of fact. And in my submission, if he did have the power it would be a useless power. That is why I was putting to Your Honor that Your Honor's findings could not bind anybody a fortiori. Any findings of fact of a departmental inspector whether in a routine investigation or a special one, if he did make findings of fact, are a waste of paper. They must be, and I advance that submission by saying there is nothing in the Act which calls upon Your Honor to do anything different or of higher power or authority than that which the Act demands of an inspector.

It is submitted that the nature of Your Honor's report should be no different in character from the report of an inspector.

 J. Puddle xx. Stood down.

That it is a report Your Honor has to make is clear because that is the wording of the Act. We might then with advantage ask ourselves : What is the nature of any report which is made by an investigating officer, whether Judge or inspector, to a Minister or other executive authority? A Minister in this case, or in most cases where the person is the recipient of a report , is the person charged with the responsibility of taking executive act. He is the person who desires to know what are the materials available which should guide him in deciding whether he should prosecute, whether he should seek to amend the Act,whether he should arrange for the changing of regulations, may be setting higher standards of competency for mine officials, but he requires to have put before him in proper form the material which will enable him to exercise his executive judgment. I would therefore define a report as being a document designed to inform the Minister or the person to whom it is addressed or the facts so that he being charged with the responsibility of executive decision has the material to make up his mind, and leave to the proper tribunals, if it be a matter of tribunal, the determination of any disputed questions of fact.

In essence, in our respectful submission thepreparation of a report involves a process of sifting, of sorting and classifying facts, to save the countless hours of time which otherwise would be necessary on the part of the Minister. Whether it be done by a sub-ordinate in the Mines Department, whether it be done by Your Honor, whether it be done publicly or privately, it is to put before him the material ina properly classified and sorted form, and of course it is part of the function of a reporting authority to set out the facts which are undenied and which are undeniable. In our submission it is undoubtedly also the function of a reporting authority in these circumstances to point out to, in this case the Minister the areas in which there are conflict - the material areas in which conflict exists. It would undoubtedly, in our submission be part of the function of a reporting authority, whether Judge or inspector,to indicate where there were apparent breaches of the law or apparent irregularities or malpractices, but not to say there were. Does Your Honor follow what I mean? I would not dispute for a moment that it would be competent for Your Honor to say on this question "There is apparently a breach of section so and so" but not to say, and in my submission it would be useless and wrong for Your Honor to say, "in my opinion there has been this breach," because that is the function of another tribunal, a judicial tribunal and not a ministerial one. This goes right back to the days when we were all troubled about a coroner saying "I find that so and so feloneously slew so and so" and we all knew the evil of that because it was a useless finding which bound nobody and it went forth to the world as a finding in effect of unlawful homicide, and of course, that has now gone. I only use that as an illustration of why it is that administrative inspectors or inquirers cannot in the nature of things make what we commonly in the law call findings.

HIS HONOR: May I interrupt you to say we still have Royal Commissions making findings of fact which do not bind other tribunals?

MR.REYNOLDS: Yes,Your Honor, but we are there dealing with a special Act which invests them with the powers.

HIS HONOR: What different powers?

MR.REYNOLDS: I do not have the Royal Commission's Act before me but I venture to suggest that if we examined it we would find there is this power. Then, if this view be correct and I do press it upon Your Honor, it is not the function of this Court to make findings.It is not the function of this Court to resolve or to purport to resolve, because it is only a purported resolution,disputed questions of fact. It is equally not the function of this Court

to pass upon the credibility of any witness. I appreciate there could be an argument which says that because Your Honor is required to study the causes and circumstances of the accident, this must of necessity involve the resolution of questions, but I would point out that the word "ascertain" is used in respect to the inspector and it can be said that the Legislature was only concerned in using that phrase to direct the mind of the inquiring authority to what were the relevant matters.

HIS HONOR: When it comes to s.31 which is the section we are dealing with here, it says - (Read).

MR.REYNOLDS: That is just the position I am facing.

HIS HONOR: You said in the case of the inspector, he ascertains, and you spoke about the Legislature choosing the words, I point out to you that in this section it is "state".

MR.REYNOLDS: I cannot see any difference between "ascertain" and "state". The process of ascertaining involves, if you take it to its logical conclusion, the resolution of questions of fact.

HIS HONOR: Take it the other way. To ascertain, of course, is a process of finding something, perhaps finding out something; but "stating" is declaring something to be the case.

MR.REYNOLDS: I would not agree, with respect. You cannot state anything until you ascertain it.

HIS HONOR: That is true, you cannot state it without ascertaining it; but you can ascertain without stating, so stating is something more than ascertaining. How can a person state anything which he has not found?

MR.REYNOLDS: That is right, but if you take the logical proposition, you could never ascertain anything in the way we lawyers understand it unless you resolve all disputes. If Your Honor is prepared to say that it is within the function of a mine inspector to resolve questions to any purpose as between citizen and citizen where one gives a divergent account from another, then that is the end of the matter. But in my submission that is a negation of the system of investigation by one officer of the Government for the information of a senior officer, whether it be ministerial or otherwise.

HIS HONOR: Are you really putting this as the crux of the position, that since there are other proper tribunals to determine certain issues between parties or between the Crown as a party and the subject, as is done in criminal matters, therefore no other tribunal can determine, not the same issues but the matters which are involved in this?

MR.REYNOLDS: No, I am not putting that for a moment as a general proposition. I am seeking to construe this Act.

HIS HONOR: Doesn't your construction involve that general proposition?

MR.REYNOLDS: No, it does not.

HIS HONOR: I thought you started off by saying there were proper tribunals and what I would do in this way, if I determined something which I am not only not empowered to do but also because those other tribunals have the power to determine those things, is a waste of time; you said it was useless?

MR.REYNOLDS: Yes, and I do not resile from that for one moment. We would put Your Honor's function in this way: There are many,

many matters, indeed most of the matters which are really germane to this Inquiry, are common ground and it would seem to us Your Honor will have no difficulty in stating the basic causes of this fire from undenied and undeniable facts, and indeed, when I have ultimately addressed Your Honor I would hope that that would perhaps simplify Your Honor's task in that respect. Let me put it this way: The way we see Your Honor's function here, Your Honor can say, for example, that this fire was caused by the ignition of inflammable gas in shunt area so-and-so. Your Honor can state affirmatively what was the nature of the ventilation which was set up and how it operated.

HIS HONOR: Pausing there immediately, can you tell me this: When you say I can state that, you have a certain conflict or a possible conflict of evidence as to whether the fire started - this is putting it simply, not fully - at one end of the shuttle car or the other. How can I state anything at all about the cause of the fire unless I come to some conclusion about that?

MR.REYNOLDS:Very readily. How can Your Honor come to a conclusion? This is just the point. Your Honor does not have to come to any conclusion. This is the whole burden of my submission that Your Honor says, for example, to take Your Honor's point, there is no question but there was an ignition in the shuttle car shunt. There is some evidence which might indicate that the ignition commenced at the front end of the shuttle car and another witness has given evidence which might tend to show that it started at the other end; it does not matter.

HIS HONOR: I am sure if my report went on in that fashion, Mr. Reynolds. the Minister would not be assisted to any great extent.

MR. REYNOLDS: Your Honor propounded the matter which we are to debate. I would only suggest that the Minister would not be interested in the slightest as to whether it started at the back or the end and Your Honor would simply say, as I am sure Your Honor will, that there was an ignition caused by a piece of wood impacted near the disc brakes of the car in the shuttle car shunt and nobody is interested whether the first flame was seen to the right or to the left. May I develop it a little further and submit that Your Honor would say that to take the matter which is currently being debated, "The management states it was the intention to hole the place numbered 13 into the goaf. Other evidence may tend to suggest that this was not really the management's intention." Now, how could Your Honor in fairness to anybody, with no question of onus of proof, no charges, no pleadings, resolve that question by a finding? This is the sort of thing. I am not seeking to obstruct Your Honor in the exercise of your function here but to try to avoid an unfortunate finding which had not been the subject of particulars or clearly defined issues and which in fact binds nobody. Does Your Honor see my point? I submit it is a very real and important point that Your Honor remembers you are basically informing the Minister in such a way that he best can make up his mind what should be done, if anything, about this occurrence.

HIS HONOR: Not having heard the witnesses?

MR.REYNOLDS: That is right.

HIS HONOR: Not having been present at the Inquiry?

MR.REYNOLDS: That is right.

HIS HONOR: But merely a report as to the claims made on the one hand or the other and where there is common ground?

MR. REYNOLDS: Yes, and it would never be his function, because ultimately Your Honor is assisting his decision, to say, "I like the cut of the witness so-and-so and he gave his evidence well, and I accept him." That ultimate matter, if it ever becomes relevant, is a matter for another tribunal insofar as it affects the rights and obligations of people in this community.

HIS HONOR: But the Minister could not say, with respect, "As far as I am concerned, leaving the company and the miners and the deputies out of it, X" - meaning a person - "was responsible for the whole of this and I want you to prosecute." Not even the Minister would be in any position to say that?

MR.REYNOLDS: What he would say, I presume, as Minister, is "There is a prima facie case justifying the prosecution of this person." This is a proposition that happens every day of the week in the criminal law. Police officers -

HIS HONOR: Police officers take whatever evidence they have and say, "As far as we are concerned, this case warrants prosecution because at least the probabilities are that these are the facts." In fact, if they have two sets of facts like that where obviously no jury, no tribunal, could find there is a case, they could not go on with it. I understand that is a proper function of a police officer. But the position simply is that a charge is made upon a prima facie case because some sort of decision is made somewhere as to where the weight of evidence lies.

MR.REYNOLDS: You then still have, apart from summary proceedings, the intervention of a ministerial inquiry.

HIS HONOR: That is so, and the Court says the same thing, "I find a prima facie case," but surely they cannot do that without finding some prima facie facts?

MR.REYNOLDS: No. Does Your Honor suggest a Magistrate finds some prima facie facts when he is hearing a case at a preliminary hearing? He does not find facts. If he does, he is not exercising his proper function.

HIS HONOR: Then it must be, as I know them, that Magistrates exercising jurisdiction in criminal proceedings in these Courts have been doing a wrong thing for a number of years.

MR.REYNOLDS: But the function of a Magistrate is to decide, strictly, whether there is a prima facie case made out, and not to determine any question of credibility at all.

HIS HONOR: Take, for instance, an ordinary type of case which comes before a Magisterial Court. Take a charge by an uncorroborated female of a sexual assault, laid against a man, and she maintains her story, uncorroborated. However, when she is cross-examined, the Magistrate comes to the conclusion that she is not a credible witness. The man nevertheless must be put on trial - he inevitably must go on trial because prima facie there is a case? The Magistrate has no part in deciding whether the man must go on trial?

MR.REYNOLDS: Let me say at once that that is the proper function of a Magistrate.

HIS HONOR: May I say, for one, that for the sake of justice in this State, they do not perform what you say they should.

MR.REYNOLDS: Yes, I agree with that, but if Your Honor asks me what the law is, he has no right to judge the credibility of that witness.

HIS HONOR: There is another view taken about that - that before a Magistrate does find a prima facie case for a man to go on trial he has to find that it is a strong and proper inference from the facts that the charge could be sustained. If that is the proper view, he must make findings of fact, prima facie?

MR. REYNOLDS: Yes. With great respect to all those who hold the contrary view, I will not subscribe to the fact that a ministerial officer making an inquiry as to whether there is a prima facie case has any function at all of deciding questions of credibility. I know, and it is a good thing it is done as a matter of practice, that Magistrates say, "No jury would convict and I therefore do not commit," and I do not deplore that. But it is my submission that that strictly is beyond the function of Magistrates.

I think that covers this submission I make, and I cannot put it more clearly than I have done to Your Honor. If I be right, we should cease to wander too far away from the facts which surround this fire and to wander into the realms of whether Mr. Puddle be right when he says his understanding was one thing or another, and that we are taking up a lot of time that really is previous.

HIS HONOR: Does any other counsel wish to address on that?

MR. LEE: Does Your Honor wish to hear us on the point?

HIS HONOR: If you could assist me on the matter, I would be grateful.

MR. LEE: If Mr. Reynolds put that there would be areas in this Inquiry where you would not be able to make up your mind on various issues and that care should be exercised in those areas, that conclusions should not be come to unless there is a real degree of satisfaction, I would agree with every word he said. I will agree with him where he says it is not Your Honor's function to make charges of negligence or findings on breaches of the statute, but it is Your Honor's function, without question, not because of anything I say, but because Parliament said it, to find the causes and circumstances of this fire. I will read s.31. (Read.) The Act specifically says the investigation shall be of the causes and circumstances. Mr.Reynolds says Your Honor has no power to make a finding of fact unless you have uncontradicted evidence before you. I have read s.31 and I find no brackets to indicate that the causes and circumstances are those in respect of which uncontradicted evidence is given, and I do not think it is in the section. With great respect, my learned friend's submission is quite groundless. Let us not forget that this legislation is legislation which Parliament has seen fit to introduce and if the Minister so requires, it may be entrusted to a Court of this land, to Your Honor as a judicial officer of the District Court and, by s.33 Your Honor becomes the Court of Coal Mines Regulation.

HIS HONOR: By virtue of a gazettal of appointment.

MR. LEE: It is contemplated this formal investigation shall be one backed by the judicial procedure of a Court presided over by a Judge and it ensures that Court shall have powers which a Court otherwise would not have. It is not only given judicial machinery, but given some very strong and powerful procedural weapons or instruments to be availed of by the Court if it sees fit. Basically the submission is groundless because it would make nonsense of the section to suggest this Court could ascertain or find, or whatever the appropriate word is - "to investigate the causes and circumstances" and make a report,

it would make nonsense of the section to say Your Honor could not make a finding of fact. My learned friend with his usual skill and ability introduced into his argument the notion that the powers of the inspector are those of the Court. I would concede that, but I would take strong issue when he suggests a mining inspector making an inquiry does not make findings of fact. If a manager says a certain thing was done and he investigates and is not satisfied it was done, he will take such action as he sees fit, and he will make a finding of fact in so doing. The real point of my friend's submission, although there is no legal basis to support his main submission, is that Your Honor would be, and probably is, at this point of time, faced with the situation where you just could not make findings one way or the other. That is not an unusual situation even in litigation.

HIS HONOR: If the weight of evidence did not enable me to make a finding, obviously I would not do it. Assume Mr. Reynolds is wrong, assume I have to make findings of facts, and I have been thinking that all along till now, what disturbed me somewhat was the onus of proof to be used in matters such as that. I can recall the proposition being put at certain inquiries that before finding something involving criminal action it should be proof beyond reasonable doubt. You did say I should not come to some issue such as, for example, a civil matter and say, "So-and-so was negligent."?

MR. LEE: Quite so.

HIS HONOR: I feel inclined to agree with that proposition. Assuming Mr.Reynolds is wrong, what happens if I come to a position where I say "This action was in breach of the Act"? There I am making a finding of what one might call at least a quasi-criminal nature. Should I refrain from doing so?

MR. LEE: No. If Your Honor is satisfied on the evidence put before you that that evidence discloses, in your view, a breach of the Act, it should be said. What is the virtue or point of the report, if otherwise?

HIS HONOR: Take a Companies Act investigation: These gentlemen who are charged with the conduct of the investigation not only make findings of fact but sometimes they, and not learned counsel, recommend prosecutions.

MR.REYNOLDS: They can recommend, but they do not find them guilty.

MR. LEE: I said His Honor could come to the conclusion the evidence of so-and-so discloses a breach of the regulation. On the question of negligence, let us not run away and make this a dry inquiry. I would not for one moment suggest Your Honor cannot find people have failed to do things they ought to have done but take for an illustration, and I hope Mr. McNally will not think I have any prepared views on this, but take the position of deputies: Let us assume Your Honor was quite satisfied the testing methods of the deputies were not in accordance with the Act but in accordance with the degree of responsibility you expect of a deputy - Mr. McNally would expect Your Honor to say it.

HIS HONOR: I would not then say "This deputy has been negligent."

MR. LEE: But if on the other hand the evidence showed the reverse?

HIS HONOR: I would go on to say what the position was.

MR. LEE: This is not a dry inquiry in any shape or form, in our submission. The section has given Your Honor complete power to

find the causes and circumstances. Those words together cover a very wide area and unless something further is needed, that additional need is met by the provision that Your Honor can make such observation as Your Honor thinks fit. If you thought in this case the Deputies and the management had at all times fully carried out every responsibility they could be expected to carry out no doubt Your Honor would feel disposed to say so, but the reverse is also the case.

HIS HONOR: Could you assist me on this question of the report? It has been put to me the report I make under the Act should not be made in Court, it should be made only to the Minister under S.31 (5). I am charged with holding an investigation under the section and making a report to the Minister stating the causes of the explosion or accident and its circumstances, and adding any observations which the Court thinks right to make. Earlier Mr.Reynolds said I was not determining the matter under S.33 restricted to inqu ries, appeals and references under the Act and not an investigation, but when I come to look at S.33 I come to 33 (6). (Read). I thought this was a proceeding under this Act.

MR.REYNOLDS: It says "A decision".

HIS HONOR: That may be, but that is on the view you have put to me this morning.

MR.REYNOLDS: A report can never be a decision.

HIS HONOR: What do you say about it Mr.Lee. I propose to come back and give a ruling on this matter.

MR.LEE: At the outset, it is clear it is not easy to take sections 31 and 33, to make them work at all points consistently. It is the view of the Crown that S.31 is a totally independent section and does not govern in all respects the matter Your Honor has in hand here and there is no recourse, so to speak, to S.33 in any way at all. In other words, Your Honor does make a report to the Minister and that is the function of this investigation. Of course, the circumstances of this inquiry are such that it may well be, and I have no instructions on the matter, that a situation might be able to be arrived at whereby the strict letter of s.31 need not be complied with. I think I have said enough on that. I have no instructions but I think it is a matter personally which could be overcome, if Your Honor thought it should be pursued. We take the view s.31 is independent of s.33.

MR.SULLIVAN: I wanted to address Your Honor on these matters.

HIS HONOR: As to the report ?

MR.SULLIVAN: As to the question of the report.

HIS HONOR: I will not trouble you on the question of my function.

MR.SULLIVAN: Shortly, on the question of the report, S.31 provides. (Read). Coming down to sub-section (2) it says: (Read). I find it difficult, when a Court is vested with a function, when it is left this discretion as to procedure, how that is not a proceeding within the meaning of s.33. How could it be said not to be? How could it be said not tb be a proceeding before the Court? A proceeding, in no sense of the term I know, involves two parties.

HIS HONOR: I do not think anybody will argue that this is not a proceeding under the Act.

MR.SULLIVAN: In sub-sec.(6) of s.33 it provides - (Read). The Court's jurisdiction is vested under s.31. (Further read.)

HIS HONOR: It says, whatever I do as far as the Minister is concerned, I must also state it, if I come to a decision, in open Court. Of course, previously I said this hearing would be heard at Bulli and the decision would be announced here but Mr.Reynolds, on one hand says I do not make a decision.

MR. REYNOLDS: I say there is no result.

HIS HONOR: Mr. Lee says s.31 is completely independent of s.33 and we do not even consider 33.

MR.SULLIVAN: That is not a view with which my submissions agree. I would submit it cannot be completely separate from s.31, the two have to be read together, because if you return to s.33 it refers in sub-sec.(1) to references.

HIS HONOR: Mr.Reynolds, you say this is not a reference?

MR.REYNOLDS: It is not a reference, it is a formal investigation.

MR.SULLIVAN: It is a reference under the Act because if it is simply an Inquiry it could have been done by an inspector. What other reference is there in the Act other than the one in s.31?

HIS HONOR: Are there any other references?

MR.SULLIVAN: I would be interested to hear. Mr.Reynolds may know of some. I know of none.

HIS HONOR: I cannot see in the index any reference to such. This investigation is something which has been referred to a Court, and therefore it is a reference under the Act.

MR.SULLIVAN: We would submit so, Your Honor. Again, I am in some conflict, I am afraid, with counsel for the Minister. I submit this is an Inquiry into the causes and its circumstances, and Your Honor can make observations on matters of civil negligence or matters which may raise implications of civil negligence.

HIS HONOR: Yes, that is so, I may if I think fit do so. The question for me is if it is of any value to the Minister. Assume I have to make a report, is it of any value for me to make a finding which an ordinary tribunal, for example, a District Court or a Supreme Court with jury or judge, for that matter, is there any use in me saying so-and-so was guilty of negligence? I do not think that is useful to the Minister. I may well say so-and-so fell short of the standard of care which one expects of people in mines.

MR.SULLIVAN: That would be a circumstance. For instance, if the whole of the people in the panel that night were all drunk or something, that would be a circumstance Your Honor would have to refer to, I would think, in a report.

HIS HONOR: I thought that would be a matter of a question of finding of fact. I thought the observations would be observations which would assist the Minister as to future exercising of the Act.

MR.SULLIVAN: And what he would do in future.

HIS HONOR: I would come to that. I have the power to make observations as I am enabled to say things as to steps which should be taken to prevent this sort of thing occurring again. I will give my decision following the short adjournment.

(Short adjournment) 782

HIS HONOR: I have invited Mr.Reynolds of Her Majesty's Counsel to make certain submissions to me concerning my powers and functions in this investigation. Mr.Reynolds had indicated that he intended to make these submissions in his final address but since they were so vital to the further conduct of these proceedings I thought that they should be determined immediately before any further evidence was heard.

I hope that I am not doing any injustice to Mr.Reynolds' cogent arguments by saying that in short they amount to a proposition that my function is merely to conduct an investigation into accounts proffered to me as to the causes and circumstances of the fire at Bulli Colliery without making any findings as to fact during or as a result of the Inquiry. Mr.Reynolds says that my report should consist of a summary after sifting of all available evidence of what facts are common ground and then a cataloging of opposing claims as to such facts upon which no agreement can be reached. He says that the findings of fact which I would make should I reject his submissions were for other tribunals, civil and criminal to determine and that my findings of fact will not bind other tribunals. He then argues that since they will not bind other tribunals any power which I might have to make such findings would be a useless power.

In my view the latter part of his argument is a non sequitur. It is a common occurrence for tribunals such as the present one to make findings of fact and to report these findings with observations to a Minister of Government. It is quite common for the facts so found to be also in the province of other tribunals when questions of liability are to be determined. A Royal Commission of Inquiry for example commonly is charged with the task of hearing evidence, investigating matters within its terms of reference, making findings of fact pursuant to its investigation and making a report containing observations to a Minister of the Crown. Other tribunals may or may not by subsequent process, to determine other issues, be seized of the same facts upon which the finding was made. Such an Inquiry, it is true, does not bind those other tribunals which are independent of it, but this proposition by no means implies either (1) that the Royal Commission has no power to make such findings, or (2) that its findings when so made are useless. The purpose of a report based upon such findings is to enable the appropriate Minister to take such ministerial action as he thinks fit in respect of such parts of the report as he adopts.

I am comforted in my ruling as to this by the very wording of s.31(5) which charges me to "make a report to the Minister, stating the causes of the explosion or accident and its circumstances, and adding any observations which the Court thinks right to make". I do not see how it is possible for any tribunal to state the causes of an explosion or accident without making necessary findings of fact which enable one to report to the Minister as to what were the causes of such explosion or accident. Incidental to this function of stating such a cause is the duty to make a finding upon circumstances such as systems of working, failure or otherwise to carry out duties imposed upon persons and the conduct of such persons and any other individual concerned.

I am further confirmed in this view by a reference to the history of the setting up of this investigation. It will be recalled that after the tragedy which occurred at Bulli Colliery there was considerable public concern and claims made which required that an open investigation into these matters be held as soon as practicable. This was a matter of such vital interest to the community as made it most desirable that the community should be able to watch the nature of the investigations to be made, to judge for themselves as to whether it was being properly conducted and to hear from a Judge as to what the true facts were. The Minister himself

must have been vitally concerned as to what may be done in the future to prevent a recurrence of such accidents. I feel sure that it was the intention of the legislature that when circumstances similar to these arose, the legislature itself through its ministerial head should have a report upon which it could rely in deciding what action, if any, it should take. A mere summary of facts which were common ground and of opposing claims as to facts in issue would be useless to the Minister, to the legislature and to the community. I therefore rule that it is my function to find the facts necessary to state the causes of the accident at Bulli Colliery and its circumstances, and to add any observations which I, as the Court, think it right to make.

As to the second issue, namely, whether I should make my report public in open Court in terms of S.33(6), I shall reserve this question for further argument when Counsel make their ultimate submissions and come to a decision having heard those submissions. I invite any Counsel interested to address me upon this point.

I am grateful to Counsel who have argued these matters before me for their assistance.

(Further hearing adjourned until 10 a.m. on Monday 7th February,1966)