

State inspector of coal mines reports

Section 57, Pages 1681 - 1710

These reports of the Kansas State Mine Inspector mostly concern coal mining, though by 1929 the scope of the reports broadens to include metal mines. The content of individual reports will vary. The reports address mining laws and mining districts; industry production and earnings; fatal and non-fatal accidents; accident investigations and transcripts of oral interviews; labor strikes; mine locations; mining companies and operators; and proceedings of mining conventions. The reports document the political, economic, social, and environmental impacts of more than seventy years of mining in southeastern Kansas.

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Q. The men were told? A. Yes, sir. The men said they did not see any sense in going on top just for three shots.

Q. Your brother was an old shot-firer? A. Yes, sir.

Q. How long had you been working at that time? A. I believe it was in August that I begun.

Q. And what was the condition of the mine in regard to dust? A. In some places it was dry and other places it was damp.

Q. Well, while it is dry, does there appear to be much dust or was it just dry? A. In some places it was in pretty bad shape.

Q. What do you know about those shots that were fired; do you know whether they were fired? A. Yes, sir.

Q. Where was the first fired? A. It was in the first south.

Q. Then your brother went up and fired the shot in the second south? A. He went up and tamped and lighted them.

Q. After he fired the shots, do you know where he went? A. Yes; he went in Clarence McClure's room; it was the second north.

Q. Now, after he came out of there, and those shots went off, and the explosion came, where did you see him next? A. I seen him on the bottom at the air-shaft.

Q. Where was he on the bottom? A. There was a stopping put in at the right, and there was where I seen him.

Q. Did you say anything to him? A. I asked him if there was anything the matter, and he said that he was blown up against the rib, and that was all he said.

Q. And he did not live long after that? A. No, sir.

Q. Do you know whether he got any blows that caused his death? A. I never noticed any; no, sir.

Q. Who came down out of the straight east after the explosion? A. There were Jones, Vanveller, Jonathan, and Archer; and I was behind them. They got to the bottom a little before me; and when I got there I asked Ralph if he was hurt, and he said he was blown up against the rib. I got out of the car and put my head in against one of those timbers in the sump, and then, right after that, Jonathan was calling up the shaft, and he said he was gone. Then, Archer was down before me and Jonathan.

Q. Did you try to get up the stairway? A. No, sir; I could not.

Q. Did any one else try besides you? A. No, sir. They were all laying down when I got to them.

Q. Do you know for sure that Ralph was in that first north? A. Yes, sir.

Q. Do you not know what caused the explosion? A. No, sir.

Q. Do you remember where the shots were? A. Yes, sir. I waited until the second shot of Knighton's had gone.

Q. And the first shot of Knighton's caused the explosion. A. Yes, sir.

Q. How long after the first shot till the second one? A. May be about ten or twelve seconds.

Q. Had the force of the explosion gone? A. Yes, sir. It was over before the other shot went.

Q. Did any fire reach you? Did you see fire? A. Yes, sir.

TESTIMONY OF TOM LEEPER.

Ques. What is your name? Ans. Tom Leeper.

Q. You are employed at the air shaft? A. Yes, sir.

Q. That is the shaft where the fan is? A. Yes, sir.



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Q. Have you any orders in regard to starting the fan when the shot-firers go in? A. When the last man comes out of the shaft I stop the fan.

Q. You never had any orders in regard to it? A. I do not know that I had any particularly, only the pit boss did at the other place, and I always shut it down when the men were all out.

Q. Do you remember whether the fan was running the night of the explosion? A. I think it was.

Q. Then it was not shut down because you did not know that they were going to fire? A. No, sir.

TESTIMONY OF JONATHAN SCHWAB.

Ques. What is your name? Ans. Jonathan Schwab.

Q. You are one of the owners of the Weir Junction Coal Company's mine No. 2? A. Yes, sir.

Q. You were there on the day of the explosion? A. Yes, sir.

Q. Did you or some one else have charge of the mine that day? A. I had charge of the mine on that day.

Q. Do you know what orders the shot-firers had in regard to firing shots? A. No, sir. I did not give any orders; only in the morning I asked one of the shot-firers if he would get Ralph Ridley to fire with him, and he got him at noon, and he was firing with him in the evening. Farther than that no instructions were given.

Q. Do you know the reason why they fired the shots that day when the men were in the mine? A. Well, Mr. Archer and I were in the second south entry, and I was talking over the arrangement of the shaft with him, and when he and I came out we met two of the men that were working day work, and he said that one of the shot firers was lighting up, and so we did not deem it best; so we started to the main east entry.

Q. And they did not have any orders from you to fire the shots? A. No, sir; not at that time. Mr. Archer and I intended to go to the top before the shots were fired.

Q. Who was with you in the east entry? A. Alf. Ridley, F. Vanvellger, John Archer; a little later Billy Jones came in. He is one of the shot firers.

Q. Was any one else working on that side of the pit but who you named? A. No, sir; Mr. Knighton had gone up; Ralph Ridley was working in the west side, but he was firing. He went up to fire the shots in the second south.

Q. You saw Ralph Ridley after that? A. When we were all on the bottom I said, "Ralph, where was you?" and he said, "I found myself here"; then I began to look for means of escape, and after that I did not see him any more.

Q. Do you remember anything that happened down there after you got to the bottom? A. I called up for them to start the fan, and they said they could not, and my brother said to come up the manway. I could not find the manway, and they told me to catch a rope. That is the last I remember.

Q. You do not remember any more that happened? A. No, sir.

Q. You have seen Ralph Ridley since then? A. No, sir.

Q. Well, what was the condition of the mine in regard to dust? A. Well, the second south seemed a little dry, and I did not see any unusual amount of dust in any other way.

Q. Was it dusty or just dry? A. It was just like a dry road.

Q. You was pretty well over the pit? A. Yes, sir; I was in every entry in the shaft that day.

Q. I understand that the condition was not dusty? A. It was a damp bottom. The second south was dry.



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Q. You have not seen any of the boys that were hurt? A. I have not seen any but Willie Jones, and he came to see me.

Q. You do not know anything as to the condition of the mine since the explosion? Do you know that the explosion started from the shot in the second south entry? A. Yes, sir.

Q. You say you did not see that shot that day before it was fired? A. Yes, sir. I did not notice it in particular. We were looking at the coal, and we noticed that there was a right new cutting and shot in each side, but I did not examine the shots.

Q. How much time was there between these two shots? A. About twenty seconds.

Q. Was there any fire where you were? A. I saw some when I said, "Faces down," but I did not look to see any come back down.

Q. You know where Ralph was when the explosion took place? A. No, sir.

Q. You came up through those abandoned roads? A. No; we came around the main east entry to the air-shaft and crawled through at the run-around.

Q. Had you ever left any orders with the pit boss to keep the places sprinkled with water? A. I spoke about watering it. I saw him water it twice.

Q. Do you know when it was watered last? A. I do not.

Q. When was the last time you remember of before the explosion? A. About ten days ago, or rather prior to the explosion.

Q. Had the shot-firers made any complaint as to the places being dry? A. No, sir.

TESTIMONY OF JAMES ORR.

Ques. What is your name? Ans. James Orr.

Q. What is your occupation? A. Deputy mine inspector.

Q. Were you notified of an explosion at the Weir Junction Coal Company's mine No. 2. A. Yes, sir; about eight o'clock on the evening of the explosion the line man from the 'phone office came to my house and told me there was a 'phone call for me. I had just got in from Mackie's mine, had my supper, dressed, and went up town again. I went to the 'phone and they told me there was an explosion out here, and to come over right away. I went right home, hitched up, and it was about nine o'clock when I got over here, and they had the men all out of the mine. This Fred Vanveller was lying in the blacksmith shop.

Q. Did you see Ralph Ridley that night? A. No, I did not.

Q. Did you see him any time after that? A. The next morning.

Q. Did you look at him to see whether he had got hit with anything? A. I went to his home the next morning and went in to see him. They had him laid out, and I noticed an abrasion over, I believe it was, his left eye, and a few little abrasions over his face, and I noticed on the back of his neck from his right ear down to the collar on his shirt that it was blue, like he had got a lick with a rock or something. That is about all I know as to whether he got hit with something; and furthermore, that he was the most likely man to survive the after-damp, provided he had not got a blow.

Q. Then it was your opinion that he got a blow? A. Yes, sir.

Q. You have been down in the mine since the explosion? A. Yes, sir; practically made two visits. The first I made was not for any investigation. Mr. Schwab had acquainted me with the fact that he had wired Mr. Casselman to be here, and under the conditions I thought it was best that you be here to have this report, and I went home. In the morning, before I come out here, they said that you was here now, and I come on out thinking that you would be here. I waited here until about eleven o'clock, and we went in and went through the mine as we did to-day, but going into that second south it seemed to be pretty

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badly smoked in there yet. The smoke seemed to hang in a vapor, and we did not know whether there was any gas or not and did not examine the shots very thoroughly. That day we examined the shot it looked like it had done its work better than I realized to-day.

Q. About how big was the shot? A. Well, I could not tell the depth of the hole, but the thickness of the shot was about four and one-half feet across, and from the depth of the hole, from the piece of coal that was standing on there, was about four feet.

Q. And was the hole past the cutting any? A. Yes; the hole, as near as I could get at it, was about sixteen or eighteen inches ahead of the cutting.

Q. What was the cause of the explosion? A. Well, I do not know. My idea is that the explosion was caused by those shots—through the agitation of those shots back through those old workings, where the force seemed to be more severe, and think that it has taken down through there; and the dust has been an important factor in making the explosion as severe as it was.

Q. Well, now, from the face of the second south entry, which way did the force of the explosion seem to travel? A. Well, it seemed to travel down through those rooms until it come down by the air-shaft, and seemed to have brought the stoppings out on the straight entry.

Q. The force of the explosion traveled west down through the rooms along the main entry west of the air-shaft? A. I think it took that course going down, and coming back east after it got onto the main entry at the first south, being confined where that brushing was being done.

Q. Is it your opinion that the dust had something to do with that explosion? A. Yes, sir.

Q. Would it be possible, after the explosion had started, for it to light some empty powder-cans that might be sitting around? A. It is possible, but does not seem to be in that case.

Q. And there is powder that is in the neighborhood of sixty or seventy feet from the first south that has been exploded? A. Of course, those were factors in the explosion.

Q. Were you ever down through those rooms before the explosion? A. Yes, sir.

Q. What condition were they in then? A. They were in what you would term a fair condition, any more than they were dry, and fine particles of dust and coal lying through them, and the dust that will accumulate through these places with the concussion of the shots.

Q. Were these rooms abandoned? A. I do not believe they were working at that time.

Q. And these roads were abandoned? A. There were some of them open and connected from the first south to the rooms on this east entry through the main shaft. There were three men working—two men working and the third was not in.

Q. When you was down through these rooms they were drier than you thought they should be, and you ordered him to keep them damp. A. Yes, sir.

Q. Do you know whether he has done it? A. Nothing only what he testified here.

Q. Do you think that the fact that the fan was running had anything to do with the explosion? A. It would not have anything to do with causing the explosion any more than it would make it more terrific when the explosion had taken place for the reason that the air would be cool and would be propelled in against the course of the explosion; the expansion would be so great that it would increase the force of the explosion.



TESTIMONY

IN AN INQUIRY HOLDEN AT BURLINGAME, KAN., DECEMBER 17, 1903, BY DEPUTY STATE MINE INSPECTOR THOMAS HERZOG, TO INQUIRE INTO THE DEATH OF ANTHONY FOSTER.

ED. HOTCHKISS, being called as a witness, and being by me first duly sworn, testifies as follows:

Ques. Where were you yesterday afternoon? Ans. Over to the shaft.

Q. It was about two o'clock this accident happened at Hotchkiss's shaft, was it? A. Yes, it was about that time?

Q. Were you there at the time? A. Yes, sir.

Q. Was it any fault of the company that the accident happened? Were you furnished plenty of props and timbering of the proper length? A. Yes, we always get all we want.

Q. Was it good timbering or was it rotten, and were they sawed straight? A. Yes, the stuff was all right.

Q. Did you work with him? A. Yes, sir.

Q. Did you feel of the roof to see if it was safe? A. No, not there; we knew it was loose at another place and propped it up.

Q. Do you know whether it was propped up where the roof slipped? A. No, I am not sure whether it was propped where it slipped.

Q. How long was he under the chunk? A. I guess about twenty minutes.

Q. Who took him out? A. Sandy Hotchkiss.

Q. Was he the first one there? A. I think he was.

Q. Did you always have all the props you wanted of the right size and kind? A. Yes, sir.

JAMES PYLE, being called as a witness, and being first duly sworn, testifies as follows:

Ques. Were you over to the shaft when the accident happened yesterday? Ans. Yes, sir.

Q. Did you help get him out? A. Yes, sir.

Q. What position was the body in? A. Lying on his side. You know how a man lays to mine.

Q. How big a rock was on him. A. Well, I do n't know.

Q. Do you know whether they got all the props they wanted and of the right size? A. I always did.

Q. Were they good or rotten timber? A. Good.

Q. How was the ventilation there? A. Good.

Q. Do you know of any reason at all that caused the accident, or anything the company could have done to caused it not to happen? A. No, sir; I think it was merely an accident which could n't be helped.

Q. Was it a blind slip? A. Yes.

Q. How long was the chunk? A. I guess about twelve feet.

Q. And how wide was it? A. About three feet at the point, and kind of got bigger; shaped like this (here witness describes a wedge shape). I was excited, and did n't take much notice of the chunk, but think that was about the way of it.



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SANDY HOTCHKISS, being called as a witness, and being duly sworn, testifies as follows:

Ques. Were you at the shaft yesterday when this accident happened? Ans. Yes, sir.

Q. In there when it happened? A. Yes, sir.

Q. How big was the rock that fell on him? A. I guess over a ton anyway.

Q. Was he dead when you got there? A. Yes, sir.

Q. Did you see any props in there? A. I did n't pay any attention; I don't know.

Q. You work there, don't you? A. About thirty feet from where he worked.

Q. Have you been bothered about getting timbers? A. I never have been.

Q. Is it your opinion the top was propped right? A. I can't tell about that.

I was excited and did n't pay any attention, but helped to get him out.

Q. How was the ventilation in that shaft? A. All right.

Q. Do you know of anything that could have been done by the company to avoid the accident? A. No, sir, I don't.

JAMES HOTCHKISS, being called as a witness, and being first duly sworn, testifies as follows:

Ques. Do you work over there where this accident happened? Ans. Yes, sir.

Q. Were you there? A. No, about ten minutes afterward.

Q. How far do you work from him? A. About 300 feet from there.

Q. Did you ever have any trouble getting timbers? A. No, I never did.

Q. Were they of the proper length? A. Yes, sir.

Q. Do you know whether the room was propped right? A. No, I never paid any attention.

Q. Did n't know whether there was any props there? A. No.

Q. Did you see any props? A. I never noticed.

Q. Was he dead when you got there? A. Yes, sir, he was.

JOSEPH ATKINSON, being called as a witness, and being first duly sworn, testifies as follows:

Ques. You were at the shaft yesterday when the accident happened? Ans. Yes, sir.

Q. When did you know it first? A. Some one told me.

Q. Who was there when you got there? A. Ed. Hotchkiss, Sandy Hotchkiss, James Hotchkiss and James Pyle was there.

Q. How much dirt was on him? A. About two tons.

Q. Do you know of anything on the part of the company that could have been done to avoid this accident? A. No, I don't. I guess he got everything he needed.

Q. Was the place properly timbered? A. I don't know; I did n't examine anything. The only thing I tried to do was to help get him out.

Q. Was he dead when you got there? A. I thought he was, but the doctor thought he breathed a little.

Q. About how long was the chunk on him? A. About ten minutes, near as I can guess.

Q. Did you get all the timbers you needed? A. Yes, sir.

Q. Properly sawed? A. Yes, sir.

Q. Did you ever get bad timbers? A. Once in a while.

Q. Did you ever use them? A. No.



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ED. HEPWORTH, being called as a witness, and being first duly sworn, testifies as follows:

Ques. Were you over there at the accident at Hotchkiss's? Ans. Yes, sir.

Q. How far did you work from Anthony Foster? A. Between 300 and 350 feet.

Q. How long had he been under the chunk when you saw him? A. About five minutes.

Q. How big was the chunk? A. Between 1600 and 2000 pounds.

Q. Did you always get all the necessary timbers and props of the right length? A. Yes, sir.

Q. Cut square? A. Yes, sir.

Q. Properly sawed? A. Yes, sir.

Q. Did you notice whether the top was propped where this accident occurred; that is, if it was propped right? A. I cannot tell. I don't know anything about the prop, as I was some excited.

DR. D. N. GOLDMAN, being called as a witness, and being first duly sworn, testifies as follows:

Ques. You were called to attend Anthony Foster yesterday, were you, doctor? Ans. Yes, sir.

Q. Please make a statement of your examination. A. I seen him about half an hour after the accident happened. I could then detect just a faint beating of the heart and a little pulsation. I made a thorough examination without taking off his pants, and failed to find any external bruises, but the blood was oozing out of his mouth, which was about the only injury I could see on the body. I felt of him and did not find that any bones were broken. I examined his legs, arms and chest with the same result. I could find no bones misplaced or broken and think the dirt simply squeezed him, death resulting therefrom.

Q. You think he died from injuries received in the mines? A. Yes, sir. It seemed as if he had just been squeezed to death.

THOMAS HERZOG, deputy state mine inspector, after an examination of the shaft where Anthony Foster was killed, makes the following statement:

James Pyle, acting as committeeman, Neil Hotchkiss and myself made an examination of the place where Anthony Foster was killed, and found a chunk of rock about twelve feet long and about two and one-half feet through. It looked as if there had been a post under it, but had been knocked out for the purpose of mining through. The piece that fell was a slip running up to the face, and a break at the face had made it loose. I believe that the prop being knocked out caused the dirt to fall. It does not seem to be the fault of any one; only an accident that might occur at any time under these conditions.

STATE OF KANSAS, COUNTY OF OSAGE, SS.

Frank E. Leonard, of lawful age, being first duly sworn, says that the above is a true and correct copy of the testimony given by the foregoing witnesses in the above-named hearing, and that it is a true transcript of the evidence as taken by him in shorthand at the time above mentioned. FRANK E. LEONARD.

Subscribed and sworn to before me, this 30th day of December, 1903.

[SEAL.]

T. A. ELLIS, *Notary Public*.

Commission expires April 20, 1907.



INVESTIGATION

OF THE EXPLOSION AT THE FLEMING COAL COMPANY MINE No. 4, WHICH
OCCURRED APRIL 21, 1904.

WRIGHT SHAW, jr., being first duly sworn, upon his oath testifies as follows:

Ques. State your name. Ans. Wright Shaw, jr.

Q. What is your occupation, Mr. Shaw? A. Coal-miner.

Q. Was you at work on the 21st of this month? A. Yes, sir.

Q. What entry do you work in, Mr. Shaw? A. Second south.

Q. How many shots had you in, on that day, Mr. Shaw? A. Three; two small and one large.

Q. How many of these shots had you fired? A. None was fired.

Q. How much powder do you generally use, Mr. Shaw? A. I don't use as much powder as the general run of men.

Q. State about the depth you had your holes, and how much powder you had in them. A. Five feet and one-half, with thirty inches of powder in one; and the other had three feet and one-half hole, with fourteen inches of powder.

Q. In what condition was your place, Mr. Shaw? A. It was damp.

Q. Damp or wet? A. It was n't wet; just a little damp along the bottom.

Q. Had you any occasion to be up in those old rooms between the second and third south? A. No, not lately; I was up in there several times before the explosion.

Q. What was your idea as to that place being wet or dry? A. I think they were a little bit wet—a little bit moist along the side.

Q. This was before the explosion I had reference to? A. Yes, sir.

Q. About how many shots is the general rule for men to put in, as to your knowledge? A. Well, I should judge about three shots to a man.

Q. Are they very large shots? A. Not generally; one small one and two large.

Q. Have you ever noticed any gas in your place of work? A. No, sir.

Q. Was you in the mine after the explosion? A. Yes, sir.

Q. Have you formed any opinion as to the cause of the explosion? A. Yes, sir, I have. I think it was from the firing shots too rapid and accumulation of gas, which ignited, caused the explosion, which I think started in the third south.

JOE BRENNAN, being first duly sworn, upon his oath testifies as follows:

Ques. What is your occupation, Joe? Ans. Miner.

Q. What part of the mine are you working? A. Third south, second room on the east side.

Q. How many shots had you in on the 21st of this month? A. Two shots.

Q. Do you know whether your shots are hard or windy? A. Never been told of it.

Q. About how much powder had you in? A. Three feet in one and three and one-half in the other.

Q. In about what shape was your shots placed, Joe? A. In what shape?

Q. Yes. A. I thought they were in good shape.



Q. Have you at any time noticed any gas in your place of work? A. No, I have never seen any gas in this shaft.

Q. What was the condition of your place, dry or wet? A. It was dry.

Q. Was there much dust in your place? A. No, not a great deal; I always clean up everything.

Q. Have you ever been up in those old rooms between the second and third south? A. No, sir.

Q. About what is the general number of shots you have? A. Two, sometimes three, not more than that.

Q. How was that hole you drilled in the right-hand side of your place? A. The right side facing to the right; I never fired in the south.

Q. Did you put the powder to the back of that shot? A. Yes, sir.

Q. You do not use any dynamite, do you? A. No, sir.

Q. Was there any loose timber or any loose coal in your place when you left it on the night of the explosion? A. Just a little slack.

Q. How is the entry, wet or dry? A. The entry is dry.

Q. Dry enough to be dusty? A. No, not dusty; and it was not wet.

Q. Have you been down in the mine since the explosion? A. No, sir.

Witness examined by Mr. Fleming: Ques. You spoke of your place being dry, Joe, or did you mean it to be dry along the ribs? Ans. It is dry, but along the ribs it is a little bit damp.

Q. Did you intend that left-hand shot to go off first? A. Yes, sir,

Q. How deep was your powder? A. Five feet, I believe.

Q. In which one did you have the three-foot powder? A. First one.

SAM MICHAELS, being first duly sworn, upon his oath testifies as follows:

Ques. What is your occupation, Sam. Ans. Miner, I guess, now.

Q. Were you working on the 21st day of this month; that is, the day of this explosion? A. Yes, sir.

Q. What part of the mine do you work in? A. Third south to the east.

Q. How many shots did you have in? A. Three.

Q. About how much powder did you have in them? A. As near as I could guess, about two and one-half feet of powder in one and two feet in other.

Q. How deep was the first one? A. I had about two feet of powder in one, or somewhere near there.

Q. How much was in your second one? A. I had about two and one-half in one, Jim, as near as I could guess; had about two and one-half in one and about two in the other, as near as I can guess.

How many cans of powder would that take—two? A. No, I would not take a can of powder; I had the shots a little small.

Q. What is the condition of your place as to being wet or dry? A. Well, it was dry.

Q. How many shots do you generally shoot at night? A. Generally two to three small shots is just about all; get out about six to eight cars.

Q. Did you ever notice any gas in your place? A. No, sir.

Q. Have the shot-firers at any time ever cautioned you about your shots being hard or windy. A. No, sir; not lately.

Q. When did he, if at any time? A. He cautioned me a long time ago about using long fuse; he told me to be sure and use long fuse. One of the shot-firers was in my room (Pigeon, they call him) just a few minutes before the explosion.

Q. About what time was that? A. About twenty minutes past three, as near as I remember.



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Q. Have you ever been down in those old rooms between the second and third south? A. Yes, sir; I believe I have been there.

Q. In what condition were they, in reference to being dry or wet? A. They were rather dry. All the places I have worked they have been dry, as near as I can remember.

RALPH MICHAELS, being first duly sworn, upon his oath testifies as follows:

Ques. What is your occupation, Ralph? Ans. Digging coal.

Q. Were you at work on the day of the explosion, on the 21st day of this month? A. Yes, sir.

Q. What part of the mine do you work in, Ralph? A. Third south, in second room.

Q. On which side? A. Right-hand side going in.

Q. How many shots had you in that day? A. Three.

Q. How much powder did you have in them? A. I had two feet in one, and two feet in one, and about twenty inches in the other.

Q. What depth was your holes? A. I had about six feet, about five and one-half feet, and about four feet and four inches, as near as I can remember.

Q. Were any of these shots following shots? A. No, sir.

Q. How is your place, Ralph, wet or dry? A. Dry.

Q. Is it dry enough for dust to accumulate along the ribs? A. Yes, sir.

Q. Is there considerable dust in your place? A. No, sir, not considerable.

Q. Do you ever use any dynamite? A. No, sir.

Q. About how much powder did you have in your shots—over a can? A. In all three shots.

Q. Have the shot firers ever cautioned you about your shots being hard or windy? A. No, sir. They cautioned me about using long fuse.

Q. When did they tell you to use long fuse? A. I don't remember just now; but several times they said to use long fuse; never have found fault with my shots.

Q. Have you ever been down in those old rooms between the second and third south? A. No, sir.

FRANK USREY, being first duly sworn, upon his oath testifies:

Ques. What is your occupation? Ans. Digging coal.

Q. How long have you been digging coal, Frank? A. About six or seven years.

Q. Was you at work on the 21st day of this month, the day of the explosion? A. Yes, sir.

Q. What part of the mine do you work in? A. Third south.

Q. In what room? A. First room on the right where you go in.

Q. How many shots had you in? A. Two.

Q. How much powder had you in them? A. Two and one-half, six-foot hole; sixteen inches in the other, I believe.

Q. In what condition is your place in, wet or dry? A. Dry.

Q. Was there any dust in it? A. No, not dry enough to be dusty, and not to say wet.

Q. What do you mean when you say not dry enough to be dusty? A. Just wet enough to keep the dust down.

Q. How many shots have you been firing? A. About two.

Q. About how much powder do you generally use—a jack every day? A. No, about three jacks a week.



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Q. How much powder did you have in, to your knowledge. A. About three feet, I suppose.

Q. What was it in? A. Powder jack.

Q. Where did you have the jack? A. Sitting in the middle of the room.

Q. Do you ever use any dynamite in connection with your powder? A. No, sir, not anything.

Q. Had the shot-firers ever cautioned you as to your shots being hard or windy? A. No, he said my shots were all right, when I have ever asked him about them.

Q. Have they ever left any shots for you? A. No, sir.

Q. Do you know of any person in the mine that they have left shots for? A. I have heard lots of them talk about it.

Q. Do you know whose shots they have left? A. No, sir.

Q. Did you hear in what rooms they were left? A. No; I have heard them say they were left.

Q. Have you ever discovered any gas in your place at any time? A. No, sir.

Q. Have you ever been down between the second and third south in the back entry? A. No, sir.

[Any questions to ask, Mr. Fleming?]

Q. Was either of the shot-firers in your place? A. Yes, Matherson was in. He come in and split the fuse.

Q. What do you suppose he split the fuse for? A. So he could light it, I suppose.

Q. Well, is he in the habit of coming in and splitting the fuse? A. Yes, sir.

Q. Is yours the only place he is in the habit of doing this? A. I believe I have been in two different places where he has split the fuse.

Q. I suppose he did that so he could light the easier and quicker? A. I suppose so.

Mr. Orr, examining witness: Q. What other places have you been, Frank, when he would split the fuse? A. Will Newberry's, Ralph Michaels, and, I believe, Joe Brennan.

Q. What was the condition of those places as to being dry or wet? A. Not any of them dry or wet.

Q. Well, were you in the mine when any of the shots were fired? A. No, sir.

Q. What time do they generally go into the rooms to split the fuse? What time was it when they were in your place? A. Ten minutes before three, I believe.

Q. Who was it came in your place? A. Matherson.

JOE KAROWPA, being first duly sworn, upon his oath testifies as follows:

Ques. What is your occupation—what do you do? Ans. Work in a mine; dig coal.

Q. Was you at work on the 21st day of this month? A. Yes.

Q. What part of the mine do you work in—what place? A. The first room, third south, on the right.

Q. How many shots did you have in that day, Joe? A. Two; one little one and one big one.

Q. How much powder did you have in those shots? A. Three feet eight.

Q. How deep were your holes? A. One about two feet, one about six feet.

Q. One can of powder in these two shots? A. No.

Q. How much powder in your can? A. About one-half powder in the can.

Q. Is your place dry or wet? A. On the right side a little wet; no water in it.

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- Q. The other side dry? A. Not dusty.
 Q. Just a little wet, but no water? A. Yes.
 Q. Do you ever use any dynamite, Joe? A. No.
 Q. Not at all? A. No.
 Q. Have you ever fired shots in this place, Joe? A. No, sir.
 Q. Have you ever been in the old rooms between the second and third south?
 A. No; never been down in there.
 Q. Did the shot-firers ever tell you your shots shot hard or windy? A. No, sir.
 Q. Have you been through the part since the explosion? A. No, sir.
 Q. You mean you have not been through the place since the explosion? A. No, sir; this is the first, to-day.
 Q. How many shots do you generally have in at a night? A. One and two.
 Q. Never three shots? A. No, sir.
 Q. How much powder do you generally use—a can a day? A. A can of powder about every second day.
- ED. OLPKIN, being first duly sworn, upon his oath testifies as follows:
 Ques. What is your occupation? Ans. I have been following mining the last two months.
 Q. Were you working in this mine at the time of the explosion? A. Yes, sir.
 Q. What part of the mine did you work in? A. Second south.
 Q. How many shots did you have in that day? A. Three.
 Q. What room did you work in second south? A. Well, I cannot exactly explain—second across, going east.
 Q. That is how many from the face? A. Three places from the face.
 Q. You got three shots in that day? A. Yes, sir.
 Q. How much powder did you have in these shots that day? A. I could not say exactly; from about 36 inches down—the small one about 20 inches long, one about 36.
 Q. About how much powder would that be, with reference to the jacks of powder? A. I took a new jack of powder in; I guess it took the whole thing.
 Q. About how much powder do you generally use when you work—about a jack a day? A. No, sir; think about three jacks of powder in five days.
 Q. Three jacks of powder in five days? A. Yes, sir.
 Q. Is your place dry and dusty, Ed.? A. No; it is damp in the bottom.
 Q. About how much powder does a man generally use, to your knowledge, in firing? A. I do not know; can't say as to any one else.
 Q. Have you at any time fired shots in this mine? A. No, sir.
 Q. Have the shot-firers ever cautioned you about your shots being hard and windy? A. No, sir.
 Q. Have they ever left any shots for you? A. No, sir.
 Q. Do you know of any one else? A. Yes, sir; they left one shot for a boy by the name of Michaels just a few days before the explosion.
 Q. Have you heard the reason? A. I believe they said it was too hard.
 Q. Had any one else examined the shot? A. I do not know.
 Q. Have you ever heard anybody make any assertions as to this mine being dangerous in firing? A. No, sir.
 Q. Have you at any time ever found any gas in your place? A. No, sir.
 Q. Have you at any time been down in the old rooms between the second and third south? A. Yes, sir; I have been through them.
 Q. I mean before the explosion? A. Yes, sir.
 Q. Well, what condition were these places; were they dry or wet? A. They

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were about the same as the general run of the rooms after the shots were fired, if I remember right.

Q. Were they dry and dusty? A. They were not dusty, as far as I could see, nor they were not wet.

Q. Do you think they were moist enough to prevent any accumulation in dust? A. I should think so.

WM. REESE, being first duly sworn, upon his oath testifies as follows:

Ques. What is your occupation? Ans. Coal-miner.

Q. Was you at work on the day of the 21st of this month? A. Yes, sir.

Q. How long have you been digging coal? A. About two years.

Q. What part of the mine do you work in? A. Second south in the second room on the west side.

Q. How many shots had you in on that day? A. Two.

Q. How deep were they? A. Two feet in one and three feet in the other.

Q. How much powder do you generally use? A. It is owing to the number of feet.

Q. About how many shots do you usually put in? A. Three.

Q. How much powder would that be? A. I use a jack of powder about every two days; but here lately the room I was in I used a jack every three days.

Q. Have the shot-firers ever cautioned you about your shots being hard or windy? A. No, sir.

Q. How was your place, dry or wet? A. Dry.

Q. Dry enough to be dusty? A. No, I don't believe it was.

Q. Have you ever noticed any gas in your place? A. No, sir.

Q. Have you been in the mine since the explosion. A. No, sir.

Q. Were you ever down in those old rooms between the second and third south? A. No, sir. I have been up in the main entry.

Q. Have you ever been in the back entry at any time? A. No. I was up the back entry about three south.

Q. What was the condition of the place, wet or dry? A. I don't remember now. I think it was about the same as the other rooms, just a little damp on the bottom.

WM. WILLIAMS, being first duly sworn, upon his oath testifies as follows:

Ques. What is your occupation? Ans. Miner.

Q. What is your present occupation? A. Mine foreman.

Q. How long have you been mine foreman of this mine? A. Ever since last May.

Q. Did you engage Mr. Shoopman and Mr. Matherson as shot firers of this mine? A. Not on the start.

Q. Who did? A. Billie Green engaged them. They were firing when I took charge of the place.

Q. Did you consider them to be practical shot-firers? A. Yes, sir.

Q. Had they in any way made any complaint to you in regard to windy shots or men putting their shots out of proportion? A. Yes, sir.

Q. How often have they done that, Mr. Williams? A. Several times.

Q. In what portion of the mine was it? A. The first one, I believe, commenced in the first north entry; then there was one about a week ago.

Q. Do you make it your business to go and investigate? A. Yes, sir; Sam has called my attention to it.

Q. What were your instructions when they would complain? A. Well, I would not fire it, either.



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- Q. Do you think they used that kind of judgment in all shots that they fired?
A. No, sir; I know that they did not.
- Q. When was the last time they have made complaint to you? A. About two weeks ago.
- Q. What place was that in? A. That is the place I don't remember; I was in at the place the next morning, but I just don't remember the place now.
- Q. Was there no one else went with you? A. No, sir; I never take any one with me.
- Q. Had you at any time fired with either one of these men? A. Yes, sir; with both of them.
- Q. About how many shots would you light at a time? A. To start west entry; Joe Brennan was driving the back entry; the first shot then went in the south.
- Q. About how many on the west? A. About two shots around.
- Q. How many was that? A. About eight shots; just four places there.
- Q. About how many shots would you have on the east side, first north entry, on drilling to shoot east entry, on first south entry, in the same place? A. About sixteen shots.
- Q. Did you fire them all together? A. No, sir.
- Q. At that time did you ever have any wind or hard shots? A. Never, but once; had a windy shot.
- Q. Did you ever examine the shot? A. I know the very man that drilled it.
- Q. Is that man working here at the present time? A. Yes, sir.
- Q. Have you ever found any gas in that place? A. No, sir.
- Q. Have you ever cut any horseback? A. Never have.
- Q. About what time would the shot-firers generally go down? A. About five to fifteen minutes past three; it was never later than fifteen minutes past.
- Q. In your judgment, how many shots can they light at one time? A. Just as far as they could run and light; they say they have lighted as many as forty shots.
- Q. Was you ever down in the old rooms between the second and third south.
A. Yes, sir.
- Q. How long ago? A. I was through them the day before the explosion.
- Q. What condition were these room in. A. Good shape.
- Q. Wet or dry? A. No, it was not to say wet, the rooms are all dry.
- Q. Have the shot firers ever complained to you about the places being dry or wet? A. No, sir.
- Q. Have you formed any opinion as to the cause of this explosion? A. Nothing more than the cold air and hot air coming in contact with each other.
- Q. What is your reason for saying the cold and hot air coming in contact with each other would cause an explosion? A. Well, the shaft was full of hot air; of course that smoke was hot air; and then starting up the fan, that would cause the cold air to become hot, and it had to get away some place.
- Q. Don't you think that the cold and hot air came in contact with something else? A. It sure had to take a windy shot to start it.
- Q. You have never seen any gas in these rooms? A. No, sir; never have.
- Q. What were your instructions to the shot-firers? A. I told them to fire one working-place at a time.
- Q. That was the order you gave them? A. Yes, sir.
- Q. What were your orders in case they would not comply with them? A. I have never given any.
- Q. To your knowledge they were firing more than one place at a time?
A. Yes, sir.

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Q. Had you ever cautioned them not to do this? A. Yes, sir; they both talked to me that evening about running the fan faster, and I told them I would run it like I always had.

Q. What did they say? A. They did not see why I could not run it a little faster.

Q. Did they ever complain of having windy shots in other places? A. Yes, sir. They could not tell which place it was in.

JIM BULLOCK, being first duly sworn, upon his oath testifies as follows:

Ques. What is your occupation, Jim? Ans. Mining; I follow a little of everything here, working day work.

Q. Doing anything that is to be done? A. Yes, sir.

Q. Was you at work on the day of this explosion? A. Yes, sir.

Q. What portion of the mine had you been working in on that day? A. I was working on the bottom.

Q. How much powder do you generally use in a day when you were digging? A. Well, that depends upon the depth, or how many shots.

Q. Do you use any giant powder? A. No, sir.

Q. In regard to your place, is it dry or wet? A. With the exception of one place, they have all been damp at the bottom.

Q. You have been up through the old room between the second and third south? A. Yes, sir.

Q. What is the condition of these, dry and dusty? A. No, sir; some dust in them, but the entry was wet like, was damp; some dust had accumulated on the ribs.

Q. Do you think the amount of dust would help an explosion? No, sir; I don't think it would.

Q. Have you ever detected any gas in this mine? A. No, sir.

Q. Have you ever fired shots? A. Yes, sir.

Q. When? How often? A. In the month of January I fired seven shots, and five in February, none in March, and four in April.

Q. What was your general rule in firing? A. When I was firing with Shoopman, four places; when Frank and I would fire we would go together, eleven places.

Q. About how many shots, an average of two and one-half shots a place? A. Right close to thirty shots.

Q. In firing as many shots, did you ever notice any windy shot? A. I don't know as you would call them windy shots, but there was a difference in them.

Q. Where were they? A. From Brennan's place; and we always got fire from the second place north, where Jim was working.

Q. Any bad results prove from them? A. No, sir; no damage done.

Q. Had either of them fired shots that you have refused to fire? A. Yes; Shoopman has fired shots I have refused to fire, and so has Matherson.

Q. Well, did Shoopman and Matherson leave any notice when firing these that you thought were not safe? A. Not when I have been with them.

Q. In your judgment, did Shoopman and Matherson use good judgment in firing? Were they practical shot-firers? A. Shoopman used more precaution than Matherson. Yes, sir; I think they were.

Q. How long did it take you to fire the mine when you went with them? A. With Shoopman, one hour to one hour and fifteen minutes; Matherson, thirty to thirty-five minutes; have fired in twenty-eight minutes—eighty-two shots in twenty-eight minutes.

Q. In firing that rapid did you seem to have any bad results with them? A.



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No, could not see any difference with them. Course, the mine was hotter than if we fired slower.

Q. Have you been through the mine since the explosion? A. Yes, sir.

Q. What, in your judgment, caused the explosion? A. It is my opinion the cold air coming in contact with the two hot airs and struck a windy shot.

Q. Do you think there was enough dust between the second and third south to have helped cause the explosion? A. No, sir; I don't think there was.

Q. You say you have been through the mine since the explosion? A. Yes, sir.

Q. What was the condition of the old rooms between the second and third south? A. I can't see but little difference; I think it was a little bit damper than it is now.

Q. You think there has been more dust in there than there is now? A. Yes, sir.

Q. Do you know about how long they were firing? A. No, sir; I don't know just how long they were firing before the fan was turned on. I don't know just how long they left off; think west side second north.

Q. Do you know how long it was when they went down again until the explosion occurred? A. They would have to fire the east side of the second north and to third north, and shot east and third south, which would not take them long, probably twenty minutes; but there is only two runs to be made.

Q. Have you ever heard them make any assertions in regard to the mine being hard to fire? A. No, sir.

Q. Where, in your judgment, would the explosion start from? A. In my judgment it would have to start at Dave Parr's or from Brennan's place.

Q. What is your reason? A. By the timber being thrown on the main line.

Q. Were there much timber in Joe Brennan's place? A. About twenty props there.

Q. When did you see these props, Jim? A. The morning of the explosion. I went up there for something.

Q. Were there any timber there now? A. I think there is two props there now.

WM. CORKLE, being first duly sworn, upon his oath testifies as follows:

Ques. What is your occupation? Ans. Coal-miner.

Q. What part of the mine do you work in? A. East side.

Q. Were you at work on the 21st day of this month? Yes, sir.

Q. How many shots did you make a day? A. Three.

Q. About how much powder did you have in these shots? A. About a jack of powder.

Q. How much powder do you generally use on an average when shooting? A. I use about four powder jacks in five days.

Q. Do you use any giant powder in connection with your black? A. Not any for about seven months.

Q. Have you ever noticed any gas in your place? A. No, sir.

Q. Have you been up in the old rooms, between the second and third south, before the explosion? A. No, sir, I have never.

Q. In reference to your place, is it wet, or dry, or dusty? A. No; the back is dry, but my place is not dusty.

Q. To your knowledge, about how much powder does the rest of the men use, about as much as you do? A. I could not say; I guess they use about as much as I use, whenever I put in three shots.

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Q. Did the shot-firers ever caution you about your shots being hard or windy to shoot? A. No, sir.

Q. Have you ever been through the mine since the explosion? A. Yes, sir.

Q. Have you based any opinion as to what caused it? A. My opinion is it commenced on the south—I think Joe Brennan's place or across from Joe's place.

Q. Was you in Joe's place any time before the explosion? A. Yes, sir; once or twice.

Q. In what condition was his place? A. I never paid any attention.

Q. Was the shot-firers in your place before the explosion? A. No, sir; I did not see them.

Q. Have you on any occasion fired shots in this mine? A. I have, two or three times.

Q. Who did you fire with? A. Jim Bullock and Shoopman, I believe.

Q. In your judgment were they safe shots to fire? A. Seemed hard on his place.

Q. Did you fire any shots that would likely cause an explosion? A. No, sir.

Q. Did you ever have any windy shots? A. Yes, sir, I had a windy shot.

Q. What, in your judgment, caused it. A. I think it was the hard coal that did it.

Q. Do you consider this mine dangerous to shoot? A. Yes, sir, I do.

Q. Do you think it was dangerous to fire in this mine—that is, before this explosion? A. Yes, sir; I thought it was a little dangerous.

Q. Had any of these shot-firers ever made any assertions to you in regard to the mine being dangerous to fire? A. I think Sam said something to me once; I told him I believed it to be the hard coal.

Q. Well, could you devise any means to make it any safer to fire, or any idea to make it safe? A. I think it is safer to fire with squibs than to fire with fuse.

Mr. Fleming examines the witness: Q. Do you think, Will, this mine is any more dangerous to fire than any other mine around here? You mean when you say this mine is dangerous you think shot-firing is a dangerous kind of work in any mine; isn't that what you mean? A. I don't think firing in soft coal is so dangerous as firing in hard coal.

Q. Did you ever work up at Mineral? A. No, sir.

Q. What do you use? A. I always use squibs; I have never used fuse.

Q. You was in the mine after the explosion, to assist them? A. Yes, sir; was the first man to go down the shaft.

Q. Where did you find these men? A. We found Matherson about fifty-five feet south of the main way.

Q. What position did he seem to be in? A. Matherson was lying face downward, with his hands to the northeast.

Q. Did he seem as though he had been blown in that way? A. It seemed to me that he had laid down that way to keep from being burnt.

Q. Where did you find Shoopman? A. Shoopman was about seventy feet from the main way, and a little bit south.

Q. Where had he been burned? A. Shoopman was burnt on the face; his hair was a perfect crisp; hands pretty badly burnt.

Q. Do you think that Shoopman was blown away from Matherson? A. I could not say.

Q. Did his body show any evidence of bruises or cuts? A. Not very much; one place on his body looked as though he had been bruised.

Q. Had they been in the habit of going that way? A. They never went on the main entry if they light the straight east.



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Q. How many shots, or was there any shots in the south? A. I do n't know; looked like three shots.

Q. Who helped carry them out? A. There was myself, Ike Shaw, Bill Blair, Hugh Craig, assisted by Ross Davidson, Mr. Green, and Mr. Walker.

Q. What time was it when you located them? A. I do n't know just what time it was.

Q. Well, what time was it when you brought them out? A. Shoopman twenty five minutes till seven, and Matherson twenty-five minutes past six.

Q. What way did you take them out? A. Brought them out of the manway.

Q. What is your reason for taking them that way? A. It was nearer and less trouble and easier way to get them out.

OSCAR BATEMAN is duly sworn, and testifies as follows:

Ques. What is your occupation? Ans. Engineer.

Q. How long do you generally stay here, Oscar? A. Five o'clock.

Q. Is the shot-firers out generally by that time? A. Generally ten and fifteen minutes after five o'clock.

Q. You were here the night of the 21st? A. Yes, sir.

Q. Just state what happened that day, as near as you can. A. Well, there isn't much to say. They came out about twenty-five past four; Shoopman he ordered me to speed the fan faster, and I refused to do it; so he said he would fire shots; then he promised to wait twenty minutes before he fired any more shots, and I only run the fan eight minutes of any speed; and that is all there is to it and the explosion.

Q. What speed do you run the fan at through the day when the men are at work? A. I don't know.

Q. Can't you approximate? A. I don't have much idea.

Q. Will it run thirty or fifty revolutions per minute? A. About fifty revolutions.

Q. About how fast did you run the fan while the shot-firers were in the mine? A. About eight revolutions.

Q. After the explosion did you try to run the fan? A. Mr. Bullock said it could not be moved.

Q. Had they on any other occasion come up to speed up the fan? A. Since I have been running the engine, three or four times. They always stayed on top and would come together, and then they would go down; only one came this time.

Q. Did they ever make any complaint about the way the fan was running? A. They asked me to run it faster, and I would not do it.

Q. How soon after you had slowed the fan down until the explosion? A. About twenty-seven minutes.

Q. Who was the first man there after the explosion? A. Jim Bullock.

Q. Who else came after that? A. Came in so fast I could not tell. I believe Ross Davidson was one.

Q. Was this the first time they have asked you to speed up the fan? A. No, sir; they have asked me a number of times to run faster.

Q. Did you do it? A. No, sir; I have not.

Q. What is your reason for not speeding up the fan? A. I did not believe it was safe. I leave that to the pit boss, unless they come up and ask me; then they said they would wait on the bottom twenty minutes.

Q. You promised you would run the fan twenty minutes; what is the reason you did not do it? A. I did not think it was safe.

Q. Do you think they had gone in and started to fire the shots? A. No, I did not then, but I do now.

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Q. What is your reason for running it eight minutes when you promised them twenty minutes? A. I think it was safer.

Q. Can you hear the shots going off? A. I can hear them in the second south, some of them.

Q. Did you hear the shots going off that night? A. No, sir.

Q. You heard them firing in the first north? A. Yes, sir.

Q. How rapid did they go? A. Pretty fast.

Q. Did you hear any shots being fired after they had come up? A. Not after they had come up. I did not hear any shots.

Q. Did the concussion affect the fan any? A. Threw the belt off of the fan.

Q. How long was it after the explosion until the fan was started up again? A. Not over four minutes. I started it as soon as I could put the belt on.

Q. Did some one order you to stop the fan? A. Yes, sir; Mr. Newland.

Q. How long? A. I don't suppose it took over five minutes to put it back on.

Q. What was his idea for stopping? A. I believe Bullock said they were in the sump. I believe that was his idea.

Q. How soon was it after putting on the belt until Bullock came up; until the other came down? A. I don't know the next that went down. He went down the air-shaft.

Q. Was you in the mine after the explosion? A. No, sir.

Q. Did you see these men, Matherson and Shoopman? A. Yes, sir.

Q. Did you examine them closely? A. No, sir.

Q. Could you see whether they were burned or not? A. Shoopman was burned and had some bruises. His hands looked to be burnt and scorched, and bruises were on his face and cheeks. I saw Matherson after they had taken him to Columbus.

Q. Did he seem to have any bruises? A. No, sir.

JOHNNIE HILLER, being duly sworn, testifies as follows:

Ques. What is your occupation? Ans. Weighing coal here.

Q. Weighing coal? A. Yes, sir.

Q. Was you at work on the day of the explosion? A. Yes, sir; but I was at home when it happened.

Q. How many men are working here? A. About forty men the day it happened.

Q. Is that about the average number of men that work here? A. There has been as high as forty-five; but forty is about the average.

Q. How much powder, as near you can guess, did you issue? A. About as near as I can guess, from ten to fourteen kegs a day.

Q. How much dynamite do you generally give out? A. From eight to ten sticks; sometimes more.

Q. Is there any one that uses dynamite alone? A. Some that use dynamite without the black powder; some with and some without.

Q. Do you know how much powder you issued out that day and the day previous? A. No, I don't remember.

Q. Is there any of the men that get a full keg at any time? A. There has been, but not here lately.

Q. Is there any of the men here that use a jack of powder a day? A. Yes; some that use a jack every day.

Q. Some individual man? A. They may not get a jack every day; they might have enough left over for another day.

Q. Did you ever wait around the mine until the boys would come up? A. I have been here when they have come up, but not often.



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Q. About how long would it take them to fire the shots? A. I could not say, but it did not take them very long; they were generally out about five o'clock.

Q. Generally out about five o'clock? A. Yes, sir.

Q. Do you know when they went down to begin firing? A. They go down about 3 o'clock or 3:30; but it is after 3:30 when they begin firing.

Q. About how often would the men take a full keg? A. I don't just remember, but I remember two fellows that took a full keg down the past two months.

Q. Did you ever work down below? A. No, I never worked down below.

W. H. GREEN, being first duly sworn, testifies as follows:

Ques. What is your occupation? Ans. General mine foreman.

Q. Well, what do you have charge of, Bill? A. Fleming coal-mines Nos. 4, 5, and 6.

Q. Was you at No. 4 the day of the explosion, the 21st? A. No, sir; I was not over that day.

Q. How long before the explosion were you in the mine? A. I cannot say; just a short time—three or four days.

Q. Was you through the mine pretty generally? A. Down around in the east entry.

Q. In what condition was the mine, in regard to being wet or dry? A. I have never seen it no other way, Jim, but wet.

Q. Have you ever been in the second and third south? A. No; I never have been through those at all.

Q. You were mostly on the main entries? A. Yes, sir.

Q. What seems to be your opinion, in the judgment that the men used in placing their shots? A. All I can go by, Jim, never seen nothing but that crooked hole that I told you about. That was in Joe Brennen's place.

Q. Is it your opinion, Bill, that if a shot has too much powder, would it do too much work? A. I don't know that I ever seen that but once or twice in my life. In firing shots, a light shot with too much powder—that is my idea—a light shot is more dangerous than a heavy shot.

Q. Do you think, then, that shot had too much powder, Bill? A. I could not say, Jim; it seems to have done its work.

Q. Do you think, then, that if the powder had got to the back of the hole it would have done its work? A. Yes, sir.

Q. Did you give any special instructions? A. I give them to the pit boss. I instruct the pit boss to be sure his fan is slow; to tell the shot-firers, if the smoke got ahead, to go out and wait, and then go back to work.

Q. Had the shot-firers on any occasion made any complaint to you as to having windy shots? A. No, sir; never a word. I also told the foreman to abide by the contract; he said he would.

Q. Do you think he obeyed these instructions? A. No, sir.

Q. The shot-firers had never made any complaint or seemed as though they were timid about firing in this mine? A. No, sir.

Q. Have they ever left any shots in the mine that seemed dangerous or out of proportion? A. No, sir. I have heard the foreman say that one or two had. I have heard Bullock say, too, that he left some, and that Sam would go and light them.

Q. Did he go that same night? A. Yes, sir; that same night.

Q. You were in the mine the morning of the explosion, Bill? A. Yes, sir.

Q. On your travels through the mine did you notice any powder jacks that



were exploded? A. I seen some kegs, Jim, but whether they had powder in, I could not say.

Q. What would be your opinion, Bill, if you had any, in regard to the explosion? A. On account of the fan running too fast.

Q. Do you think the fan run fast that night? A. Yes, sir; I think the fan was running in full speed.

Q. Had any of the men, to your knowledge, detected any gas in the mine? A. No, sir.

Q. Had you ever cut any horseback other than the fault on the west? A. No, sir.

Q. Was there any gas detected through that fault? A. No, sir.

Q. You do not think there was any dust that might have accumulated that might have caused the explosion? A. No, sir; because the bottom is always damp—cannot keep them dry.

Q. Have you at any time been at the mine when they were firing shots? A. Yes, sir. I used to be here all the time. I used to do some of the firing myself.

Q. Did you ever have any windy shots? A. Just one, I believe.

Q. Have you been at the mine since you have been running, say, a number of thirty or forty men? A. Yes, sir, I have, but never noticed anything uncommon.

Q. Had the shot-firers gone out? A. No, sir.

Q. You could not tell, then, to your own knowledge the shot fired? A. No, sir. Light the first and run to the second.

Q. How rapid did they go off? A. I could not say.

Q. Had you at any time in firing thought there would be an explosion at this mine? A. No, sir, I always felt safe; I never thought we would ever have any trouble.



DECISION OF ARBITRATOR

BETWEEN DISTRICT No. 14, U. M. W. OF A., AND THE SOUTH-
EASTERN INTERSTATE COAL OPERATORS'
ASSOCIATION, FEBRUARY, 1904.

DECISION

OF JUDGE A. F. EVANS, ARBITRATOR ON ROOM TURNING INSIDE HORSEBACKS AND DELIVERY OF POWDER IN 12 $\frac{1}{4}$ -POUND KEGS, BETWEEN DISTRICT No. 14, U. M. W. OF A., AND THE SOUTHEASTERN INTERSTATE COAL OPERATORS' ASSOCIATION, FEBRUARY, 1904.

In the matter of the arbitration under article 21 of the contract between the U. M. W. A. of District 14, of the first part, and the Southwestern Interstate Coal Operators' Association, of the second part, entered into in August, 1904.

Article 21 of said contract is as follows:

"ARTICLE 21. That the questions in dispute, namely, paying for room turning inside of horsebacks and furnishing powder in twelve and one-half-pound kegs, has been submitted to arbitration; the findings of said arbitrators shall be final and binding upon both parties to this contract, and become part of said contract."

Prior to time said contract was made, the Southwestern Interstate Coal Operators' Association and the United Mine Workers of America, districts 14, 21, and 25, which include the states of Missouri, Arkansas, and Kansas (except Leavenworth county), and the Indian Territory, by their respective and duly authorized representatives, met July 13, 1903, in joint interstate convention, at Pittsburg, Kan.

The miners submitted to the convention a wage scale. Thereupon the operators submitted a scale. Both scales were referred to the joint scale committee.

In the operators' scale were included certain general resolutions which gave rise to a discussion of the jurisdiction, scope and purpose of the interstate convention. Thus began the first joint interstate convention ever held in the territory named. Hitherto conventions had been held in the separate districts, and independent agreements made between operators and United Mine Workers of America of the respective districts.

During that discussion, as shown by stenographic report of the proceedings of the convention and its several committees, the miners took the position that all prices and conditions common to the entire competitive field, such as digging prices, dead-work prices, day wage scale and eight-hour day, should be considered and settled by the interstate convention, and that all questions of a local nature, peculiar to the separate districts, should be reserved for consideration at the respective district conventions.

The operators took the position that the interstate convention should formulate an agreement and adopt such rules and regulations as would enable all operators in the field to put their coal on the market on a fair competitive basis, and that the district conventions should not be left at liberty to thereafter impose, in their respective districts, conditions that would disturb such an equilibrium.

President Mitchell defined his views upon that subject in the following language: "So far as I understand it, we will determine the mining prices as far as we can, and agree upon conditions of employment so far as they affect all operators at the mines and all miners alike. There may be questions of condi-



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tions that it may be necessary to refer back to our districts; there may be questions of prices and internal differences that we may want to refer back."

Thereafter, and on July 16, the following resolution was offered by Mr. Darnall for the operators' committee.

"WHEREAS, The call of May 29, 1903, by the executive officers of districts 14, 21 and 25 of the U. M. W. of A., for an interstate joint conference of miners and operators, comprising the states of Missouri, Kansas and Arkansas and the Indian Territory, for the formation of a scale to govern the prices of pick and machine mining, day work, dead-work, and yardage, and any other questions affecting an interstate agreement which may be mutually agreed upon; and whereas, the product of these districts being inter-competitive; and whereas, past experience has established the fact that the general condition of mining in the states and territory named have not heretofore been uniform or satisfactory: therefore, be it

Resolved, That this joint conference hereby agrees to execute, before adjournment, such general rules and regulations as are necessary for the equitable and satisfactory government of the operation of the mines, between miners and operators in such states and territory."

Whereupon the following dialogue took place:

PRESIDENT MITCHELL: "I observe you say here, 'such rules and regulations as are necessary,' etc.; I presume this means general rules and regulations such as would affect all the miners and all the operators of the three districts alike?"

MR. DARNALL: "That was the intention of the resolution."

PRESIDENT MITCHELL: "You understand that it is necessary in some portions of this field to make rules that may not be applicable to other places."

MR. DARNALL: "That is understood."

After amendment in phraseology, made at instance of miners, the resolution, in the form above set out, was adopted by the joint scale committee.

Thereafter, on July 20, the operators, by Mr. Kirkwood, submitted another proposition, as follows:

"*First*.—That we accept your proposition so far as agreeing to pay the national day wage scale, as now existing and being paid in the state of Illinois.

"*Second*.—That we also accept your proposition in agreeing to pay an advance of 12½ per cent. for entry, yardage, and deficient work, and that the same rules and customs defining deficient work now existing and prevailing shall be continued in force this coming year.

"*Third*.—That we also grant your request and agree to pay the Illinois outside day wage scale.

"*Fourth*.—That we agree to pay an advance of six cents per ton of 2000 pounds mine-run coal in the shooting coal field of district No. 14, and the price of powder shall remain as at present—two dollars per keg.

"*Fifth*.—That the above advances are conceded by the operators with the understanding that there shall be no local demand or district rules or regulations that will create new conditions that will in any way increase the cost to the operator beyond the concessions already granted. . . ."

Thereupon the following dialogue took place:

MR. RICHARDSON (for miners): "Am I to understand, Mr. Kirkwood, that that provides that the present regulations in regard to faulty coal is covered by this? I should like to have that matter referred to our district conference. It is something the other two districts do not have to any great extent. You must bear in mind that in this district here recently, in the faulty entries, where faults have run very extensively in the mines, we know it is not very satisfactory to the operators to see those faults in there and they are not very profitable to the miners. The way they have been worked for the past few years has not been very satisfactory to the men. I think that this is one of the questions that ought to be referred to our district conference. I do not think it will add anything to the cost of production to have a different understanding in regard to the way we handle them."



MR. KIRKWOOD: "To what particular class of work do you refer, and in what way has it been handled?"

MR. RICHARDSON: "Driving through those faulty places has been provided for by some companies by the yard, and by others by the day."

MR. KIRKWOOD: "It seems to me that is a question that should be determined largely by the men who do the work and the operator interested at the time. There are some classes of work that you cannot, in justice to both sides, define the compensation for here. I think the operators are usually willing to pay a price that will make it equivalent to the day wage scale of the miners. The operators in presenting that section desired that no new conditions should be insisted upon by the miners that would increase the cost of coal to them beyond the figures mentioned in that proposition."

It is to be observed that while Mr. Richardson expressed a desire to have the regulation in regard to faulty coal referred to the district convention, neither of the matters now under consideration were referred to by him.

On July 22 the special committee to which the question had been referred made the following report to the joint sub-scale committee:

"That there shall be an advance of seven cents a ton on shooting coal in district 14.

"That all entry, yardage and dead-work shall be advanced twelve and one-half per cent. The same rules and customs of defining dead-work now existing and prevailing in district 14 shall be continued in force for the coming year.

"That outside day labor shall receive the scale of wages paid to outside day labor in the state of Illinois.

"That inside day labor shall receive the national inside day wage scale.

"That shot-firers working under normal conditions shall receive three dollars a day.

"That the price of powder shall remain at two dollars per keg."

During the discussion of a motion to adopt the report, the following colloquy took place:

MR. DEACON: "In the clause relating to powder the price is fixed at two dollars a keg. I do not object to the price, but that is a matter I think we should take up in our district convention. I do not want this to prevent us from regulating conditions in the district. The price is all right, but we expect to take up the conditions in our district convention."

MR. BROWN: "It is the understanding of the operators' committee that any questions agreed upon and settled at this conference are removed entirely from any jurisdiction whatever by the district committees, except by the way of enforcement. . . ."

MR. MITCHELL: "Mr. Deacon has reference to a local regulation about the delivery of the powder. This is a matter for mutual regulation in the district."

MR. BROWN: "I thought he had reference to the price."

MR. RICHARDSON: "Mr. Deacon agrees that we are satisfied to buy our powder from the companies and pay two dollars a keg for it, but we want to make local arrangements about the delivery of the powder. This is something that interferes with our local arrangements."

The report was adopted, and incorporated in substance into the interstate agreement, which was completed and executed July 27, 1903.

The provisions of that agreement which are most essential to the consideration of the questions pending before the board are as follows:

"Pittsburg interstate agreement for scale, to take effect September 1, 1903:

"PITTSBURG, KAN., July 27, 1903.

"It is hereby agreed between the representatives of the Southwestern Interstate Coal Operators' Association and the representatives of districts 14, 21 and 25 of the United Mine Workers of America, that the following scale of prices shall be effective from September 1, 1903, until August 31, 1904:

"All entry, yardage and deficient work shall be advanced twelve and one-half



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per cent., and the same rules and customs defining deficient work now existing in district No. 14 shall be continued in force during the life of this agreement.

The price of powder shall be two dollars per keg.

"LOCAL DEMANDS.—There shall be no demands made locally, by either operators or miners, which are in conflict with this agreement or any district or subdistrict agreement made prior to September 1, 1903; and there shall be no provision imposed violating the same."

The last paragraph above quoted is found in the interstate agreement, under the general head, "Rules and Regulations."

At the last session of the joint sub-scale committee, the following proceedings relating to said "rules and regulations" were had:

MR. MITCHELL: "The special committee that was appointed to take up the general conditions and rules beg leave to submit the following report, and beg your consideration of it:

"(Mr. Mitchell read the rules and regulations as they appear in the completed scale at the end of this report.)"

MR. KIRKWOOD: "I move that the report of the committee on rules and regulations be adopted."

"The motion was seconded by Mr. Hanraty."

MR. DEACON: "Is it the purpose of the rules, where it says, 'no new conditions shall be imposed' to take away from the district convention the right to take up such local matters as may need be considered? I refer to matters not covered by this contract."

MR. KIRKWOOD: "I do n't think it would have any bearing upon that so long as there was nothing done that would conflict with this agreement."

The rules and regulations were subsequently adopted, and incorporated into the contract signed by the parties.

Afterwards, in August, 1903, pursuant to the terms of their agreement made in August, 1902, the representatives of the U. M. W. of A. of district 14 and of the Southwestern Interstate Coal Operators' Association met in district convention, adjusted by mutual agreement all differences except the two propositions which they agreed by said article 21 to submit to arbitration. Pursuant to that agreement, these two propositions have been submitted to this board.

The taking of testimony in the case was concluded at Pittsburg, Kan., October 3, 1903. The operators' statement and brief of the case was, through some delay, caused in part by miscarriage of mail, not received until December 19, 1903. The miners' statement and brief was received some time before last-named date.

In accordance with a plan of procedure which seems to have been accepted as a precedent in that district, and by consent of all parties, the representatives of the miners and operators, respectively, on the board of arbitration, acted in the capacity of advocates, or attorneys of their respective interests, while the fifth member of the board sat alone, as arbiter, at the hearing of the case.

Both sides were ably represented and their causes were presented with great clearness and precision—facts which tended to emphasize the distress of the arbiter, when he was made to realize by arguments that may be read on pages 116 and 220 of the minutes of the joint interstate conference that his work has been condemned in advance, and that he cannot even hope for approval.

Taking the questions in the order in which they were presented, we will first consider the questions of "paying for room turning inside of horsebacks," and will, in that connection, first consider the miners' contention, that such work is worth, and the miner should be paid therefor, the sum of \$2 25, under the present scale, and will then consider the operators defenses to that claim, namely:

1. That a fair compensation for such work is paid in the rate fixed for cutting the horseback; and



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2. That the miners are estopped from presenting such a demand by the terms of the Pittsburg interstate agreement.

No attempt was made to prove how much time or labor was necessarily expended in such work, but in my judgment it may be fairly stated, without quoting the testimony, for the several transcripts thereof are in easy access, that the following propositions were established by a fair preponderance of the testimony:

1. That turning a room inside a horseback is more difficult than turning a room off an entry, for which miners are now paid \$2 25.

2. That the work of cutting a horseback, without including therein the turning of the room inside the horseback, is reasonably worth the wage fixed therefor in the present scale.

3. That it has for many years been the custom in district 14, when a man cuts a horseback and quits before he turns the room inside, to deduct from one dollar to two dollars from his wages, and pay the man who thereafter turned the room two dollars therefor.

4. That the work of turning a room inside a horseback in said district was, prior to September 1, 1903, reasonably worth, over and above the wage fixed for cutting the horseback, the sum of \$2.25, and consequently that the miners, unless estopped from making the claim by the Pittsburg interstate agreement, should be paid therefor at that rate.

But the Pittsburg interstate agreement contains, as above shown, two conditions bearing directly upon the right of the miners to make this claim at this time. The first of those provisions is as follows:

"All entry, yardage and deficient work shall be advanced twelve and one-half per cent., and the same rules and customs defining deficient work now existing in district No. 14 shall be continued in force during the life of this agreement."

That is, for the purpose of defining the work to which the advance of twelve and one-half per cent. should apply, the rules and customs then existing defining deficient work shall remain as they then existed. It was established by a great preponderance of the testimony, and, in fact, admitted by Mr. Deacon, that, by the long-established custom in that district, turning the room inside of horseback was included in the work—at any rate, in the pay for the work—of cutting the horseback, and that the work of turning the room inside of horseback, when done by same person who cut the horseback, had never been paid for independently, except in very few isolated instances. The work in question is deficient work. All deficient work is covered by that agreement, and by it the wages theretofore paid for such work are advanced twelve and one-half per cent. It is not necessary for us now to try to determine whether or not anything at all had, prior to time of making the Pittsburg interstate agreement, been paid for the work of turning room inside of horseback, or whether or not some part of the one dollar per foot theretofore paid for cutting the horseback was paid, as the operators contend, for the work of turning the room. In either event, the result will be the same. If, in fact, nothing at all was then being paid for such work, the mathematical problem of ascertaining twelve and one-half per cent. of nothing defeats the claim. If, in fact, some part of the said one dollar was being paid for turning the room, both propositions are covered by twelve and one-half per cent. advance on the dollar.

It is further provided by said interstate agreement, as hereinbefore shown, that—

"There shall be no demands made locally by either operators or miners which are in conflict with this agreement or any district or subdistrict agreement made prior to September 1, 1903; and there shall be no provisions imposed violating the same."



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It is contended by the operators that the claim made by the miners is in violation of this provision, also, in that, if allowed, it would be an advance in wages of cutting a horseback and turning room inside, over the wage heretofore paid, of 68 $\frac{1}{2}$ per cent., instead of 12 $\frac{1}{2}$ per cent., as shown by the following illustration:

"Price for cutting four-foot horseback, room turning included, scale of 1892, equals \$4; advance conceded in scale of 1893, 50 cents; advance asked in addition, \$2.25; total advance, \$2.75; total cost, \$6.75; per cent. of increase, 68 $\frac{75}{100}$."

On the other hand, it is contended by the miners that the right to take up both these questions at the district convention was reserved by them while these questions were under consideration at the interstate convention, and for that reason they are not estopped by said interstate agreement.

For the purpose of presenting this position fully and fairly, I have already quoted at considerable length from the minutes of the said interstate convention.

Laying aside for the present the question whether or not either of the propositions under consideration was reserved or referred, even in that manner, with sufficient definiteness to advise the other party that these particular questions were intended to be reserved, we will first consider how such a reservation or reference could have been legally made.

The minutes of the joint interstate convention and of its several committees, from which we have quoted, are, of course, no part of the Pittsburg interstate agreement. They only show the conditions and surroundings under which the agreement was made and the objects the parties had in view, and to that extent may probably be resorted to for aid in construing the contract, in so far only as it may be ambiguous on its face. (*Moran v. Prather*, 90 U. S. 492; *Reed v. Merchants' Union Ins. Co.*, 95 U. S. 23; *Price v. Evans*, 26 Mo. 30, l. c. 49.)

This board can do no more nor less than construe the contract as made. It has no power to vary, or add to, the agreement, nor make a different agreement from that which the parties have made. (*Thornton v. Royce*, 56 Mo. App. 179.)

"The great object of construction is to collect, from the terms or language of the instrument, the manner and extent to which the parties intended to be bound. To facilitate this, the law has devised certain rules which are not merely conventional, but are the canons by which all writings are to be construed and the meaning and intent of men to be ascertained. These rules are to be applied with consistency and uniformity. They constitute a part of the common law, and the application of them, in the interpretation and construction of dispositive writings is not discretionary with courts of justice, but an imperative duty. If it were otherwise, no lawyer would be safe in advising upon the construction of a written instrument, nor any party in taking under it." (*The County of Johnson v. Wood*, 84 Mo. 489, l. c. 509.)

The chief object is to get at the intention of the parties. (*Carter v. Arnold*, 134 Mo. 195, l. c. 211.)

"It will not do to look at the action of one party only, but of both." (*Price v. Evans*, 26 Mo., 30 l. c. 49.) The construction and legal effect of a contract do not depend upon what either party thought, but upon what both agreed. (*Metropolis National Bank v. Kennedy*, 84 U. S. 19.) The construction of a written instrument cannot depend upon the motives, purposes or expectations of a party to it, in contradistinction to the plain meaning of the words used therein. (*Watrous v. McKie*, 54 Tex. 65; *William Camp & Sons S. E. B. Co. v. Sloan*, 21 Fed. 561.) And where the language of a contract is not ambiguous there is no room for hesitation. The words used therein must be taken in their ordinary and popular sense. (*Sterns v. Sweet*, 78 Ill. 446.) Technical words and phrases which may have acquired a peculiar meaning must be construed to mean just



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what the parties understood and intended them to mean, as shown by the evidence.

The provisions of the Pittsburg interstate agreement, hereinbefore quoted, are not modified or in any manner affected by any of the terms or provisions of said agreement. As stated, that agreement expressly fixes the wages for all that class of work to which the work in question belongs, and especially of that item of work in connection with which the work in question had, by long established custom, been done and paid for. From the beginning to the end of the agreement, nothing in the nature of a reservation or reference to a district convention, or other tribunal or body, of any proposition whatever, whether covered by that agreement or not, can be found. The law will presume that a person meant what his language, by its terms and under the circumstances in which it was used, would be fairly understood to mean; and this presumption cannot be rebutted by proof that he intended something more or different, which he made no effort to express. (*Clarke v. Lillie*, 39 Vt. 405.)

And when the parties have reduced their contract to writing, it is conclusively presumed, in the absence of accident, fraud, or mistake (by which is meant mutual mistake), that the whole engagement and the manner of its performance are embraced in the writing, and all anterior and contemporaneous stipulations and representations are merged in the written contract. (*State, ex rel., v. Hoshov*, 98 Mo. 358.)

The contract under consideration is complete and unconditional. It contains no reservation, or reference, of any item, or any terms limiting, or intended to limit, the natural operation and effect of the language already quoted therefrom.

Therefore, if the question stood upon this condition alone, there would be only one conclusion possible and no room for hesitation. But it seems to be conceded, after a fashion, by both parties, that if, during the discussions of the scale at the joint interstate conference, an intention had been expressed by either party to reserve for, or refer to, the district convention, any item of the scale or other proposition, such item or proposition would have been considered as so referred or reserved, unless protested against by the other party at that time.

Even upon this theory, the record of those proceedings will be searched in vain for any expression of desire or purpose to so reserve or refer the question of paying for turning a room inside of horseback.

On the contrary, the very purpose of the joint interstate convention, as declared in the resolution adopted by it July 16, the entire record of its proceedings taken together, and the Pittsburg interstate agreement itself, leave no substantial basis for such a claim.

If it be contended that all parties then knew that a district convention would be thereafter held, and would not be a perfunctory assembly, without work to do or an object in view, was of itself sufficient notice these questions would be open for consideration there, the question is that such a condition would emasculate the joint interstate convention; for if its work could be so easily undone it were not worth the doing. The district convention would, of course, be at liberty to act upon any proposition not already covered by contract between the parties, without any reservation or reference thereof.

But it cannot, in justice or law, be maintained that either party has the right, against the protest of the other, to take up and consider, at a district convention or elsewhere, a proposition with respect to which their mutual relations are fixed by contract solemnly executed, without fraud or mutual mistake, with the intent and purpose of changing their relations thereto. Such a course would be condemned by all the experiences of man and by all the law of the land.



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It is also contended that, by the article submitting these questions to arbitration, the operators admitted that the miners were not estopped from making either of these demands, or, at least, waived the right to plead such estoppel in defense thereof. The evidence in the case is that the operators resisted both demands in the district convention on the very same grounds they urged before this board, and, being unable to reach any other agreement with the miners, agreed to arbitration because they thought they could win.

In view of the fact that the operators took the position at the joint interstate convention that it should be understood that the advances there agreed to were upon condition that no local demand, rule or regulation should thereafter be made which would increase the cost of production, and at the district convention took the position that the subject-matter of the propositions defined in said article 21, and thereby submitted to arbitration, were covered by the Pittsburg interstate agreement, by which both parties are bound, and take the same position before this board, and of the fact that the language of said article 21 is broad enough to cover the issues whether or not the work should be paid for at all, and, if so, how much, and also to open to the operators the right to make any defense they may have relevant to those issues, I am not able to find any ground upon which that claim can rest.

The other question submitted for our consideration is "furnishing powder in twelve and one-half pound kegs."

The Pittsburg interstate agreement provides "that the price of powder shall be two dollars per keg."

The committee, as shown by its report, hereinbefore set out, agreed "that the price of powder shall remain at two dollars per keg." It appears from the discussion which followed the report, and which is also quoted herein, that the miners were satisfied with the price agreed, but wanted to reserve the right to make in their district convention some local regulations about the delivery of powder in district 14. This reservation made in that way seems to be treated by the parties as sufficient to save the right to regulate the delivery of powder.

For a number of years the miners had paid two dollars for a keg of twenty-five pounds of powder. The statute of Kansas provides: "It shall be unlawful for any miner or other person to take into or have in his possession in any coal-mine, shaft, slope or pit in this state more than twelve and one-half pounds of powder, or any other explosive substance, at any one time."

It has for several years been the practice for the operators to open the kegs in their powder-house, and, by use of a measure, generally, deliver to the miner in his jack, which he also buys from the company, what was supposed to be one-half of a keg, or twelve and one-half-pounds, of powder. The miners complain that the operators have, under this system, practiced upon them grossest abuses, in that, in many instances, they have not received the full amount of powder they paid for; that at more than one mine in the district eight kegs of powder were habitually distributed among eighteen jacks; in other words, that the operators gain one in every eight kegs opened, and that, in some instances, dishonest measures were used, and that, in addition to swindling them on powder, the operators got the benefit of the return value of the empty kegs. They have proved that their complaint is a just one. The wrong practiced upon them in this regard, so far as shown by the evidence in this record, antedates the contract under which they are now working, and does not operate to release them from their obligations thereunder. They agreed to pay two dollars per keg; that price contemplated, as all understood, a keg of twenty-five pounds.

The miners have proven that such an outrage has been practiced upon them