

Honor's mind was any kind of gas. Your Honor asked this question on p.320: "Q. Leaving aside any breach.....being used".

HIS HONOR: Do you say Mr. Menzies, from the way I asked the question, thought I was only referring to inflammable gas?

MR. REYNOLDS: Yes.

HIS HONOR: What leads you to that belief.

MR. REYNOLDS: The part I am going to read now where the witness said: "I accepted the fact that CH⁴ was found in the shunt". Your Honor then said, "You based your answer on the assumption that CH⁴ had been found in the shunt?" he answered, "Yes". Then Your Honor puts the very question: "Q. Assume a deputy had found CO₂ in the shunt.....not black damp but Illawarra bottom gas".

HIS HONOR: I think the deputies concede the position that they were suspecting black damp when making their tests.

MR. REYNOLDS: It may be in Your Honor's ultimate conclusion in this case that that paragraph of Mr. Menzies will have a very important bearing. Mr. Donnegan said, on a purview of the whole situation, that the whole germ of this case is that this gas was not identified as being Illawarra bottom gas and Mr. Lee bases the whole theme of his submissions on that proposition.

30. If the foregoing be correct the real and effective cause of this accident was the failure of the management to provide for circumstances which on the information available to it, it had no cause to anticipate. The system of ventilation was in fact inadequate to deal with those circumstances.

The causes of its inadequacy may be attributed to a failure to provide for the chance of inflammable gases from the goaf penetrating the brattice stopping and to appreciate that the vent tube would not adequately dilute such gases in such event.

I suggest, with great respect, it would be unwise to substitute conclusions based upon inductive reasoning as opposed to the opinion of a man who has spent a lifetime in coal mines. The lawyer could be right but there is always the terrible danger of him being wrong. Mr. Menzies dealt with this in his report at p.300 of the transcript. He was asked "Given normal circumstances this system devised was adequate but it could not cope with the abnormal? A. Correct". Your Honor asked another question and he said "I think I can refer to my answer - obviously inadequate to deal with the situation." (page 301) Coming from Mr. Menzies I ask Your Honor to say that the management did deal with the situation reasonably having regard to the information which they then had in their possession. I point out "The system of ventilation was in fact inadequate to deal with those circumstances".

HIS HONOR: You are asking me to discard inductive reasoning alone as a test but one must look at these things in the light of what one imagines goes on in the mine and what ought to go on. Would you say a practical man would have said, knowing the shunt and the brattice, that the management should not have checked on deputies? It may be you do say that.

MR. REYNOLDS: I say, with respect to Mr. Lee's submissions that the management cannot check on the deputies, really. Mr. Lee blandly submits that the management has no right to rely on the deputies. I would put it to Your Honor that the structure

of this legislation is such that they are the people to be relied upon.

HIS HONOR: Yes, but is the management to be satisfied it is compliance with the Act and Regulations?

MR. REYNOLDS: Not as an absolute situation, and I would not put that for a minute.

HIS HONOR: We have evidence from Mr. Puddle that he gave instructions to the deputies other than the statutory requirements to do something more than that, to keep a look out for gas in this area. Mr. Lee argued that he was aware of the possibilities of a situation of danger. That leads one to the conclusion that he thought the bleed tube situation and the brattice would adequately deal with it. Does he go and make a test himself or does he say to the under manager, "Go and test in the shunt"?

MR. REYNOLDS: We are speaking about the under manager, Your Honor.

HIS HONOR: I am sorry, the assistant under manager, Mr. Wright. Does he say "Go and test in the shunt to see if it exists". Is that not reasonable to expect?

MR. REYNOLDS: I do not think it is. If you have a man whom you have no reason to distrust and in relation to whom you have no indication he is not doing his job properly and if he says it is clear, why should one not accept him?

HIS HONOR: If one were outside the mine and dealing, for example, with an ordinary situation which is common above the ground, for example if one were dealing with somebody in a car yard, a yard filled with cars, and the manager said to one of his men "Go outside and see whether there is a clear path for all cars coming in and out of the yard to get through", and he came back and said, "Oh yes, it's all right", he might be entitled to rely on it but now you are dealing with something in mining situations where it is recognised that although coal has to be extracted there is such an extremely hazardous situation that the utmost precaution must be taken. It is a situation where everybody must be on the alert, particularly where there has been some report of gas and there has been a method devised for dealing with it. Is not that the true situation from a practical man's point of view as distinct from a lawyer theorising by inductive reasoning?

MR. REYNOLDS: I don't know, the situation may be terribly different if there is the faintest sniff of inflammable gas, if I may put it that way. Once the official mind was alerted to the possibility of inflammable gas the whole situation of the necessity for vigilance and cross-checking and perhaps doing it yourself becomes obvious. We know now there was inflammable gas there. Aren't we tending to say "That is what it was, why didn't he check on that and do that and cross-check?"

HIS HONOR: You might have got the same result.

MR. REYNOLDS: It depends on a view of what was there at the time and what was shown when the conditions were simulated and after. I concede, as I must, that the ventilation system was in fact inadequate to deal with those circumstances.

Your Honor says it may be due to the fact that there should have been possibly more foresight. Then I say what induced possibly these failures and I put it this way:

31. These failures were caused or contributed to by the fact that despite many tests that were done or were believed to have been done in the shunt the presence of inflammable gas had not been detected or reported either in the vicinity of No. 3 cut through or this shunt.

At p. 29 Mr. Menzies said there was no evidence that methane existed in large quantities as a separate gas anywhere, it only existed, on his information, as a component of bottom gas. This gives point to Mr. Lee's submission that the real trouble was the failure to identify this insidious bottom gas.

32. One question is whether irrespective of the information provided by reports of Deputies and others, the management should have allowed for such an eventuality.

I only put it to Your Honor that the consideration of such a matter is really outside Your Honor's province in this case. This is a factor but to go into fine questions of foreseeability in solving the problem and what was the cause in the circumstances is, in our submission, outside the ambit and can safely be left with the tribunal that has to deal with such a matter. Your Honor knows my client company has no control over this. The legislation has seen fit to have a Coal Mines Insurance and I can make no concessions about such a matter as this. It is not within our province to say we will or will not pay civil claims. However, that is incidental.

MR. REYNOLDS:

33. It may be said that in the circumstances that existed the use of A Heading as a shunt with a brattice stopping could be justified if there was instituted and maintained a system of vigilant inspection of it.

Now, this is tied to what Your Honor put to me about what Mr. Puddle said and it may be that you can fine this case down in another analysis and say "If they were going to use it they should have stationed a man there permanently to check it, and secondly if they decided to use this shunt, not a sufficiently vigilant inspection of it was instituted and maintained," but of course this is refining the causes of causes too much.

HIS HONOR: When one really gets down to the basis of the proposition, I suppose what you say, Mr. Reynolds, is that if there had been a proper test done which must have identified a gas, then this would not have happened?

MR. REYNOLDS: It would not have happened. Those instructing me say, and for what it is worth I put it to Your Honor, "Fundamentally this is a problem of detection and elimination and the system broke down there. Once there was proper detection and proper identification, proper measures would have been taken."

HIS HONOR: I must say this frankly: I have been considerably disturbed, particularly as the evidence drew to its conclusion, as to whether the whole picture has been given to me. I cannot understand a failure by any sort of reasonable tester to have detected bottom gas, and methane content in bottom gas, in the quantities that have been described here. That has disturbed me and I am still disturbed by it. One gets the feeling after some years experience of practising in the law, and particularly in various jurisdictions, that there is something more to the picture.

MR. REYNOLDS: This is always a great problem. There are two views about this. The management can say, "Look, we have complete faith in our deputies and we just can't believe that men whose own safety was at stake" - because indeed it is - "who have had it drilled into them over the years, that if there was gas there afterwards they could have missed it, therefore it could not have been there."

HIS HONOR: That is one argument which the company itself does not accept because the view put to me is that these simulated conditions were as they were before. I suppose to that extent the company accepts it by saying "It was not there before, and something happened to bring it there." That was in fact a mere coincidence because in fact CO2 was detected and reported.

MR. REYNOLDS: But the company has the added problem which Your Honor has not, that the company knows these men and it has had them working for it for years and has personal ties and beliefs about them, and they can find it hard to believe that any man would be so derelict to his duty or so careless in its execution that he could miss it. That may be one side of the picture.

HIS HONOR: Yes, but we have had a number of witnesses, including Mr. Sellers who says that "If it were there, I can't see how they failed to detect it."

MR. REYNOLDS: That is right.

HIS HONOR: And if that is the position, and if I come to the conclusion that it was there - and so far that seems to be a conclusion I must draw - I am forced to say, "Then how could

they possibly have missed it?" I have heard deputies come here and give descriptions of tests they have made. It has been said by counsel for the Department, the Minister, that these tests were obviously inadequate in the light of the proper tests which were described. At the same time my assessors who advise me, and my own common sense, all drive me to the conclusion that even with these inadequate tests as they were described, methane must have been detected in bottom gas. That is my worry, and I have a feeling here that it is not just a question of certain men, deputies, coming here and saying, "We tested" when they did not test at all; that there is something more behind it. I say that at the moment, that is a feeling. It is not an inference. It is a feeling based upon the picture that has been presented to me and, as I will describe it again, it is a feeling that the whole picture has not been put to me and I am very disturbed about it.

MR. REYNOLDS: I cannot comment on this. I can understand Your Honor's dilemma.

HIS HONOR: I do not know that it is a matter for you, because you had instructions, and Mr. McNally had instructions, as did all other counsel. Counsel only puts to me, in an endeavour to assist me - and does it of course with the integrity that counsel have - what their instructions are.

MR. REYNOLDS: I am not urging any particular instructions on Your Honor except to deal with the evidence as it appears, and if I may say so with respect, I understand fully the problem which confronts Your Honor about what existed afterwards and the inference that probably existed before and what follows from that. We have these reports.

HIS HONOR: I can only go on the evidence, Mr. Reynolds.

MR. REYNOLDS: Yes. We had started debating 33 to some extent, but really it does come down in its final analysis to a problem of detection and identification and there was no detection - for whatever reason one does not know - and there was no identification.

34. The failure to report inflammable gas must be because:

- (a) It was not present.
- (b) A belief that the occurrence of Illawarra bottom gas was so rare that its absence could be assumed when carrying out routine testing.

I have some references there, but I think Your Honor is well aware of those.

- (c) Faulty testing techniques.
- (d) The inadequacy of the oil flame safety lamp in the hands of an ordinary operator to detect methane in a mixture or
- (e) tests were omitted.

There is some evidence to support each of these propositions but alternative (e) is highly unlikely.

By (e) being unlikely, I mean that the man did not go with his lamp and carry out some procedure. Mr. Lee has put that he did not carry out a proper test for bottom gas. That, I would rather put in (b), that when carrying out the routine testing for CO₂ at the floor and methane at the roof, it may be that the belief induced by a long period of no knowledge

of this gas which led to an assumption that in doing what might be termed routine testing you do not have to worry a great deal about seeing whether there was any inflammable component of gas on the floor; I do not know.

35. There is no credible evidence to suggest that any officer of the Company consciously jeopardised the safety of the men in his charge.

HIS HONOR: When you say "consciously jeopardised," do you mean deliberately jeopardised?

MR. REYNOLDS: That is right - took a decision to take a risk consciously to place them in any situation of danger to life or health.

HIS HONOR: And by "officer of the Company" do you include deputies?

MR. REYNOLDS: That is right. Insofar as it is within my province, I am more particularly concerned in this submission with Mr. Stone and Mr. Puddle.

HIS HONOR: Yes, but of course it is quite obvious Mr. McNally would put the same proposition to me, and you do not disassociate yourself from it?

MR. REYNOLDS: Yes, but it comes better from him.

HIS HONOR: Yes.

MR. REYNOLDS:

36. It is not established that the installation and siting of the auxiliary fans caused or contributed to the accumulation of gas in the shunt and intersection which was the subject of the ignition.

Mr. Longworth said in effect "We did have this view when we first inspected this, but then we carried out tests and they did not substantiate the view we held." Mr. Wasson gave evidence to the same effect, and the only importance of that is it could be argued that we did not have the permission to put these fans in this place and it is a breach of -

HIS HONOR: You say that even if you were in breach of that, which is arguable, there was nothing in the breach?

MR. REYNOLDS: Yes, I would suggest it is not established that the action of the fans had any material effect in making those gases come into the shunt and the intersection which led to the fire.

HIS HONOR: I do not think Mr. Lee, who represents the Department, had this view?

MR. REYNOLDS: He did not put it, Your Honor. Others may put it, but I am content to leave that submission with Your Honor. I want to put this general thought, that concerning the institution of a ventilation system in a given situation - and by this I do not mean the general circulatory system of the mine - as I put to Your Honor earlier, this is something which has to be done from time to time by a man on the spot who does not indulge in an appreciation of all the scientific facts involved. He draws on an experience and on knowledge he has gained, he is ex hypothesi the holder of a first class or second class certificate of competency. He has had to be in the mine for a certain number of years before he got that, and he has a general understanding not in a highly scientific way of the principles of the ventilation of a mine or of a place in a mine. He does not know about the

number of cubic feet per second which are necessary. He does not work out the velocities that are necessary. He knows that by the use of brattice in this way or by putting a stopping here a certain effect will be achieved generally. Whether he has been successful in what he is instituting as adequate and proper can only be determined by testing thereafter, he having used this empirical method, whether indeed it has been satisfactory or successful. If the tests he gets are incomplete or inaccurate, then he never really knows whether the system which he has instituted is in fact good or bad. Your Honor sees once again how vital it is that he gets, generally speaking through the agency of his deputies, reports as to how it is working. The knowledge of the effectiveness of his system is withheld if his reports are not accurate or complete.

I want to say this, perhaps finally, just before I say something about recommendations. The expression "lax and off-handed" was used by my friend Mr. Lee yesterday and, not unnaturally, that phrase, attractive as it is to those whose sympathies do not lie with the company, has been widely publicised, and it was used in respect to the company's attitude to gas. It seems to me that that description is altogether too harsh and is not, on the evidence, warranted. It comes of course from counsel for the Department which is charged with the duty of inspecting our mine and other mines, and whilst we did not make any such allegation we suggest it is fair to say that whatever description is apt to fit our attitude to gas, it can just as equally and fairly be applied to the departmental inspectors and to the check inspectors who are members of the Federation. No mines inspector and no check inspector has detected and identified bottom gas in our mine in recent years.

So far as recommendations are concerned, the company supports what Mr. Lee has put and I cannot really add anything to it because the company is of course vitally concerned with improving, wherever it is possible, the conditions in the mining industry and the safety of the men employed in it.

HIS HONOR: Before you sit down, Mr. Reynolds, did you ever discover whether there was any other special meaning of the word "reference" in the Act, other than the meanings referred to?

MR. REYNOLDS: As a matter of fact I have not looked, Your Honor, but my junior will do so overnight.

HIS HONOR: I wonder whether I am compelled to give a finding in this way or not.

MR. REYNOLDS: I agree entirely with Mr. Lee. Frankly, I cannot see Your Honor's problem in it.

HIS HONOR: If you were in my position you would realise the problem because by the Act I may be constrained to do something.

MR. REYNOLDS: I submit s.32 answers it, "The Minister may causethink fit." In my submission that resolves Your Honor's problem because it is dealing with reports.

HIS HONOR: What do I do with s.33(6)? How do I construe that, which was inserted in 1941?

MR. REYNOLDS: What ever Your Honor does, it is not to decide but to report, and what Your Honor does cannot be a decision. Your Honor does not decide anything. I do not mean to canvass my submission I put before about deciding questions of fact, but essentially what Your Honor does, even if it involves the resolution of questions of fact contrary to my submission, is in essence a report. It is not a decision, it is a report. In s.32

it states, and we know it is a report to the Minister, that this Act confines to the Minister the decision, if and when and by what means that report shall be made public.

HIS HONOR: Do you agree with that, Mr. Lee?

MR. LEE: Yes, that is our submission.

HIS HONOR: Thank you for your assistance, Mr. Reynolds.

(Short adjournment)

MR. MURRAY: Your Honor, I think it can be fairly said that it became fairly clear early in this Inquiry that as far as the work performed by my clients - that is Mr. Kent and also the other electricians - it had been discovered, despite earlier pronouncements to the contrary, that their work was in no way subject to criticism, so that mostly during this Inquiry our role has been an objective one. That must be considered in the light that we are workmen, employees of the company, and that we work together with others, members of other industrial organisations, in a hazardous industry.

I was going to make a submission to Your Honor on my view of the Act, but a short conversation with my learned friend Mr. Lee of Queen's Counsel persuaded me I was wrong. Therefore I revert to a suggestion I made some weeks ago in this Inquiry when the initial problem arose as to where Your Honor stood at the conclusion of Your Honor's deliberations. It would seem to me as a practical solution, and I repeat one I made earlier, that if s.32 is to be the deciding thing - and not as I was going to submit, as I will now tell Your Honor, that s.33(6) clearly applies, since before Your Honor can ascertain under s.31(2) Your Honor must make a decision - the argument against that is of course that the decision in s.33(6) - and I think this carries the day as far as I am concerned - refers to a judicial determination. It concerns a certificate, against the refusal of the issuing of a certificate, and so on - the matters set out there in s.32. However, the Minister does have the power to enable the report to be made public and that may be an administrative matter that could easily be cleared up before the time comes for Your Honor to complete your report.

HIS HONOR: I cannot inhibit his department, clearly. If the Minister in his wisdom decides that the method of making the report or that certain parts of it be made public lies with me or with the Court, then I should carry out the desires of the Minister.

MR. LEE: I propose to get certain instructions on that. The machinery will be put in train concerning that today.

HIS HONOR: Mr. Lee, I would ask you to bear this in mind: there is always a difficulty about presenting the whole of a report, as it contains a number of ancillary matters relating to the nature of the inquiry, and so on.

MR. LEE: Yes.

MR. MURRAY: Firstly I would like to direct my attention briefly to one or two remarks contained in the submissions of my learned friend Mr. Reynolds yesterday. He referred to legislative regulations to which this industry is subject, inviting Your Honor to agree that this employer was already bound up by regulations to an inordinate degree, pointing out forcibly - and if I might say so with respect, persuasively - that even its own employees were certificated and independent of the management, and indeed had statutory duties. Now, This is not unusual and

this industry is by no means unique in that regard. My own people from the Electrical Trades Union are familiar with the detailed legislative and quasi legislative supervision of their work, and this is of course accepted and accepted for a good reason: safety. It is in my submission no longer good enough and it has not been good enough for decades, in workmens' safety to rely merely on the experience, the common sense and the good judgment of their employers to avoid the tragedy of industrial accidents. For Mr. Reynolds yesterday in effect put what I submit is the extraordinary proposition that in the coal mining industry, it would be better regulated if the employers' obligation were to be merely that of the common law, without statutory regulations at all, the employer to be left to provide reasonably safe working systems and ventilation such as in the circumstances are reasonably available, or some words like that, and be subject to be sued in civil Courts should it breach this duty of care and someone be hurt or killed. Remarks were made about regulative minimums becoming practical maximums. I would submit an extraordinary concession from an employer whose organisation produces over 25 per cent of this State's coal, an employer who is duty-bound of course to introduce his own additional standards in the light of his own experience and his own operations. Therefore I would submit to Your Honor that we should not shrink from supporting legislative restrictions in this industry. History has proved them to be one of the working mans best safety safeguards and it must surely be self-evident that in industry generally there is workers' insurance legislation, factory legislation, scaffolding legislation, explosives legislation as well as mining legislation. And in every State of every developed country, not only at a compensation and regulation level but, above all, prevention. Coal mining has to be especially looked at and has its own legislation ranging from pensions to its own industrial tribunals. Can we therefore, as Mr. Reynolds would appear to want us to do, throw out of the window the safety legislation and revert to, accept and have the mining community accept, and have the families of dead mine workers and living mine workers accept the concept of fatalism, of the inevitability of accident, of the inevitability of fatality and leave to the employer his common law obligation to provide reasonably safe working conditions, and if someone is hurt or killed, to be sued? That is the crux of the submission which was put forward, in my submission, on this point yesterday on behalf of Australian Iron & Steel. The company's approach was, as I have said, put smoothly and persuasively, but in my submission it is out of touch with reality today. It is not good enough to imply that occasionally men must be injured or presumably be killed; that occasionally managers make errors of judgment. Our submission to the contrary is that men need not die, that mistakes need not be made, and our submission is that this Inquiry should endeavour to make recommendations which, if adopted, should try to ensure an impossibility - namely that no mine worker need die in the course of his daily labour.

In relation to this, as an illustration of this point and perhaps of what must be accepted, which is that familiarity with the problems of safety does lead to a degree of complacency in everybody, naturally, may I just read this: "In conclusion, the Commission are well aware that no matter how stringent the regulations, or perfect the discipline, in a mine, or however strictly industry may be fenced in by Acts of Parliament, accidents will happen.

Where gas exists the safety of the whole workmen is dependent upon the care and attention with which every individual deports himself. The lives of all hang on the actions of an individual, and the momentary carelessness of one may imperil the lives of those observing the regulations. It is impossible to suppose

that men will not attempt to deviate from rules obviously necessary for the safe conduct of a mine. In such cases accidents must and will happen which no Act of Parliament, skillful management or human foresight can avert; but it is none the less necessary to frame regulations for the preservation of human life and to maintain the observance of these, while strict and close discipline will certainly decrease the risk or number of accidents; and for this reason they should be rigidly enforced." That is a quotation from p.33 of the recommendations of the Commissioners into the Bulli disaster and it is dated 12th July 1887.

HIS HONOR: I have read that.

MR. MURRAY: And, in my submission, equally applies today. Our interest in these proceedings is very real. Mr. Barry Kent, one of my clients, has a vital interest in the Inquiry for a number of reasons. For instance, his workmates were killed. He himself was injured and he was the shift electrician in the panel. The Electrical Trades Union has something approaching 400 members employed in coal mines. We are familiar with close legislative supervision of the way our work is to be carried out in other industries, of which I can give instances if Your Honor requires them.

With increased mechanisation the proportion of tradesmen (members of craft unions) increases. With the increasing use of electricity in mining, the numbers of electrical tradesmen in the industry have increased and will further increase markedly in the future. The electrical tradesman wherever he works is, like all workmen, concerned with industrial safety. This concern particularly applies to the electrical tradesman as wherever he works he is dealing with a lethal energy source - electricity.

For these reasons my clients as a body have a general interest in this Inquiry and the mine electrical tradesmen have a particular and vital interest in this accident and in the solution of any mine safety problems that are revealed. Therefore I propose to consider several aspects of the evidence in the Inquiry and to suggest certain observations to Your Honor and recommendations as appropriate and necessary.

I suggest the following are valid and necessary conclusions as to matters of fact and I propose to list a number of them briefly. However, before I turn to them I would like to make a general submission and, if I may with respect, sound one brief note of warning. In an administrative Inquisition such as this, although there is no matter in issue on the party versus parties basis, there must necessarily be resolution of factual controversy. These matters may range in administrative situations such as this from the waiver or imposition of a late fee by a postal clerk to the determination by a magistrate of a public servant's guilt or innocence of misconduct in an Inquiry instituted under ss.56 and 58 of the State Public Service Act for the purpose of the magistrate reporting thereon to the Public Service Board. The magistrate makes nothing but a recommendation.

In such an inquiry as this there may emerge factual controversies the resolution of which has great implications to those concerned and which may greatly affect peoples personal lives. In my submission to Your Honor, the law has very wide standards to be applied by a judicial tribunal. These I submit in general terms vary in dimension according to the importance of the subject matter of the decision. Here we have considered - and these are words which from time to time have been used by

Your Honor and by my learned friends - "Information," "Understanding of witnesses," "Hearsay," "Advice from Assessors," indeed a great deal of material that would ordinarily be excluded entirely from a Court of law. And, in my submission, rightly it has been considered so that the Court may inform itself and no avenue of fruitful inquiry left unexplored if only for these reasons:

- (a) Any topic suitable for further investigation may emerge:
- (b) the public sees what appears to be the fullest possible investigation; and
- (c) my submission is that this is the most important, in order to assist in uncovering the evidence.

True, this method of inquiry can hurt. There are other instances of similar inquisitorial tribunals allowing information to be publicised which proved nothing but harmed bystanders. Our submission here is that Your Honor will make no positive finding on any matter of importance and controversy unless there is a satisfactory preponderance of evidence in the strict legal sense to support that finding.

HIS HONOR: You may rest assured that that is my attitude, Mr. Murray.

MR. MURRAY: If your Honor pleases. Some examples at random of the issues that may have to be resolved and therefore explored can only be resolved positively with the support of overwhelming evidence or a preponderance of evidence:

- (a) did the company intend to hole the goaf in No. 2 cut-through?
- (b) Did Deputy Stewart test for Illawarra bottom gas in the shunt?
- (c) Were the regulators moved to alter the air split into 8 Right just before the fire?
- (d) Where did the management intend to split the new pillar?

These are matters which, as I have said, would require a preponderance of evidence in the legal sense before any positive conclusion could be arrived at. I am not suggesting in using those as illustrations that any one of them had any particular relevance to the cause and circumstances of the fire, but they are matters which have been mentioned, cross-examined on, and there are others which no doubt have occurred to Your Honor and of which mention will be made. I am grateful to Your Honor for indicating that you do agree with my submission and I submit that is the basis on which the matter should be approached.

We suggest the following are valid and necessary conclusions as to matters of fact:

- (1) There was no fault in the electrical system in 8 Right on 9th November 1965 and there was no error or other dereliction of duty by the electrical tradesmen concerned with this work in 8 Right or the servicing of the equipment used.
- (2) That Mr. Kent showed some degree of selfless courage when he went back to see whether Bobby Stewart had the warning, an attitude which I submit is typical of the teamwork which develops amongst men who work together in difficult conditions.

- (3) The plan of the management for the development of the pillar extraction outby of No. 4 cut-through was contrary to good mining practice and led to ventilation improvisation.
- (4) The deliberate erection of the brattice in the A heading shunt was an error.
- (5) Some gas was present in the section and had been present for some weeks prior to 9th November 1965.
- (6) There is no direct evidence that this gas was Illawarra bottom gas.
- (7) The presence of noxious gas or inert or extinctive gas and inflammable gas had been detected in 8 Right in the weeks prior to 9th November 1965.
- (8) Responsible members of the staff - the manager, the under manager and others as well as the deputies - were not fully aware of the significance of the presence of methane, CH₄, in noxious or inert or extinctive mine gases known to occur and found to occur in this mine.

Now, for what it is worth, Your Honor, this is not, in my submission, a new thing. There were two Royal Commissions into the industry taken in the late 1930's and early 1940's and conducted by His Honor Mr. Justice Davidson. I have the document here. I am sorry I only have photostats of parts. They are very voluminous. There are two reports and I am not aware of which section this one is in, having discovered only this morning the fact that there are two reports. This one is in fact four pages taken from one of those reports, pp. 116 to 119, and I would like to read the first paragraph, then perhaps refer Your Honor to the context and a fact which emerges from reading it: "The presence of several gases in some of the mines constitutes one of the major menaces in coal mining. Fortunately the severity of their consequences has in most instances led to successful study of the manner of their appearance and of the methods for the detection of their presence and of their treatment. The result has been so satisfactory that during the last eleven years in New South Wales there have been very few fatalities or even serious accidents due to this cause. Therefore it is not necessary to discuss the subject at any length." Then His Honor goes on to consider the mine gases found in the course of his very lengthy inquiry, and not once does he mention the presence of CH₄ with inert, noxious or extinctive gases or any problem associated with its detection therein.

- (9) The responsible members of the staff and the deputies did not expect to find inflammable gas near the floor of these workings.
- (10) The only direct evidence is that tests were, however, carried out for inflammable gas as a constituent of noxious gas. That of course is sworn testimony.
- (11) Not less than 13 people (members of the staff, deputies, and members of the Federation) would ordinarily have carried out tests for gas in 8 Right section during the week before the fire with negative results. I justify this statement by the reference to Mr. Puddle's evidence in cross-examination by me and also this factual deduction. Certain men in mines have lamps to detect gas. They are always carried by those men and they are carried not to warm their lunch but to test for gas. These are the men of the managerial hierarchy. Mr. Stone and Mr. Puddle were both in this section in a period 1041. Mr. Murray's address.

not long before the fire. On the day shift, Mr. Wright, who has not been called. Mr. Charles Stewart, the deputy; Mr. Deputy Gordon, who relieved him for two weeks previously when Mr. Walker was off. Bobby Stewart, the miner driver, who according to my understanding is required to be able to test for gas. The afternoon shift, Mr. Eager, the staff man and the overman whose name does not appear in the transcript.

HIS HONOR: Mr. Fears was the new overman.

MR. MURRAY: Yes. He was on the day shift. I think the name is Taylor but I do not think it appears in the transcript. The afternoon shift miner driver, again whose name does not appear in the transcript that I can recall; and Deputy Cambourn. Now, the maintenance shift, - Your Honor will recall there is some responsibility on the maintenance shift to get the place ready for the day's work and there is also other evidence that other deputies not included in my 13 or staff men go into the pit on overtime on Sundays to turn on the fans. Those men carry lights. But the final three of the 13 are Mr. Overman Ryan on the maintenance shift, Mr. Deputy Walker and the unknown miner driver, so that makes 13 men. One of the questions Your Honor will have to answer, and again I would submit on the basis on what is the preponderance of evidence is: Can 13 men be wrong?

- (12) There is just no evidence that these tests or any of them were carried out in a conscientious and competent manner.
- (13) The maintenance shift (which included staff and employees equipped with test lamps) tested for gas with negative results prior to 6 a.m. on the morning of the fire. We may assume they tested - in fact they did, there is no need to assume it, the deputies' reports show it.
- (14) Deputy Stewart tested for gas twice between ten to eight and quarter to nine in the shunt with negative results as far as inflammable gas was concerned.
- (15) That inflammable gas was present in the shunt prior to the fire. How much or how long it had been there it is not possible to say on the evidence, in my respectful submission.
- (16) That at the time of the fire the gas in the shunt was goaf gas in the form of an inflammable mixture of CH₄ and extinctive gases.

There is no number 17.

- (18) Oil flame safety lamps have a number of inadequacies. For example (a) it will not test for CH₄ near the floor or roof; (b) it will not test for a low percentage of CH₄; (c) it will not accurately test for CH₄; (d) it will not test for N₂; and (e) it will only with great skill test for CH₄ in noxious or inert mixtures.

HIS HONOR: That is not the evidence of certain experts. Mr. Sellers, for example, was quite positive and some of the other mining inspectors, that providing you have got one per cent upwards, certainly if you have two per cent, of methane, it must show.

MR. MURRAY: To what expert is Your Honor referring?

HIS HONOR: I mentioned one, but there are other mining inspectors.

MR. MURRAY: For instance, Mr. Longworth does not agree with Your Honor's proposition.

HIS HONOR: That may be, but I think you will find Mr. Menzies does.

MR. LEE: I think Mr. Longworth did agree with it, but in cross-examination he did ultimately admit that with some incompetence you could have troubles.

MR. MURRAY: From the table, my learned friend Mr. Sullivan says that Mr. Parkinson, the check inspector, says you must find it. He was in this mine numbers of times over a period of months prior to the fire, as Mr. Reynolds pointed out.

HIS HONOR: What is the evidence as to Mr. Parkinson being last in 8 Right section?

MR. MURRAY: I do not know.

HIS HONOR: The fact that a man is in a mine does not necessarily mean he is in the place where gas is.

MR. MURRAY: Not necessarily, but Illawarra bottom gas was not detected by Mr. Parkinson. Look what Mr. Longworth says at p.153. I have no interest in this except that my men do not like working in coal mines where the equipment supplied does not enable dangerous gas to be detected. That is the point I am making. At p.153 the difficulties are referred to:

"Q. When you have the small flame of the methane, that is when the discernible cap on the flame appears?A. Yes. That is when you discern or assess the actual percentage.

Q. So that to use the normal or near-normal flame as a test for methane, if you happen to miss the luminosity - A. Yes, you would not know.

Q. Your test has gone?A. Yes. "

Then at pp.188-189, that is concerning the difficulties of testing with it, at the bottom of p.188:

"Q. So therefore that lamp cannot be used to examine gas an inch from the ceiling - an inch from the roof?A. If you put it in a cavity above the roof you can test above roof level but generally it is difficult to test at roof level for a layer of gas.

Q. To that extent then that lamp has deficiencies, hasn't it? In that it is difficult with it to test at roof level? That is right?A. Yes.

Q. Would you show me how with that lamp you could test gas an inch from the floor?A. It would be difficult - as equally difficult.

Q. It is impossible, isn't it?A. Unless there was a hole in the floor and then you could test by getting the lamp more or less at floor level."

HIS HONOR: But that is a test for Illawarra bottom gas?

MR. MURRAY: And testing for methane at pp.189-90. At p.190:

"Q.The answer is Yes, isn't it?A. It is inadequate to determine the correct percentage in it.

Q. It is inadequate to detect with any worthwhile accuracy the presence of methane, isn't it?A. Yes. "

Towards the bottom of p.190: "Q. Therefore the lamp does not give an adequate test - "

HIS HONOR: To assist your argument I think you should read the next question and answer there.

MR. MURRAY: Yes.

"Q. Once you have turned the flame down and you are testing in a mixture which contains black damp, in other words where testing in bottom gas, you run the real danger of the flame being lost before methane can be ignited inside the lamp?A. There is that possibility.

Q. That is a likelihood?A. It is a likelihood.....
A. If the lamp were lowered into this concentration then it would be lost."

And of course it was a concentration higher than that which was found after the fire. At the bottom of thatpage:

"Q. Therefore the lamp does not give an adequate test for methane in bottom gas?A. It would depend on the operator, I would say.....

Q. How many years experience have you had?A. More than you."

Then he goes on to talk about the question of diffusion. Irrespective of what Mr. Longworth may have said in-chief, my submission is that we all know that one of the tests of testimony is what is said in cross-examination. We have the experts here, all of whom differ; indeed criticise each other, without going through it. From recollection I think we have seen Mr. Cambourn demonstrating the light; Mr. Longworth demonstrated at length the method, and I am certain Mr. Sellers did. My impression is that Mr. Sellers was criticised by Mr. Menzies, but all I am pointing out at this stage is that they were saying that the oil flame safety lamp is still the piece of equipment and must face this inadequacy, that it does require a great deal of skill and experience to test for inflammable gas in the presence of extinctive, inert or noxious gases.

(19) These inadequacies have been recognised for many years and have been known to Mines Department officials.

I refer again to the evidence of Mr. Menzies and Mr. Longworth in particular.

(20) The methanometer is a simple and reliable testing instrument for methane.

(21) Its value has been known to senior Mines Department officials for ten years.

(22) It would appear that it has not been approved by the chief inspector for purposes in the General Rules in s.54 despite his knowledge, constructively, and certainly that of his officials of its value.

I refer Your Honor to the questions asked yesterday and I make this statement which I challenge to be contradicted. It has been approved under s.54 so therefore it cannot be used, and I will refer to this again shortly.

MR. LEE: So that members of the public who read the papers may not get any wrong ideas, are these inspired guesses or statements of fact?

MR. MURRAY: Your Honor yesterday asked my friend whether or not the methanometer had been approved. After some delay my friend said it had been approved and referred to the 7th Schedule. I am instructed that this methanometer has not been approved by the chief inspector as an alternative to the oil flame safety lamp for the purpose of s.54.

MR. LEE: Of course we would not and we never would, as an alternative to the oil flame safety lamp. We would have it with it but never as an alternative.

MR. MURRAY: That is now made clear.

MR. LEE: The methanometer is going to look a bit silly trying to detect CO₂.

MR. MURRAY: It was approved under the 7th Schedule following an incident involving an electric welder on direct action by the combined mining unions in 1964. Your Honor will note that the 7th Schedule on p.217 was amended in October 1964. I will refer to what I submit is of any significance, if anything.

(24) There is no evidence that the chief inspector has:

- (a) introduced any legal provision augmenting the oil flame safety lamp as a testing device, or
- (b) introduced any legal provision encouraging or requiring the use of self-lighting flame safety lamps.

Indeed the evidence of Mr. Menzies is that they are in fact not approved although they have been in existence for some time.

(25) The self-lighting lamp has been known to senior Departmental officials for 25 years.

MR. LEE: It has only just been approved because they have a type that is satisfactory.

MR. MURRAY: My friend says these things from the Bar table. I am here representing a group of men working in coal mines. We look to the Department to ensure that our employers are, either by persuasion or legislative sanction, using the best safety equipment money can buy.

(26) The knowledge that he can simply re-light the lamp would be of assistance to a deputy and give him confidence in testing for CH₄ with the lamp in extinctive situations yet no approval has been given to it.

I refer there to the evidence of Mr. Menzies given only a couple of days ago.

(27) There is and has been for years a real and important requirement for gas alarms for the working places.

- (28) There is no evidence that the Department has done anything,
- (a) to stimulate their production, or
 - (b) to encourage or require their use.
- (29) Self-rescue devices of the type in evidence have been known for years and are a valuable safety device.
- (30) There is no evidence that the Department has done anything to have their use introduced on a compulsory basis.
- (31) No written plan of the development of the pillar extraction existed in this mine, it was only a matter of post-factum maps.
- (32) No fire hoses were closer than 38 phone some 500 yards outby of the working place.
- (33) The water reticulation system in section 8 Right was not fitted with fire hose taps.
- (34) There was no rescue equipment of any sort in or near the section.
- (35) No foam machine existed at the mine.
- (36) There was no emergency line on the telephone system in existence.
- (37) Barometer:

I merely quote somewhat lightheartedly from the 1887 Royal Commission, p.32, recommendation six:

"The Commission would not insist upon a barometer being provided at each mine. Experience has proved that this is a tardy index to atmospheric conditions. Serious changes in the atmospheric pressure occur, and are felt before they are indicated by a barometer."

So, that matter was considered at that time also.

HIS HONOR: I wonder, in view of that, what caused it to be introduced.

MR. MURRAY: We use United Kingdom legislation as a precedent. There the changes in atmosphere may be of much greater extent.

HIS HONOR: I agree that the atmosphere may be different.

MR. MURRAY: These are my suggested conclusions:

- (1) Methanometers should be carried by the deputies.

It is implicit in these suggestions that whatever legislative changes or recommendations or approvals are necessary should follow.

HIS HONOR: I take it you mean in addition to and not in substitution for the oil safety lamp.

MR. MURRAY: It was said by Mr. Lee that his clients would not allow the oil flame safety lamp to be superseded because the methanometer would not test for CO₂.

MR. LEE: I said we would not substitute the methanometer as an alternative for the safety lamp.

MR. MURRAY: Because the methanometer won't test for CO₂?

MR. LEE: Yes.

MR. MURRAY: My submission is that neither will the oil flame safety lamp test for CO₂ in any accurate sense. It is useless, in my submission, except as a warning to know that CO₂ or nitrogen is present. The danger of the presence of inert gases is that it will alter the capacity of the light to detect methane and, above all, the proportion of methane to oxygen. I think it is clear from the evidence that you can dilute a mixture of CH₄ and inert gases with air and produce, from a safe mixture, an explosive one by the dilution process because of the introduction of oxygen. So unless the device, and this has been a scientific fact known for years, this problem has been known because in 1928 there was a pamphlet written by the C.S.I.R.O. people and I think that was referred to by Mr. Reynolds, and I have photostats of it, and there are set out the proportions of the mixtures between CH₄ and CO₂ which will explode, and this has been known for 50 years yet the oil flame safety lamp is still supported by Mr. Lee and those instructing him as the device. If we follow other countries, surely we are able down here, with a very extensive coal mining industry, to say it is time we ceased to follow them.

HIS HONOR: How would you detect CO₂ without the oil flame safety lamp?

MR. MURRAY: I am sure had the Department or the Minister indicated 20 years ago we needed an accurate device for determining the CO₂ content in the air we would have had one at least 15 years ago. Surely today nothing is beyond us. There is evidence before us that methanometer alarms are now common and we have had them here. I would submit a device which will not only detect CO₂ must be there for the research as with a device which will detect nitrogen in air.

HIS HONOR: Mr. Buck tells me there are other devices for testing CO₂ which are known to the Department in the nature of indicators. Mr. Buck tells me in fact the Mines Department inspectors carry them but they are not used by deputies. The oil flame safety lamp is adequate to detect CO₂ in the air and the lamp will not go out unless the oxygen content falls too low. The regulations simply say that once the lamp goes out that's it. So, the oil flame safety lamp is enough to show that it is dangerous. Apparently that is the Departmental attitude up to the present day.

MR. MURRAY: My recollection is that certainly it was mentioned in cross-examination that these devices have been known for years.

- (2) Methane alarms should be available to the deputies.
- (3) The continuous miner machines should be fitted with an effective CH₄ alarm.
- (4) The developmental plan should exist in detail as a future plan for pillar extraction and be put up at the pit top and in the section where the deputies and all others can see it.

I have learnt enough about mining and my instructions are that it is not easy to plan pillar extraction and the man on the spot must make decisions in the light of what he sees and I go along,

to some extent with the submission made on that basis. So, therefore if it cannot be put up and rigidly adhered to the variations dictated by practical decisions made by the responsible officials should be put on it as soon as practicable and then the Mines Department inspectors visiting will be able to see at a glance whether an error is contemplated and the deputies will know exactly what the amendments on the plan are. This may involve some amendment, for instance, to s.35.

- (5) A map showing the exact state of the workings should be kept at the pit top for fire-fighting purposes, including the state of the workings, all stoppings, screens et cetera and be brought up to date at the end of each shift.

Your Honor will recall that the fire-fighting teams entered the section and put up a brattice at C heading, there being one already there. There is no evidence but the presumption is that they did not know there was a brattice stopping or screen at the inby end of C heading. Your Honor can see the very serious implications that could follow if the fire-fighting crews did not know that brattice screens or headings existed.

- (6) Fire-fighting hoses should be kept, say, in the crib room or other places handy to the working place.

I am not suggesting that is a magic answer but it seems to me rather strange that these men were so far from anything with which to fight a substantial fire.

- (7) The water reticulation system should have a tap for fire hoses every so often.

It is a matter of someone who knows determining how far and certainly not a matter of having a man coming down with his tools, with the fire raging, and having to tap into the line.

- (8) Each mine telephone system should have a line reserved for emergency calls which rings in a permanently manned central office (see Mr. Jones' evidence at p.53 and Mr. Menzies' evidence at p.321). Mr. Menzies said the Mines Rescue Station was not notified till 9.25.

HIS HONOR: You are suggesting a "hot line" as it is called today?

MR. MURRAY: Yes.

- (9) Air regulators should be locked and the issue of the key recorded.
- (10) Devices for carbon dioxide and nitrogen should be available to the deputies when required and in this regard my instructions are that we agree whole heartedly with the 28th and 29th points put forward by Mr. Reynolds in this context.
- (11) Future inquiries where the Judge is to do it, should have appointed a counsel to assist the Judge, counsel who does not represent any sectional interest.

This, Your Honor, will be something to obviate the occurrence of feelings such as Your Honor gave expression to this morning, when any person can be called.

. I might add at this stage that there is nothing known to me or, to my knowledge, to my instructing solicitors or to any person I have interviewed from the union

who knows anything about this fire, that has not been put before Your Honor and we work there and we are involved in safety. There were 12 men and my mind boggles at there being anything which would not be known to them.

I will now deal with the submissions of the Mines Department.

- (1) Yes. Let the shuttle car be inspected, and the wheeling road. We do not accept the wood block theory - we submit that it is so likely that men would have smelled smoulder odour that the probability of them smelling it combined with the difficulties encountered in workshop reconstruction make the theory improbable and the brake fluid is more likely, we submit, if the ignition occurred in the vicinity of the brake. If brake fluid were dropped it would be dropped continually and men may get used to it but wood smoulders for some time and men would, certainly, in my submission, smell it.
- (2) The lamp with the probe and re-lighter should be introduced.

In relation to the third submission, the methanometer, the fourth submission of a device to be attached to the miner and the fifth submission, the self-rescue - yes please - because it is an extraordinary submission to this effect: Mr. Lee said, and, of course, these are not his words but the best I could get it down, "I am instructed by the Chief Inspector that through me the Chief Inspector would like to see Your Honor recommend the introduction of the methanometer." What a state of affairs, when after ten years the man now in the position of having the power and the responsibility through counsel for the Minister asks Your Honor to do his job. He did not give evidence. He has not told us what he has done to introduce these devices or, if there are any, what difficulties there are in his way. We have heard from Mr. Muir, Mr. Menzies and Mr. Longworth, men with wide experience and greatly respected, as I am informed, in the industry, and rightly so, and in my respectful submission they have been of great assistance in this matter. The fact is that these devices were known to the Department, they say, before these men died. Why not the self-rescuer which may have encouraged ---

MR. LEE: This is purely inflammatory. This is not an inquiry into the Department. I do hope the Press realises the responsibility and does not carry what is a wanton attack, really, on the Department. My friend is making submissions along the lines that there is no evidence of this and that of course, is right, but how it appears to the public is that there should have been evidence. Now, if we had put the evidence as to what the Department has done, briefly referred to in evidence before Your Honor as to this liaison with other countries, with the English Research Authorities and with the establishment in Norway and other places, if that evidence was put before you and it had been shown over the years what the department had done no doubt we would have added another fortnight to the length of this Inquiry. It was never incumbent upon the Department to put any such evidence, in our submission.

MR. MURRAY: Why not the self-rescuer which may have encouraged Mr. Sullivan's clients' husbands to try to follow Kent. This is not wanton. If my friend is stunned I am sorry but it is a fact that in mines on this coast a device has been used for some time now which may have assisted these men to do what Kent did.

There is no explanation as to why these devices are not required. I am merely drawing attention to that fact.

HIS HONOR: There was some explanation made that they are unpopular with the men. That was a suggestion put before me.

MR. MURRAY: Surely that would not be given a moment's consideration.

HIS HONOR: True. I am merely answering your query. It was, as I say, an explanation put forward.

MR. MURRAY: No doubt prohibition of smoking underground is unpopular with some men. As I say, they may have done what Mr. Kent did. The fact of Mr. Lee being here partly analagous to counsel assisting the Inquiry should not, in my respectful submission, prevent these questions being asked. Why should not the device have been brought forward, and instead of being put on the table, and they were not mentioned in Mr. Lee's opening address - -

MR. LEE: They arrived here during the Inquiry. We went to the trouble of getting them from America.

MR. MURRAY: It may have been a good idea if they had been here some years ago.

HIS HONOR: The fact that they were produced at all was something for which I was responsible, not that I suggested the production but when I was informed of them I suggested that it might help clear up what devices were available. I do not think there is any sinister significance in the fact that Mr. Lee did not mention them in his opening.

MR. MURRAY: I am not suggesting anything at all sinister in this, I am merely pointing out what I believe to be empirical facts and indicating that at p.439 I asked Mr. Donnegan this question, "In your view.....thank you Your Honor."

(Luncheon adjournment)

MR. LEE: Your Honor will probably give an indication on this matter so that the Department will be protected. May I assume that? In view of the attack made on Mr. Anderson personally and the Department may I assume that Your Honor at some stage before the Inquiry closes will give an indication as to Your Honor's view as to the relevance of evidence as to the non-production or non-introduction prior to this fire of any automatic devices?

HIS HONOR: Yes. I will certainly consider that.

MR. MURRAY: Before I leave the question of devices, Mr. Lee said "We do not make these things here". Shortly before lunch he did make some comments about these things arriving from overseas. It may well be if that is the case and we have been depending upon what is done in the countries of our great and powerful friends, it may be it is time that that situation was changed because we are large producers and are becoming large exporters of coal and I would submit the evidence before Your Honor may well persuade Your Honor to suggest that some greater measures be taken for us either to initiate the production of devices which our own experience leads us to consider we need, or to make more vigorous efforts to obtain these from overseas.

HIS HONOR: I do not recall there is any evidence before me, apart from the Mines Department itself, of any organisation

such as the C.S.I.R.O. which specialises in equipment or any kind of research connected with the coal mine.

MR. MURRAY: There is the Australian Coal Research Organisation but I am instructed it is concerned more with the question of production, quality of extraction and ash.

MR. SULLIVAN: There is the Australian Fire Protective Association which has its headquarters in Collins Street, Melbourne, and I have mentioned this to my learned friend Mr. Lee and I have had some discussion about that with him and those instructing me were in contact with a Mr. Marriott who is an expert on fire prevention and Mr. Marriott sent up to Mr. Lee, which I do not have in my possession at the moment in Court, but which is in my possession, the I.L.O. code which I am sure the Department is well aware of, that is, the International Labour Organisation in relation to reports on fire prevention in mines and methods of fighting fires in mines. I am sure they could be made available to Your Honor if Your Honor would like to see them.

HIS HONOR: Is there any body apart from the Mines Department, any institution especially set up to consider matters such as these for safety measures, as distinct from, say, production?

MR. SULLIVAN: I was informed by people interested that as far as the Australian Association is concerned it has quite a large library in Melbourne which deals, inter alia, with mine fires, their prevention, cause and so on but we found it difficult to get anybody from that body up here because of the expense of it. I mentioned the matter to Mr. Lee. We tell Your Honor that because Your Honor may feel at some stage that you want further information on these matters and that is a possible source of it. That is all I can put.

HIS HONOR: The evidence before me, and as I recall it it came from Mr. Menzies, or perhaps it is Mr. Donnegan's evidence, is that the Mines Department has to liaison with other organisations in other parts of the world and that they send officers abroad to keep up to date with fresh steps being taken. That is not, of course, the same as having an organisation such as Mr. Murray contemplates which carries out its own practical experiments and actually produces equipment of this kind.

MR. SULLIVAN: I think the Underwriters are responsible for this other organisation. Had they been in Sydney I might have endeavoured to get somebody along but it was too difficult for us from the expense point of view.

HIS HONOR: I wish you had mentioned that because I have power to ask for witnesses and I have power to arrange for their costs to be paid.

MR. SULLIVAN: He is a highly qualified technical witness. It would have been expensive.

MR. McNALLY: On the top of p.439 of the transcript Mr. Donnegan was asked, "Do you know of any organisation.....".

HIS HONOR: Thank you.

MR. MURRAY: That was in answer to a series of questions asked by me. My learned friend referred to what I have said in a certain way and that is entirely a matter for him but I have asked questions of each witness, as far as I can recollect, from the Department along these very lines. Indeed, the material from which I am able to make these points was largely elicited in cross-examination weeks and weeks ago, indeed, Mr. Donnegan, for instance, was called on 17th December of last year.

As I have said we, the workmen, have for good reason in the past looked to the Department and, lest by not saying it it be thought we do not adhere to this point of view, we are conscious of very great improvements which have been brought into mining safety by legislative enactments which are, no doubt, initiated by officers of the Department, because we cannot rely upon our employers to introduce this equipment. Everything I have said concerning the responsibility of the men to whom we look in the Mines Department, applies even more so to the employers. The employer, as I have said, produces something like a quarter, if not 33-1/3rd per cent of this State's coal and is the person immediately responsible to us under the law for the organisation of its system of work and abiding by the provisions of the Act but none of this equipment has been introduced by our employer, certainly, it would appear, not voluntarily, because in this mine there was no provision of the individual rescue device, for what it is worth, there is no provision as I indicated earlier in cross-examination of any safety device whatever in the place. There is provision of the methanometer to the deputies although the management knows their value and has them, it is quite clear, in my submission that they are there because they are required when welding goes on underground. That is why they are there. There is no evidence at all of them being available to the deputies. Indeed, the evidence is that they were not available and one might have thought that A.I.S. itself, being in the industry in such a large way, as my learned friend said, in the business of winning coal and conscious of safety, as my friend has also said, may well have itself been carrying out some developmental work so as to improve the devices available to its employees in its own gaseous mine.

HIS HONOR: Is the B.H.P/A.I.S. group the greatest producer of coal in Australia?

MR. MURRAY: I only know they produce about one quarter or one third of the coal in the State.

HIS HONOR: In this State?

MR. MURRAY: Yes.

HIS HONOR: This State, I take it is the greatest producer of coal.

MR. MURRAY: I think it is almost the exclusive producer.

MR. SULLIVAN: Queensland.

HIS HONOR: I suppose one could say probably the A.I.S/B.H.P. group produces more coal than any other single company or group of companies?

MR. SULLIVAN: Not quite.

HIS HONOR: At any rate its production is high.

MR. SULLIVAN: Very high.

MR. MURRAY: Certainly it is one of the biggest employers of labour. I might indicate it would appear that the example of others, for instance, we have now been informed that Huntley Colliery have for some time been using the individual safety mechanism and also, I think, Clifton, the colliery over the range. I do not suppose it matters which ones have been using the methanometer for some time - I do not say it belongs to our employer --

MR. REYNOLDS: It does.

MR. MURRAY: Another colliery in its own group is using the methanometer. Huntley Colliery belongs to the Electricity Commission.

The inspectors who are men who have the respect of the entire industry do carry methanometers and do have the Toka device and the device of which Your Honor was informed before lunch for the detection of CO₂ and they take them to the mine and use them when they inspect, thereby giving to the management an example of these things being available. All of this leads, it would appear to indifference - not indifference - perhaps I am unable to justify that - but certainly not taking the example by the A.I.S. here. I merely mention that point because it seems, coming back to the question of legislative regulation, if these devices are to be introduced into the industry it will only be by the sanction of law.

The sixth and seventh points made by counsel for the Department concern the education of deputies. I am not in a position to assist except to say that so far as we are concerned the best standard available should be the one that we have and if the deputies would benefit by refresher courses certainly, let there be refresher courses but there are others who test in mines from the management down, I understand there are other tradesmen who are required to test from time to time and let them also have the refresher courses if anybody is given them because everybody who tests should be able to test accurately.

I refer to my earlier submission that is uncontradicted on the evidence that at least 13 men of various stations in the mine tested in this mine over what I am submitting is the relevant period.

On the question of pillar extraction, we do not think it would be practical for our employer to have to get approval, as it were, in advance as Mr. Lee suggested and our submission would be it would be a practical alternative here if the plan were approved initially and kept in the office so that Mr. Menzies, Mr. Donnegan and others would be able to see at a glance what was going on throughout the workings rather than have to wait till the time came round when they visited.

The question which is very much before this Inquiry, it would appear, is the question of the deputy. Our only relationship is that he is a fellow workman, a fellow employee and he is, of course, separately represented here and I merely refer again to what I said before lunch and that is that we have certainly put up everything we know that could possibly assist the deputies. That is what he is, as are my people, they are not mining engineers. They are leading hands and they are on about a 15 cents an hour margin over the miner and they should be so considered at all times, in my submission.

The only other matter my friend Mr. Lee raised which I would submit was, again, a rather strange submission, was this: Your Honor was asked by the Mines Department, through its counsel, that is, through counsel for the Minister, to recommend to the Minister for Mines that he ask someone, presumably his Department, the Mines Department, to re-draft the Coal Mines Regulation Act. That is an extraordinary state of affairs.

HIS HONOR: I do not know that Mr. Lee said that in so many words.

MR. LEE: I do not remember anything remotely resembling that but I did say it was apparent there were some sections of it

which might not be in accord with present day conditions and Your Honor might consider it an appropriate time to make an observation on it. I do not feel there is anything strange in putting into Your Honor's hands such a suggestion.

HIS HONOR: I thought you meant the Act in some respects is out of date in that it does not conform with modern practice and therefore if I drew the attention of the Minister to the fact he might get a draughtsman on the advice of his Departmental officers to go through it with him. I only took it in that light.

MR. MURRAY: Now my friend has explained what he meant I understand. I can only go from what falls from his lips. My impression was he said that the Act should be looked at and brought into accord with modern conditions and modern technology. If that is not a job for the Mines Department and its officers, what is? It is the public department which administers the Coal Mines Regulations and if we have to wait for a tragedy in the industry and have a judicial person ask the Minister to ask the Mines Department to review the Coal Mines Regulation Act and bring it into accord with modern conditions and modern technology it is a strange state of affairs. I leave it at that.

As far as the employer is concerned I have made earlier my submissions concerning the factual matters to be determined but I would like to make this clear, as I have made certain comments concerning other individuals in the industry which are part of organisations represented here: as far as we are concerned Mr. Stone and Mr. Puddle and the other officials - personally, we believe, would never deliberately do anything which created deliberate danger to the men and, a fortiori, because they are working beside us the deputies would never knowingly do, or omit to do, anything, the doing or omission of which would prevent the safest possible conditions prevailing and, in our respectful submission the evidence has underlined this to be a valid attitude.

These things are clear: at the door of the management lies the responsibility for this accident and, therefore, the death of these men and it lies there for reasons which I would submit are now abundantly clear and despite the way the ground has been ploughed and re-ploughed, are very largely conceded by the responsible people and the management is responsible because (a) the plan of development was contrary to good mining practice and led to ventilation improvisation, (b) the deliberate erection of the brattice in the A heading shunt was an error and, (c) the management failed to provide adequate testing devices for the deputies and other officers testing for gas particularly in the light of the history of this mine and the presence of extinctive gases and CH₄ in diffused mixture.

Finally, it seems to be a tragedy of this industry that it needs a major incident of this nature for there to be any real review of the requirements which one would have thought would have been every day attracting the attention of all concerned.

HIS HONOR: Mr. Lee has asked me to make some comment in regard to the Department's action in bringing to this Inquiry safety devices. I have only this to say: the safety devices produced have, in fact, been in the precincts of the Court for some considerable time to my knowledge and they were produced as late as they were in the Inquiry because I indicated that would be the most convenient time at which to produce them. I can see nothing improper, let alone sinister, in the time or the manner in which they were produced by counsel for the Minister.

MR. MURRAY: I was not suggesting in any way that was a matter to which I drew attention. There is no suggestion of anything sinister in the timing of their production. I personally have seen those devices in Court for some time and I did not intend my remarks to be applied to the circumstances or manner of their production, it was a question of the significance re the industry.

HIS HONOR: Before I hear Mr. Sullivan, I want to hear another witness who may assist me to resolve certain matters in my mind. I have had this witness brought to the Court by summons - not that it was needed - and I understand he is outside the Court. Call Mr. Stewart, please.

CHARLES ROBERT STEWART

Re-Sworn

Examined as under:

HIS HONOR: Q. You are Charles Robert Stewart?A. Yes.

Q. You have already given evidence in this Inquiry?A. Yes.

Q. And you have been at work and have come straight from work, is that right?A. Yes.

Q. Mr. Stewart, I wonder whether you could give me some assistance on certain matters I want to know about and which have not really been dealt with in the evidence so far. Firstly we have heard a description of this shunt in which the shuttle car was working and in which you say you conducted certain tests in regard to gases. You have seen the shunt since the fire, have you?A. Yes.

Q. And you recall the shunt as it was immediately before the fire?A. Yes.

Q. We know that the brattice stopping was destroyed by the fire. Was there any other difference in the shunt, in the appearance of the shunt, before the fire from its appearance at the present time?A. Yes, it had been cleaned out, that is like from rib to rib, and that actually made it just like a square face and ribs. But before the fire the ribs had fretted and there was a fair bit of debris behind it, like prop ends and coal running up, and you would probably find a height of roughly about two feet going back in, say, three feet from the actual rib face itself.

Q. Was that in front of the brattice?A. Yes, on this side of the brattice.

Q. That is on the working side, the outby side, of the brattice?A. Yes.

Q. Did these things that were there interfere at all with the testing for gases?A. In what way?

Q. Well, did they make it more difficult to test?A. Oh yes, they actually would - in one way they would, yes. But in another way, you could get up on to the rib and get right to the roof.

Q. You could get higher, but what about getting down to the floor level?A. No, you couldn't get to floor level behind the timber, the props itself.

Q. You have told us of certain tests that you carried out there. Have you ever suspected methane, inflammable gas - whether it be in the form of bottom gas or free methane - in that area or any other working in the mine, any other part of the mine in which you have worked?A. Yes, I did contact methane on two or three occasions and I did report it.

Q. Was there any time you inspected and suspected there might have been methane there but you have been doubtful about it?A. No.

Q. Have you ever seen anybody using the methanometer at all?

A. Yes, on one occasion.

Q. When was that? A. It could have been 3 months before.

Q. About 3 months before? A. I wouldn't say exactly 3 months, but in that vicinity, and it was -

Q. Who had it on that occasion? A. Fred Wright and it was up on the top side of the working places in A, B or C heading.

Q. Have you ever asked for any methane test to be conducted?

A. No, I haven't.

Q. You have never asked? A. No, not in that section.

Q. Have you anywhere else? A. Yes.

Q. Whom did you ask? A. The under manager.

Q. The under manager - is that Mr. Puddle? A. Yes.

Q. And was the methane test conducted at your request? A. Yes.

Q. Now, you have told me about the tests that you make on those occasions when you are working. Is yours a busy job during the shift? A. Yes.

Q. Is there any pressure at all on you to keep production going?

A. Not exactly pressure, but there is quite a fair bit of time taken up with the production side of it, yes.

Q. And is there any check kept on you at all as to whether you keep production going? A. We have production sheets we have to fill in, and delays and so on on them.

Q. Do you ever get any inquiries from the management or any official of the management as to why there may be delays such as you have spoken of? A. Well, usually when you have a delay you note it on this sheet and when you hand it in there may be questions asked about what was wrong and how long it took to rectify that stoppage and so on.

Q. Do you ever get any telephone calls from the surface as to what is happening down there? A. No - I can't say directly from the surface, no.

Q. And does the overman come round frequently? A. No, not in my section.

Q. What about the assistant under manager? A. Yes, he is in there, I would say - it would vary from half past eight till half past ten on I would say almost every morning.

Q. And does he come back again later in the shift? A. No. If he comes in the morning he doesn't come in the afternoon, but if he doesn't come in the morning he usually comes in the afternoon.

Q. And do you have more than one man like that coming down - more than one official coming down to have a look at what is going on? A. The under manager and manager.

Q. And the manager? A. Yes.

Q. Tell me how you decide when it is time for you to make a test for gas? A. Well, by the Coal Mines Regulation Act there is a two-hourly test and -

Q. But I want to know what goes on during the shift, you see. We know that you are required under the Act to make certain tests at certain times. What do you do? Assume you are engaged in doing something with regard to production; there may be a difficulty arise or you have to instruct the men what to do. I take it that goes on? A. Yes.

Q. Then what goes on? What happens when it comes close to the time you are about to make a test? A. You leave instructions to the men what you want doing and then you go to your respective places for your tests. You always leave word with the men where I am going in case any emergency arises so they can contact me.

Q. Do you look at your watch? A. Oh no.

Q. How do you know when it is time? A. When you leave - yes, you have to know your times of your tests. You may start - your tests may start at, say, 7.40 and the first test may finish round about 8.30 or 9.30 or something like that, and that is how you verify your tests and your times.

Q. And you just knock off your work, your other work, to carry out your tests, is that right? A. Yes.

Q. Have you ever lost your flame in your safety lamp? A. Have I?

Q. Yes. A. Yes.

Q. How long ago? A. Oh, it would be some considerable time before the fire.

Q. So you had not lost the flame in your safety lamp for some considerable time before the fire? A. That is right.

Q. What do you call "some considerable time" - months? A. Yes, months before - I mean, I couldn't say exactly, but round about month before.

Q. And during all this time you had been testing for both methane - A. Yes.

Q. - and CO₂, black damp? A. Black damp, yes.

Q. And also for a mixture of the two? A. Yes.

Q. Known as bottom gas? A. Yes.

Q. You had been testing for that specifically? A. That is what I thought I was testing for.

Q. You thought you were testing for bottom gas specifically? A. Yes.

Q. And having tested carefully right up to your last test, which was something like half an hour you say before the fire? A. Yes, round about that.

HIS HONOR: Are there any questions by any counsel?

MR. SULLIVAN: Q. You told His Honor it might have been about a month before that you lost the flame on your lamp? A. Months - it could have been a month.

HIS HONOR: Months?

MR. SULLIVAN: Q. I think you said it could have been a month? A. Yes.

(Question and answer marked + above read by Court Reporter)

Q. You agree with that, don't you?A. Yes, it could have been.

Q. That of course would have been in 8 Right?A. Yes.

Q. And it would have been early in October?A. It could have been in October, it may have been a little bit before.

Q. But early in October?A. Very early, yes.

Q. And that would have been in by No. 3 cut-through?A. Yes, it would.

Q. And that was where a tight brattice was put up, is that right?
A. Yes.

Q. And as I understand it the position is this: that is the occasion on which you reported noxious gas?A. Yes.

Q. And the position was of course that you lost your lamp?A. Yes.

Q. Then you went out to the re-lighting station?A. No, we have no re-lighting station.

Q. What did you do about it?A. Got another light.

HIS HONOR: Q. Where from?A. The machine man carries a light.

Q. You took the machine man's light?A. Yes.

MR. SULLIVAN: Q. What did you do with your own lamp?A. Put it in the crib room I imagine.

Q. You have to return it yourself, haven't you?A. Yes.

Q. And did you give an explanation at the lamp cabin as to how it became extinguished?A. No, I don't think I would.

Q. You didn't - no one asked you?A. No.

Q. When you lose your light, it is a very strong warning, isn't it, to a man carrying a Davis safety lamp?A. Yes, it is.

Q. And it doesn't mean necessarily only carbon dioxide, does it?
A. No.

Q. It could be methane?A. It could be, yes.

Q. I gather that you did not ask Mr. Wright after that incident to test with a methanometer did you?A. No.

MR. McNALLY: Q. This was the occasion when Mr. Puddle was there with you?A. Well, I'm not sure. No, I wouldn't say that was the occasion, but it was round about that area, yes.

Q. And you had reported inflammable gas the very day Mr. Puddle tested, I think that is the position?A. I can't say for sure but the records would be there.

MR. McNALLY: A piece of knowledge came to my attention yesterday, Your Honor.

Q. Following upon the fire involving Mr. Emery in the welding, I think certain instructions were issued to Deputies; is that the position?A. Yes - it came to us from our union rep that, I think during the Inquiry or the talk about this incident, oil flame safety lamps were not good enough to test roughly 3, 4 and 5 inches from the roof and the same from the floor.

Q. Perhaps I misunderstood the instructions I had. You remember there was a fire in the Bulli Colliery involving Mr. Emery in the welding. Do you know of that occasion? A. Yes, I have a rough idea.

Q. Were certain instructions issued to you following upon that concerning the use of safety lamps? A. I can't say specifically.

Q. I could be in error. You did not receive a screed of paper or - A. No, we didn't. It was just from our union representative that said that somebody from the Mines Department had said it was not advisable - well, you couldn't test 5 inches or 4 inches or wherever it was from the roof and the same from the floor with the oil lamp, and there would have to be a methanometer used for testing before welding.

Q. Did you yourself ever know that before? A. No sir, not before that incident.

HIS HONOR: Q. You just said that before this Inquiry you did not know that you could not test for methane which existed in a strip 3, 4 or 5 inches wide at the roof - is that right? A. I didn't know - no, that is not what I meant. I didn't know that, but that is what they said in the inquiry, that this light was not good enough to test for that area.

MR. REYNOLDS: Q. That is the inquiry after the welding incident? A. Yes, after the welding incident.

HIS HONOR: Q. Well, you knew at the time of this Inquiry, did you - that is the time of the fire? A. Oh yes.

Q. Tell me how you tested for methane at the roof? A. With this light?

Q. You tell us you had no methanometer? A. Yes, well, the same way. I lowered my flame to the non-luminous blue, raised it to the roof, tested it across the area and then lowered it and raised the flame.

Q. Assume the methane was existing in, say, to take a neutral number, a three inch layer at the roof. Tell me how you got a test for methane on your oil flame safety lamp? A. I would imagine you couldn't.

Q. What did you do - just go in there in any case and put your lamp up? A. Yes, as high as possible.

Q. Did you ever complain to anybody that you could not find any methane that might be up there? A. No.

Q. And of course you knew, didn't you, that methane in its free state almost invariably is up high? A. Yes.

Q. It is only a question of how thick the layer is, is that right? A. Yes.

MR. MURRAY: No questions.

HIS HONOR: Are there any further questions from anybody?
(No response)

HIS HONOR: Thank you, Mr. Stewart. I make the ordinary order for payment of witness's expenses.

(Witness retired)

(Counsel continued to address)

1060. C.R. Stewart, recalled, retired.

MR. SULLIVAN: May it please Your Honor: both Mr. Reynolds and Mr. Murray spoke about the regulation in this industry apparently, according to Mr. Reynolds, on the basis of over-regulation of work in this industry, and Mr. Murray in comparing it with safety regulation in other industries. In a way, those remarks link up with the manner in which Your Honor will make your report in this Inquiry because of the type of regulation in this industry; whilst it may appear superficially to be the same as other safety regulations, has a different historical basis. For instance, one might well hear the question asked by somebody: "Well, why are we having a formal judicial Inquiry because four miners were burnt up at the Bulli Pit, when in an undertaking conducted by the same Company, the Steel Works, four men might be burnt and there might be no suggestion of any judicial inquiry." It is in the historical aspects of this legislation that the difference lies, and it is in this particular aspect that Your Honor's duties and functions in this Inquiry are bound up.

Regulation of mining in New South Wales is of course not a recent thing, as Your Honor probably knows, and the fundamental Act is not the Coal Mines Regulation Act but the Mining Act. And indeed, there has been regulation of mineral resources under the Mining Act since about 1874. The present Act in force is the 1906 Act and the reason why there has been so much attention to mining by the New South Wales legislature is because the mineral being mined does not belong to the people mining it. In the early days, certain very early Crown grants contained no reservation of minerals for the Crown except of course the common law reservations of gold and silver; but from very early on, all grants issued by the Crown contained a reservation of minerals generally and the purchase of a freehold did not involve the ownership and right to work the minerals under the soil. And of course, included among such minerals is coal.

That leads to an interesting position. It means this: when the Parliament is dealing with coal and other minerals, it is not simply dealing with it as an outside body regulating in the same sense as it regulates building under the Scaffolding and Lifts Act, but the executive government is in fact the owner of the coal and it only allows people to work the coal on leases. Those leases are entered into and the body which on behalf of the executive government looks after those leases and the way they are worked is of course the Minister for Mines and his Department, the Mines Department. That has caused Parliament always to have a very intimate regard for coal. It is part of the people's assets. It does not belong to Australian Iron & Steel or Huntley Colliery or Coal & Allied, or anybody else; it belongs to the people. By way of royalties the executive government is a partner in the activities carried on by mining companies. And to speak of "over-regulation" as if this was a free private enterprise in the widest sense in the context of the legislation just does not hold water. The Australian Iron & Steel cannot speak of over-regulation. All it is is a lessee, and the Crown through its Mines Department has wide powers of regulation which it has exercised. Indeed, if Your Honor looks at the Mining Act, Your Honor will see that there are provisions in the Mining Act which provide for labour conditions being put in leases, and that sort of thing. This is the State's problem, and the State is the one that says how it is worked; and that is why this is the only safety Act in which inspectors are given statutory powers conferred by Parliament which amount to a power to intrude into private enterprise to a much greater extent than they are.

The Act itself has the sections to which my learned friend, Mr. Reynolds, referred. At s.27, if Your Honor would turn to it at p.33, it gives an inspector for the purpose of the execution of the Act power to do all or any of the following things, and he of course has much wider powers than an inspector would generally

speaking have under the Labour and Industry Act. Amongst those things is the power set out in s.27 (1)B(ii) to ascertain any matter appearing to the inspector to affect or relate to the safety or health of persons employed in the mine or the care or treatment of animals employed thereat, "and in particular but without prejudice... required by this Act to be given." He has the power, and that power is then implemented by Clause C (read). Then certain savings are made in relation to answers. Then he can take samples.

HIS HONOR: Interrupting you, if I may: I may say I had in fact considered that section myself and I mentioned this morning certain matters which are exercising my mind. I wondered whether I had the power to conduct an examination of any person - not on oath, one requiring him to sign a declaration - in the absence of certain other persons who had been present at this Inquiry; but I was constrained to the view that since I am required to conduct my Inquiry in open court, that was not a permissible course.

MR. SULLIVAN: As a matter of fact, Your Honor, I propose to try to assist the court - and I am putting this to Your Honor in the form of submissions - by taking a look at these sections of the Act because it may be that Your Honor still has one unresolved question, I understand from my learned junior, and that is about the publicity of the report, Your Honor's findings. My junior has informed me that we know Your Honor did express some desire to have us address on aspects of that nature.

Returning to C (i), (ii) and (iii), the two things contemplated are an examination - which obviously refers to the seizure of machinery for the purpose of looking at it, and Mr. Donegan seems to have done some of that in this particular case - and inquiry. So the powers of the inspector there are to examine things and to inquire, in the sense of asking questions of persons. Those are the inspectors' powers and it shows a peculiar interest on the part of the legislature in investigating accidents in its coal seams, and I emphasise "its" coal seams. Then the next section is s.28(read). So he has a power springing from the particular relationships in this industry, which exceeds far and away the powers that are normally conferred by safety regulations. Then by s.29, his intimate connection with the Minister, that is the executive government, and the Parliament, the people's representatives, the representatives of those who own the coal is revealed by this (read). So it is more than just a safety supervision, it is because the Parliament is interested in its assets. Now, s.30 (read). I am indebted to my learned friend, my friend Mr. Reynolds, for some submissions he made during the course of the case on these sections and, as he pointed out, that does not add to the powers the inspector already has under the earlier section. They are still to conduct an examination and an inquiry, but the Minister may - and this of course shows the interest of the legislature in explosions and accidents and that type of thing - where such an event has occurred, direct an inspector to make a special report. That is a special report with respect to the explosion or accident, and that is obviously so that the matter can come through the Minister, if necessary, to Parliament.

The next one, and this is the crux of the situation, with its intimate connection with the coal resources, the legislature has provided a most unusual ad hoc procedure - the type of procedure which could not possibly, as the latest safety legislation in other areas operates, be conducted except by means of a Royal Commission, and that is, a formal investigation. Where it appears to the Minister that a formal investigation of any explosion or accident and of its causes and circumstances is expedient, the Minister may direct such investigation be held, and then follow the sub-clauses. In sub-s. 3 (read), so Your Honor can examine and inquire, as an inspector can, and in

addition the following powers, "to enter and inspect ... for the said purpose," so Your Honor has unlimited powers of entering, "by summons ... signing of a declaration." My learned friend put it to Your Honor that Your Honor only had the powers of an inspector in relation to this. Well, the Court is defined as the Court of Coal Mines Regulation, and I would submit that nobody would dispute the proposition that when a Court which already exists is invested by statute with a further jurisdiction, the investing authority - that is the Parliament in this case - takes the Court with all its procedures and authorities. Amongst the procedures and authorities is of course the power to appoint Assessors, which Your Honor has done. Sub-s. 5 (read) - in any proceeding before the Court you could summon witnesses, and this is a jurisdiction invested in the Court, people can appear, there are certain orders and determinations which can be made by the Court, the costs question, and of course the general power to exercise what are usually known as judicial powers.

Now, is there anything subsequently in that which takes away any of the powers under the conferring section, s.31? That is the question. S.32 provides "The Minister may... think fit." It refers specifically to the special report dealt with further back and the type of report which presumably may be made by the Court, and it may be that that may be regarded, and it is a matter for Your Honor, because I am afraid in this new jurisdiction Your Honor will perhaps have to make decisions about the scope of your jurisdiction -

HIS HONOR: I am told there has never been an Inquiry such as this one before.

MR. SULLIVAN: And this sub-s. 6 of s.33 is the one which this s.32 may affect. Now, much as my clients would like the decision to be given in open Court, we recognise that this may create difficulties. However, both the Federation which I represent and the widows whom I represent feel that the Minister has given an undertaking in the House - it is in Hansard - that the report will be tabled. And, having tabled it, we rely on him to give it the publicity which it should have, and indeed, if he does not honour his undertaking we can call on members of Parliament to see that the matter is ventilated.

The position therefore is this, that the inquiry section of this and the examination of it now takes on a sort of judicial tinge, even though it may still be a judicial Inquiry, and it is for Your Honor to examine the facts and circumstances. Your Honor will undoubtedly have to decide between conflicting evidence or evidence which does not quite fit in. I am sure Your Honor will draw inferences in the same manner as any other court will do and as this is a jurisdiction in which Your Honor reports, we feel sure Your Honor will not hinder the effectiveness of that report by hesitating to apportion blame where, on the facts and inferences, Your Honor may feel that blame is due. We intend, my friend and I, to address you generally in respect of all our clients. We have the four widows and two industrial organisations. We do not feel that any separate submissions will be put on behalf of one group rather than the other group; we do not feel it calls for that. If we speak more about the disaster and the tragedy of these men, it is because we feel we owe a peculiar duty to the widows who have been bereaved by this accident.

In our submission, there will be two questions with which Your Honor must deal if Parliament is to have a rounded picture of the occurrence at Bulli Colliery on 9th November, 1965. We submit that Parliament will want to know, through the Minister, how it happened, and Parliament will want to know: Why did it happen? They are the two questions. In the answer to the second of those questions, the question as to why it happened, it is our submission to Your Honor that there will be implications of gross negligence - and I use the word "gross" advisedly in this context-

on the part of those who were conducting the mining operations in 8 Right section of the Bulli Colliery. I used the expression "gross negligence" advisedly because perhaps the word "guilt" would be too extreme in these circumstances. Certainly, in our submission, there was the grossest negligence. In reporting, Your Honor will probably - and I say this because we are making submissions, as Your Honor understands - try to give the legislature, through the Minister, a picture of the section, its location in the colliery, and its general contours. From looking at the notes I have of the addresses of my learned friends, we would submit that Your Honor has not been sufficiently directed to what we would submit are very salient points in the genesis of this tragedy. Probably at this stage it sounds like the utmost redundancy to say that Section 8 Right is part of a ventilation split in the Bulli Colliery which is known as No. 1 North; that it is the first sub-split of the main split, and that it is receiving in the order of 28,600 cubic feet of air per minute, or it was receiving in that order in its workings. It is obvious that by definition in the Coal Mines Regulation Act, it is a gassy place. Furthermore, apart from the legal definition of a "gassy place," it was mining coal from the Bulli No. 1 seam which, in the evidence of Mr. Sellers who is the Company's own expert, shows inflammable gas in the whole of its range from Helensburgh Colliery which is the Metropolitan Colliery, to Mt. Kembla. This was mining in No. 1 seam, a seam which contains inflammable gas throughout its range.

Now, we would submit the evidence has established without any contradiction that such inflammable gas which is found in the Bulli seam is methane, or, as some call it, carburated hydrogen. In addition, in the course of working the coal in 8 Right, carbon dioxide was liberated, and it is our submission that as well as containing methane and carburated hydrogen, this area contained an inseparable mixture of those two gases, methane and carbon dioxide, which has been referred to here as Illawarra bottom gas. The presence of these gases in mines is no mystery. It is particularly no mystery to people who work in the Bulli seam. They know there is methane there, they know there is carbon dioxide there; and if one looks at the chart issued by Mr. Donegan, the gas chart containing the list of mine gases, there is an obvious reference to carburated hydrogen and carbon dioxide. It is not an unknown quantity. Take the position of a person uninstructed in chemistry, for instance, knowing there was carbon dioxide and methane coming out of a coal seam, even if he knew nothing at all about mine gases the possibility of their being mixed would occur to him. It is probably the first thing that would occur to him, so there is no mystery about this so-called Illawarra bottom gas.

The colliery commenced to extract coal from this Section 8 Right in May of 1965, and at that stage it was using the normal bord and pillar methods which are laid down by s.53B(a) of the Act. Your Honor has probably had your attention drawn to that, which lays down as a general rule that the method of extraction shall be by means of bord and pillar operations. That is at p.75 (read). He is exercising his rights as lessor there too, I would submit. They were using a three-heading system and it was ventilated by air coming up the intake located to the right of the workings - that is looking inby - and that has been referred to in these proceedings as C heading, and returning by an airway located to the left looking inby. That was the A heading, which set-up Your Honor will remember. In July of 1965 - and in our submission these dates are important, as to how this happened - pillar extraction commenced in an area four pillar lengths inby of the part where the men were burnt. The evidence is that the cessation of solid extraction was dictated by the existence of a fault inby the area where solid extraction ceased. That brings us up to the stage where we start pillar extraction to come back. Now, the feature -

and this is a feature which in our submission has not been emphasised sufficiently - of the headings already driven, which are A, B and C and the solid workings, was that the contours of the workings sloped sharply from C heading to A heading, and this little contour map that was prepared for us by Mr. Sellers is the document which is the very relevant one in this. It sloped sharply and those contours go right through. I think this was marked as an exhibit?

HIS HONOR: It is part of the report, at any rate.

MR. SULLIVAN: Yes. And this was an unusually steep type of fall to one side of the workings. We also know this, that roof conditions were bad due to the proximity of the fault. We know also that there were dykes present in the working area and again we rely on Mr. Sellers' uncontradicted evidence that these dykes are commonly associated with emissions of gas. The Under Manager, Mr. Puddle, was in charge of the pillar extraction, and if I may refer Your Honor to pp.719 and 720 where he gives the order of work, there is one omission in his description of what he did which I am sorry I did not think it was necessary to remedy at the time, but we do not know the dates. Your Honor will remember the witness Mr. Muir when he was being asked questions by my learned friend Mr. Reynolds about the order of extraction, said he could not come to certain conclusions because dates were not given. Your Honor will recollect that. At any rate, at p.720 and perhaps the yellow plan, the one with the orange on it, could be used. That is Exhibit JJ. Pillar extraction commenced in July 1965, as I say, and relating to that a piece of evidence from other matters in the mine, at that stage, July 1965, the metering of return air showed that 8 Right Section was putting into the return airway - not necessarily making but putting into the return airway - 28 cubic feet per minute of methane. That is when they started in on their pillars. The procedure adopted, as Your Honor will follow on the map, was that the position 1, this colour here, was driven and we are not told whether 1 was driven with its right angle on it - it is nearly a right angle, but really an obtuse angle, going up to the bord, but certainly No. 1 was driven. It may have been driven to the bord or it may have been left at the end of the heading, but at any rate that was the first drive. Presumably when 1 was driven, the pillars which are marked with the figures 6 and 4, those two groups of pillars, were still intact. That would appear to be the position because this is intended as what has been referred to as a ventilation heading, as Your Honor will recollect. At that stage there was no goaf.

The next split that was made was No. 2, and that certainly was driven through to the bord, because Mr. Puddle says so. They worked then from A heading and they cut through, and also of course from No. 2 which is the pinkish chalk there, and they took various haphazard lifts from the area marked 7 and all of that sloped downwards from the original headings. And if there was present whilst that work was being done, any gas heavier than air, it would tend to accumulate in the bottoms of those yellow lifts. It would go down under the influence of gravity, and of course once the fans were taken out there was nothing at all to draw it back into the return airway, and if the gas continued to make in those headings it would stay there until it spilled out. There was no real goaf there, and we know this about the nature of the area in which they were working, how close it was to the fault and therefore the possibility of a gas make, that in the process of extraction from 7 - this is Mr. Puddle's evidence - the continuous miner and a shuttle car were buried by a roof fall from the face. As Your Honor can see - and it is not a matter of criticism by me but a matter of sheer fact - this was obviously the commencement by the management of a period of

dangerous mining. It was dangerous mining because they nearly lost their continuous miner and the shuttle car; roof conditions as Mr. Puddle kept emphasising, were bad, and that was a fall at the face.

The next move after they took out those orange parts was to drive 3 again down to the lower contours. These are like bags in the earth, these things they are driving. At the end of them, the dead end of them is always lower than the mouth, and looking at a flat plan, probably very few of us appreciated that in the earlier part of this hearing. It was not until Mr. Sellers brought this in, and remember he said the manager and the under-manager would have a contour plan, that we appreciated what they were really making here every time they were driving one of these headings. They were making gas bags.

HIS HONOR: Gas sumps.

MR. SULLIVAN: Very well, Your Honor. And, having driven three down they started to snatch irregularly positioned pieces of coal on a quite obvious basis of improvisation. There is 5 driven through here and 6 there and 8 there, two lifts on eight, two little lifts, just raiding an unstable area to the left of the workings and getting as much coal out as possible, apparently trying to keep the roof and every time they drove towards the lower contours they were making a sump for any heavier than air gas. To this stage no gas of any capacity had been formed although in September a glance at the return air count for methane would have shown a make getting into the return airway from these sumps of 56 c.f.m. of methane. That was happening at that stage and it could be seen by the under manager when he looked at the air returns.

At last we are able to more or less arrive at a date. We know all that was done between July when they started extracting pillars and the 5th October because we know from evidence given by Mr. Lake, the bricklayer, and the subsequent evidence to identify the time at which that brattice was put up in No. 3 cut-through, that it was probably round about 5th October and I got from Mr. Stewart today the final little brick to show it was 5th October when that was put up. I am grateful to Your Honor for recalling him.

The position then was that on or about 5th October No. 3 cut-through was extended again down to the lower contours and, judging from the maps, a distance of about 120 yards, may be more, may be less, over 100 yards, No. 3 cut-through was extended by No. 9 by the position marked No. 9 on this plan and then they connected up 7 with 2 with 1 with 3. May I give you the order again: 7 with 2 with 1 with 3 and that was connected to the return airway inby of 3. There is one thing that cannot be known about this particular set-up: we can know how much methane was getting out of these sumps or working places into the return airway and that was probably the free methane coming out from the face workings but probably was not the methane mixed with carbon dioxide which would tend to lie at the bottom of the sumps, but we do not know how much of a make there was, but we do know this from Mr. Lake's evidence and from Mr. Stewart's evidence today about putting his lamp in the gas and having it extinguished on or about 5th October, we do know that the accumulation of gas in those west workings had by 5th October formed a pool in these goaves sufficiently deep to spill over into A heading. It is not a matter of gas being blown out by air, it is a matter of the gas spilling out.

HIS HONOR: Is the intersection of A heading and No. 4 cut-through a lower point than the intersection?

MR. SULLIVAN: That is a higher point, Your Honor.

HIS HONOR: The fall in contour is over towards the coloured area towards the top?

MR. SULLIVAN: (By leave approaches His Honor) These contour lines I have assumed that where Mr. Sellers wrote, say, "50" there, he means it is 50 there and 50 there, along that line. There is a general slope that way at these workings. That is why I regard these headings as sumps or bags, because if it is heavier than air it gets down and the only way it can come out, unless it is blown or pumped out, is by building up a level of the make and in that way, until it reaches a level where it can spill over. It is a question of it spilling over like water and that is what happened when Mr. Stewart and the bricklayer, Mr. Lake, put up the brattice, the cement washed brattice in No. 3, inby of No. 3 cut-through.

HIS HONOR: That is all based on the assumption that this make of gas in the goaf had been forming for some time.

MR. SULLIVAN: I will come to that later. We submit it must have been because the next thing that happened shows that what I have just put to Your Honor as what happened in No. 3 cut-through is correct. It appeared to those who did it that the putting up of the cement washed brattice was effective in keeping the gas back. So then we have another look at the return airway for October, that is another date we have and that is for the whole of October and we find, looking at that, that the amount of methane gas, not necessarily the make of gas, but the amount of methane gas getting into the return airway -

HIS HONOR: The amount getting out?

MR. SULLIVAN: Yes. It may get out because it comes out in a free form and goes up against the roof and differences of pressure get it out or it may come out otherwise but at any rate the make then had suddenly dropped back to 28 c.f.m. and we would submit what happened was obvious because you will remember that by October the size of the goaf had been greatly increased with ten having been taken out and 11 probably had been taken out.

HIS HONOR: Mr. Reynolds shakes his head.

MR. REYNOLDS: That is quite wrong on the evidence: when 9 was being driven 10 and 11, as far as the evidence goes, were still pillars.

MR. SULLIVAN: 10 would be but 11 had been taken out.

MR. REYNOLDS: The evidence was 10 and 11 were taken out together.

MR. SULLIVAN: The evidence is there, Your Honor and the position is this that at that stage that instead of it being the brattice that kept the gas back it was just retreated into the sump created by the new work.

Let us get back to the undoubted facts about what gas was found in the headings: Carbon dioxide was found, there is no doubt about that, and methane was found. Methane was found by then in the safety lamp. Of course, it was present in the return airways. Common prudence in any case, even if it had not been found, by people who were mine managers and mine under managers, I mean, it is not us conducting these operations, we do not put ourselves in their place in the sense of looking at them as if they had the same qualification as we have, we look at them objectively as people represented by the A.I.S. as being competent to conduct mining operations with safety and we submit strongly that reasonable prudence would have dictated to anybody at all working there on the No. 1 Bulli Seam at least the probability of there being carbon dioxide there or of there being carburetted hydrogen there, even if they had never found a mixture of the two. Mr. Puddle has an under manager's certificate. We will say that perhaps that is not good enough for the work he was engaged in for the A.I.S., perhaps he should have had a manager's certificate. But, Mr. Stone had a manager's certificate. He was not an unqualified man, he was a practical expert miner with the certification the Department wants before it will allow anybody to operate a mine as manager. We put ourselves in his place to this extent and say, looking at it objectively again, if I had those qualifications, if I had to pass three examinations and got a first class certificate in which I had to show myself competent

to deal with mine ventilation, competent to deal with gases and, if I had the practical experience necessary to allow me to qualify under the Act should not I have known of the danger of those three gases being present in those workings where gas sumps were being created?

We say the drop from .20 in the return airway in September to .10 in October, and that means the whole of October up to about October 30th when certainly 10, 11 and 12 would have been taken out - 12 doesn't matter so much because it is on the higher contour and in fact would tend to go through the sump from there, certainly the drop in the methane content in the return airway in October was a sign of danger, not a matter to be complacent about, as Mr. Stone was. It has got to be looked at, where it is coming from and why it is forming. That means that by early in October or, rather, in November before the fire when the methane content had again risen to a make of 56, an obvious make of 56 from 28, it means the trap was set in which these men were caught. (Approaches map) This trap was set as truly as if they had been condemned to death by the management because before this accident happened, and this is undoubted on the evidence of Mr. Sellers, the expert Mr. Reynolds called, along with Mr. Wasson, there was the goaf, the contour of the goaf was down towards this sump here, the level of gas or the specific gravity, greater than air, was building up to such an extent that according to Mr. Sellers on the day of the tragedy when these men were trapped and suffocated and burnt it was so high that it spilled a matter of seven feet from the pavement into the shunt. That was a death trap, Your Honor, and that was made by the management. It means this: If they had not killed them one way they would have killed them another.

MR. REYNOLDS: Be a little more temperate in your language.

MR. SULLIVAN: Looking at the contour map the bottom of the pool to which this heading was being driven, and that is the bottom of the pool, was about 30 feet deep with gas and the people responsible for these deaths, in our submission, were the ones who were doing that and I am not singling out any individual. What do we know about that pool of gas? We know now it was there because their own expert knows. There was a large goaf area there, the lowest part of it was to the left of A heading and at a level of 40 feet below the intersection of A heading and No. 2 cut-through. If Your Honor looks at the contour map and takes the intersection of A heading and No. 2 cut-through it is 40 feet below where this gas spilled.

HIS HONOR: Would you say that again?

MR. SULLIVAN: Just before the tragedy, according to Mr. Sellers, there was a large goaf area.

HIS HONOR: Where is the point of 40 feet?

MR. SULLIVAN: Just at the very lowest contour. (By leave approaches His Honor) Just in by the end of this second lift. That is the lowest point.

HIS HONOR: What is the reading there?

MR. SULLIVAN: The reading at that point would be about 60 because your contour there is 60 and it goes up through there.

HIS HONOR: Would you point to it again?

MR. SULLIVAN: This particular point. Whatever Mr. Reynolds

says about 10, 11 and 12 not being removed in October, they certainly had been removed by November.

MR. REYNOLDS: Yes.

MR. SULLIVAN: So this was the position: we know from Mr. Sellers that as the gas formed so the level of this pool rose just the same as water in an irregularly shaped container, the level remains the same, and we know now that it contained, on Mr. Donnegan's count, 40 per cent of methane. Even later than that Mr. Sellers got a count of 20 per cent of methane and it amply deserves the adjective which was used which was "rich" in methane, much as my learned friend Mr. Reynolds objected to me using that phrase at the time.

HIS HONOR: From that area of 60, the lowest point, the gas must have either accumulated to such an extent that it rose to the time it was something like 110 feet -

MR. SULLIVAN: Yes, from 60 to 110, about 40 or more. I think the measurement made by Mr. Sellers, and I do propose to refer to his evidence perhaps in more detail tomorrow is in the order of it being, in January, a matter of 7 feet.

HIS HONOR: From floor level.

MR. REYNOLDS: It was 107 feet above sea level and the intersection was 103 feet above sea level so it was four feet at the brattice.

HIS HONOR: There is quite an amount of evidence and this has caused me some concern: there was an addition of free methane coming, apparently past the brattice in the shunt higher up at the time of the fire.

MR. REYNOLDS: It was found subsequently.

HIS HONOR: It was put to me the fire was close to roof level through the elephant's tube burning but in fact subsequent tests showed free methane was coming out at roof level at the time of the fire and part of the fire was being fed by free methane coming through the brattice. That is an aspect to which nobody seems to have paid very much attention so far.

MR. REYNOLDS: Not even the inspectors, Your Honor.

HIS HONOR: That is the evidence.

MR. MURRAY: Only afterwards.

HIS HONOR: It is true in the simulated conditions this was discovered.

MR. MURRAY: No one has suggested there was anything burning at roof level except - -

HIS HONOR: Except what? People say there is only a tube of gas burning. The evidence is the flame extended from the roof down. I think it was Mr. Kent who ran through the fire and got a bit burnt but he ducked down and his body escaped burning after ducking down. The flame was, in the main, above him.

MR. McNALLY: Mr. Donnegan dealt with convection currents.

HIS HONOR: I remember that evidence.

MR. LEE: I am reminded of the samples he took. Whether they

were up in the roof or down in the bottom they were all samples of bottom gas so when we are talking about free methane up there we should really be talking about bottom gas as far as what was discovered after the fire as far as the inspectors are concerned.

MR. REYNOLDS: Mr. Menzies said there was no evidence of methane in his interpretation in any quantities in its free state.

HIS HONOR: I do not recall that but I will have a look at it.

MR. SULLIVAN: I will be giving references, Your Honor. I am not just giving evidence from the Bar table, I am making submissions at the moment. I am trying to let Your Honor know how this came about or, make submissions along those lines. The suggestion was made that previously bleeder or ventilation headings had been put in for the purpose of bleeding off the gas and it was further put to the Court by Mr. Puddle that the extension to No. 2, that is No. 3, was intended as a bleeder heading. Let us have a look at it from the point of view of a bleeder heading: Firstly, it drops in its contours from contour 110 to contour 70. The next contour where it was going to hole into the goaf was contour 60. You have got a gas which is heavier than air down there. How would it bleed as a bleed heading? There we have the situation about the week commencing 2nd November, the fatal week.

HIS HONOR: Assuming the company believed it was not bottom gas but carbon dioxide with which they were dealing, there still would be a gas which was heavier than air?

MR. SULLIVAN: Yes, that is right.

HIS HONOR: How do these bleeders drain off that gas?

MR. SULLIVAN: Pages 366 and 367 of the transcript. It is in re-examination by Mr. Lee: "Just to finish off that last mattercompletely inadequate to deal with it.....asphyxiation would follow." Then he asked him about his experience and then in the second-last question on p.367 he asked: "In your view would it be usual practice.....I would hate to be in that position myself though". He is describing the set-up behind the work place immediately before the men were trapped.

(On Mr. Murray's application His Honor granted leave to him to be absent from the further hearing of the Inquiry on the understanding that he could be contacted and brought back at short notice. Mr. Murray informed His Honor that a representative of the Union would be present but he did not seek any right of audience for that representative).

(Further hearing adjourned to 10 a.m. on Wednesday 16th February, 1966)

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IN THE COURT OF
COAL MINES REGULATION
HOLDEN AT BULLI

)
) No. 1 of 1965.
)

BEFORE HIS HONOR JUDGE GORAN
ASSESSORS: Messrs. MAHON and BUCK.
WEDNESDAY: 16th February, 1966.

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

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(PART HEARD)

MR. REYNOLDS: Just before my learned friend Mr. Sullivan resumes his submissions, I have been instructed to mention here because this is the only way this can be redressed, what appears on p.4 of the Daily Mercury. It quotes me as saying that the company felt it most likely that the deputies did not carry out tests. All I can say is that that is the direct opposite of what I submitted. And this journal, circulating amongst the people concerned in this Inquiry, it could lead to a grave misunderstanding. I would only ask that the newspaper take steps to report that aspect of what I said correctly.

HIS HONOR: I do not see that I have the power, Mr. Reynolds, but thank you for mentioning it to me. You certainly did not say that.

Yes, Mr. Sullivan?

MR. SULLIVAN: Your Honor, at the adjournment yesterday I had read what Mr. Menzies, the Departmental inspector, said at pp.366-67 of the transcript and Your Honor will recollect that Mr. Menzies was referring to the situation prior to the fire when the large area of goaf - a comparatively large area of goaf - obviously had this pool of gas, the greatest depth of which would be at the lowest contour point and in fact directly where it is suggested by Mr. Puddle that the miner crew should hole in. Mr. Menzies in the passage I read to Your Honor dealt with the possible, perhaps even probable, consequences of adopting such a course. On 2nd November, Deputy Gordon placed a tight brattice across A heading attempting to create a stopping which it was suggested would operate as it did in No. 3, and the purpose of that stopping being put there was the same purpose as it was intended to serve in No. 3; that is to hold back the goaf gases. Let us take the position as it was at No. 3, and I now refer Your Honor to the evidence of Mr. Mangles. We know now from the question I asked Mr. Deputy Stewart that this occurred on or about 5th October 1965, the occasion on which Mr. Deputy Stewart lost his lamp, his light. At p.454 Mr. Lake speaks of meeting Mr. Fred Wright, the assistant under manager, being told by Mr. Fred Wright to get to 8 Right straight away "as quick as you can." He said to Mr. Mangles who was driving a loco, "Take these fellows to Three 8 phone straight away," and then they went to 8 Right. The position we now know almost accidentally on or about 5th October was this: No. 3 cut-through was being extended into what is now the goaf area, one pillar length ahead of No. 2 cut-through. The work was well under way and it was approximately 100 feet from the intersection of A heading - the miner was down approximately 100 feet from A heading down the extension of No. 3 cut-through. Your Honor will recollect Mr. Lake thought it was No. 2. Charles Stewart was erecting a brattice stopping across the heading. He said

"It's pretty crook, isn't it?" and Mr. Stewart said further "It's pretty crook, Cliff, and when you get back in there, you know, when you feel like it, go out and get some fresh air. Don't stay here and choke sort of thing." And we know now as a result of Mr. Stewart going back into the box yesterday that he lost his light. He admitted it yesterday - he lost his light at that time, did nothing about it, apparently, other than to go and get the miner driver's light. Why the miner driver gave it to him is another question, seeing he is supposed to have one under the Coal Mines Regulation Act, but he went and took the miner driver's light leaving his own out, and did nothing more than report noxious gas being diluted.

HIS HONOR: Do you say that the time of the erection of the brattice was the time he lost his light? Did you actually put that to me?

MR. SULLIVAN: Yes. I did put it to him - I have not actually the transcript references, but in any event if I am wrong Your Honor will see it.

HIS HONOR: It was certainly around that time. The only reason I queried you about it is that you then say he did nothing about it, but he had a brattice erected.

MR. SULLIVAN: But he was told to by Wright.

MR. McNALLY: Your Honor, he did on this day report inflammable gas.

MR. SULLIVAN: But he reported noxious gas too.

MR. McNALLY: Inflammable gas - Your Honor sees the report?

MR. SULLIVAN: I asked him yesterday and he said he did report noxious gas.

MR. McNALLY: I am not quite sure whether it was noxious gas or inflammable gas. He did report inflammable gas - whether he did report both, he did report inflammable gas.

MR. SULLIVAN: I think that makes it worse. At any rate, I am not criticising him.

HIS HONOR: I suppose your point, Mr. McNally, is that on that occasion he was able to detect inflammable gas?

MR. McNALLY: No, on the very day the screen was put up, when Mr. Puddle tested, inflammable gas was at the goaf edge. That is the point I make - it was reported that day and the next day. Anyway, the report is there.

MR. SULLIVAN: I had intended to deal with the deputies separately at a later stage. I am trying to give Your Honor what happened and how it happened, not really the "why". It is our submission to Your Honor that at that stage the sumps to the left of A heading had filled up sufficiently with this gas which had a specific gravity heavier than air - had filled up sufficiently to spill out, as I put to Your Honor yesterday, having regard to the contours, and the palliative taken was to put up this brattice, and when we are thinking of whether they knew or ought to have known what was going on it is in our submission most significant that at that stage Mr. John Puddle, the under manager, without consulting Mr. Dennis Stone, the manager, who said that he blocked out the workings to the left of A heading, decided to take out No. 10 before he drove No. 13. Now, whether he

intended it or not is a matter for Your Honor. There is circumstantial evidence in this case as well as direct evidence, and sometimes circumstantial evidence is more convincing than the type of direct evidence we have been getting here from some of the officials. But the fact remains that taking out 10 pillar did have the effect of creating a larger sump which would have the effect of causing these gases which were spilling out at that stage against the brattice in No. 3 heading to recede.

HIS HONOR: If he intended that - if it was his intention to bring about that result?

MR. SULLIVAN: Yes. It also means he would know that gas had been building up there over this area in these sumps, and Your Honor of course realises the importance of that decision at that time which resulted in the creation of that big sump. He abandoned the use of bleeder ventilation headings, or ventilation headings. Is that coincidental? It may be, but I will draw Your Honor's attention to further coincidences that occurred. The next thing, Mr. Wright, from whom we have not heard, was party to this decision - the man who, according to Mr. Stewart's evidence yesterday, was seen by Mr. Stewart around 8 Right with a methanometer.

MR. REYNOLDS: Before this goes any further can we have one thing clear concerning not having heard Mr. Wright. I think it should be made clear that I said to Your Honor very early in this matter that we would call any person whom Your Honor indicated because it was Your Honor's investigation, and that has always been the situation.

HIS HONOR: If I think Mr. Wright should have been called, I will still ask for him.

MR. REYNOLDS: I thought that was the position, and I do not think it is appropriate for my friend to keep reiterating this as though he is attaching blame to anybody that he has not been called.

MR. SULLIVAN: I am only doing it because of what Mr. Reynolds said at p.421: "MR. REYNOLDS: Does Your Honor want Mr. Wright called? HIS HONOR: Yes. MR. REYNOLDS: He is the assistant under manager. HIS HONOR: That is so. At a convenient time MR. REYNOLDS: We will arrange for him to come to the Court. "

MR. REYNOLDS: If Mr. Sullivan will not do the fair thing, His Honor subsequently indicated he did not require Mr. Wright to be called.

HIS HONOR: That is so. If Mr. Wright has not been called it is my fault and if I still think he needs to be called I will have him called. Yes, Mr. Sullivan?

MR. SULLIVAN: If Your Honor pleases. Whether Mr. Wright was called or not he made the decision or was party to the decision to put up the tight brattice. What they did when they got down to No. 2 cut-through, remembering they had taken 10 out, for the first time they had changed their system - taken 10 out, creating the sump for gases to recede before they started in on the extension to 2 cut-through.

HIS HONOR: Taking 10 out would mean that the gases on the sump theory would spill into 10 or where 10 was?

MR. SULLIVAN: Yes, to where 10 was, and temporarily relieve the gas problem without ventilating - that is temporarily. When they

got to No. 2 - and Mr. Wright as we know was in the section virtually every day, according to Mr. Stewart - on 2nd November Deputy Gordon placed a tight brattice across A heading, again attempting to re-create a stopping similar to the one in No. 3, to hold back, and he did this with the knowledge and approval of Mr. Puddle - indeed, almost the suggestion of Mr. Puddle - and Mr. Puddle said it was to hold back gas. This was inevitably ineffective because the only reason why the goaf gases had not pushed their way through the brattice screen was because on succeeding days they were going into the position where No. 10 had been. There was no similar place into which they could go at No. 2 and the brattice must inevitably be ineffective for its purpose because as the level of the pool rose - that is the one which was at least 30 feet deep back towards the working place - and reached a level above the top of the shunt at A heading on the edge of the goaf, it must inevitably create pressure on the back of the brattice and consequently leak into the shunt. A moment's reflection by people who are qualified - we do not know what qualifications the assistant under manager, Mr. Wright, has, but presumably he has an under manager's ticket - a moment's reflection by anybody would have enabled them to arrive at that conclusion with a contour map in their hand. Yet Mr. Puddle and Mr. Wright, who are both qualified, competent persons appointed by the Australian Iron & Steel to look after their mining operations, either knew of it and decided to take a risk or they were so incompetent that they did not work it out. And I am not talking about hindsight, Your Honor, I am talking of being on the job.

HIS HONOR: I suppose what you are putting is really summed up in a comment or a question I made just a few days ago, or it may have been a day or two ago: that at least inquiries should have been made as to where this gas was coming from when it was found?

MR. SULLIVAN: More than that, Your Honor. If Your Honor would allow me just to continue, to show Your Honor what else was going on?

HIS HONOR: Yes.

MR. SULLIVAN: The real effect of this brattice was first of all to prevent this goaf edge from being inspected at the top of A shunt.

HIS HONOR: The purpose?

MR. SULLIVAN: No, the real effect. I am not saying that is a purpose. Your Honor may be able to infer it was to keep the deputies away, but I am not putting that to Your Honor.

HIS HONOR: You may take that to be the last thing I would infer.

MR. SULLIVAN: Until Your Honor has looked at the whole matter of what happened here, perhaps Your Honor may return to the position you put to counsel yesterday, that you are not certain the whole story has been told. But it had the effect of preventing the goaf edge from being inspected, and of course in the schedule to the Coal Mines Regulation Act the goaf edges abutting the working place should be inspected, and you don't put up a brattice to prevent people from going in there, otherwise you make a monkey of the Regulations. So from 2nd November when that brattice went up, a goaf edge which led to a sump, abutting on what was really a working place, I would think, with respect, or a travelling road - it is one or the other - could not be inspected. The other thing it did is that it prevented

the goaf edge from being ventilated so as to dilute any dangerous gas - noxious or inflammable, it does not matter which - but any dangerous gas being given off. They did not have to make any inquiries when they put that brattice up to know that they were doing that. They knew what they were doing and they knew that those two consequences must inevitably flow - men with under manager's certificates.

That was done on 2nd November. Now, the chain of events that led to the deaths happened fairly quickly. At 10.10 p.m. on Friday the 5th the goaf was not holed. If Your Honor accepts Mr. Menzies, this meant at least that the miner crew on that shift were lucky. Instead another lift in the unholed working place was commenced next to the previous one. At or about this time - remembering that the fire occurred on the Tuesday - although there was a surveyor's peg and an extension of the vent tubes positioned here - if I may come round to the plan - which was approximately the same position as the splits parallel to A heading had been made in the previous two pillars, the idea was changed to split the pillar adjacent to the goaf from end to end (Mr. Puddle's evidence) and when the message was put through to Mr. Wright that they had not holed into the goaf - allegedly because he had made a mistake, and we must not forget he had not made a mistake - the deputy in charge, Wright, told them not to hole into the goaf but to come back and do a lift next to it. Coincidences are increasing, are they not? Is it not a possible inference from that, a change in the method of splitting the pillar, failure to hole into the goaf, that Wright at least knew about that pool of gas?

Then the fans were turned off for the week end after that shift, and for a period up till 9.15 a.m. on 9th November 1965 the goaf gases, completely uninspected, completely unventilated, completely undrained, were left to continue increasing and the logical point of egress from them was behind the brattice in A heading. And to add to this silent menace that was forming behind the brattice, the brattice was erected in such a way as to stop them coming out. Now, that is the build-up of the trap, and it was sprung about 9.15 a.m. when the goaf gases spilled through the brattice and were brought into contact with the point of ignition and burst into flame. Smith, Hunt, Murray, Stewart, were trapped in the working place by fire and they died over the next hour - that is all we can say - either by suffocation or burning. They died over the next hour - deadly trap. That is how it happened. It is only a brief outline but I am prepared to submit, except for a mistake I made yesterday, I meant to say 10 was extracted before 13, except for one mistake I made yesterday, everything I put to Your Honor is absolutely substantiated by uncontradicted evidence, every matter of fact in the transcript. The inferences, of course, are ours. That is how it happened, and it is to be assumed you will get to "how" well within your jurisdiction.

Why this Inquiry was constituted was not, as my learned friend Mr. Reynolds submitted, to find these factual matters only and put them before the public but to go further and report to the Minister who, as I said yesterday, undertook in Parliament to table the report and say why it happened.

Returning to what I said in my opening submission, the deaths occurred in the coal seam owned by the Government and people of New South Wales and worked by persons to whom the Government had granted a lease for exploitation. They are in the business. The Government, the Mines Department and the people is not just interested in these mechanical facts I have put, they are interested in how, under the control of people to

whom the exploitation of this seam is more or less delegated by the Government by way of lease, how four men who were supposed to be protected by persons skilled in mining and tested by examination, how four persons came to die as miserably as this. That is what Your Honor reports on. Finding the facts is one thing - the facts are clear as crystal, I would submit, but why it happened must be considered. In ascertaining why it happened the inspectors who have given us their assistance here in pursuance of their duties under the section to examine and enquire have put before Your Honor most valuable and cogent evidence to assist you. The inspectors have not only the interest but the duty, the same as the mine manager Mr. Stone has, to see the provisions of the Coal Mines Regulation Act and every single provision of the Coal Mines Regulation Act is carried out by people exploiting the lease and the very first General Rule, Rule 1 at p.78 says (Read). In relation to this working place, 8 Right, the management was under an obligation to send sufficient pure air to dilute and render harmless inflammable and noxious gas. It has been glibly said in this Court that gas presents a problem of detection and dilution - that is the wrong way round. As far as gas is concerned their first duty is to send sufficient air to the working place to dilute it, whether it be noxious or inflammable, and render it harmless. The detection provisions of the Act relate to what is to be done by deputies after that Number one duty has been carried out, to check on the way it is operated from time to time to see whether any inflammable or noxious gas is getting into the working place. The attempt to throw the responsibility for this system of ventilation back on to the deputies in this case has been disgraceful. They are not responsible for seeing enough air gets into a place to dilute and render harmless noxious gas. That has got to be done first of all and then arises the problem and the deputy is continuously under the control and direction of the under manager and all statutory officials. If Mr. Puddle - not Mr. Wright - Mr. Wright is outside the statutory heirarchy - if Mr. Puddle says to Mr. Stewart "put a brattice up there " it would not matter if one hundred thousand cubic feet of noxious gas were coming through there every minute, under the schedule Mr. Stewart is bound to obey Mr. Puddle and Mr. Puddle is bound to obey Mr. Stone. It is as bad as a ship. It is exactly the same set-up - the captain, first mate and second mate. You have got to do what you are told and this attempt to throw this back on to the Deputies Association - and I am not saying the Deputies Association is completely blameless within their own responsibility - but they are certainly not required to undertake the duty of the management to obey Rule 1. All they have to do is report and there is a pro forma report there which they fill in and they have done that.

I was speaking about the Department. The Department, in the process of carrying out its duty, and if I may say with respect in view of some criticism levelled at the Department yesterday, very ably and very thoroughly did the Department do it. Inspectors Longworth, Griffiths, Menzies, the analyst from the Department, Mr. Donnegan and others, Mr. James, exercised their powers under s.27(1)(b)(ii) of the Act immediately after this fire, or very shortly after this fire and they have got a great mass of information. The first thing to which they directed their attention, and I am going to deal with the role of the Department in these proceedings in helping Your Honor to decide the question of why - the first thing that was produced - it was not the first thing, but the first thing in order of understanding the why of this case, the first thing to which I will refer is Mr. Muir's evidence about this fire. It is "B" and "Z". I think it has been divided into two but it is all in one file. This file commenced on 20th August 1959

and I do not expect to refer to Mr. Wasson's evidence very much but it appears that at about that time auxiliary fans were starting to be used by collieries. I would like to refer Your Honor to the Act before it was amended. General Rule 3 at that time provided - (Read). It is my impression, although Your Honor's assessors could probably tell you, that this was introduced in 1947 or thereabouts: "Any mechanical contrivanceventilating system". Mr. Stone said to me in the course of his evidence that he quibbled about that however that is not very relevant at the moment. At any rate in 1959 there was no quibbling about it and the then manager, Mr. Ryan, in his first request to Mr. Muir asked the Department about the installation of auxiliary fans. Mr. Muir then laid down certain conditions about these fans and the colliery and the Department seemed to be completely ad idem on each occasion that the request was made to put in auxiliary fans to assist ventilation. The Department, through its inspector, and the colliery, the A.I.S. colliery, seemed to be working quite harmoniously together and when they wanted to put an auxiliary fan in they got permission, asked for the conditions, then the inspector would come and have a look at the place, assess it, have a look at the general mining practice in the place, and then if he thought they were all right, O.K., they could go ahead with their fans. The value of that, the value of the obedience to that, and I say "obedience" to General Rule 3 was shown in connection with an application that was made on 15th July 1960, again by Mr. Ryan and this was a case of pillar extraction, and I think this is the first one in the file. The others had been mainly solid workings. Mr. Ryan says: "I wish to advise.....". Mr. Muir wrote back to Mr. Ryan and in the last paragraph said, (Read). This is 1960. The other accident occurred in 1965. His report is on the following page dated 15th July 1960. Then he wrote again to Mr. Ryan following on that and then on 19th October he inspected the place. Your Honor will remember he had advised stoppings on the goaf edge. It was a two heading system. The sketch is obtained in the report dated 25th November 1960. It was a two heading system, the air intake in No. 1, by two brattice screens and sent down to the extension of the cut-through, and they tried to block off goaf gases with brattice. We do not know anything at all about the contours of the place, it might have been flat workings for all we know and irrespective of what the making of goaf gas was when Mr. Muir came along he found two per cent of inflammable gas in the vicinity of the brattice stopping erected in No. 2 heading. That is the advantage the A.I.S. gets from obeying the law. They sought permission to put these fans in. That is the advantage the miners get from the A.I.S. obeying the law, the Government inspector comes and has a look at the place and tests for gas, it is not left to deputies.

Well, Mr. Muir did not like the system. If Your Honor looks at p.2 of his report there was the utmost co-operation between Mr. Muir and Mr. Ryan at that stage and they worked out a system in which, despite whatever doubts you may have about the bleeder heading system in this particular set-up, it seems to have been effective in relation to the 2 heading system with the airflow being from left to right and the auxiliary fans being positioned in the way in which they were. Mr. Ryan, in 1961, wrote, sent his sketch and there was an inspection. That was on 16th May 1961. Mr. Ryan again obeyed the law all the time. On 26th October 1961 he again did so, in each case followed by an inspection. On 8th November 1961 he obeys the law, he is going to put some fans in so he notifies the district inspector who comes down and they have a look at it. After that year they do not seem in any case to have, if there were cases besides 8 Right, and Your Honor will recollect there were fans in the area to which Mr. Parkinson went in the western returns on the morning he was there - but there has been

no application under the General Rule, according to Mr. Muir, since 1961 and there were certainly no applications for the use of auxiliary ventilating fans in 8 Right. Mr. Stone said, "I doubt if they have got the power". That is a matter for Your Honor to consider. I would submit they have always had the power.

HIS HONOR: In my opinion it is irrelevant to consider whether they have the power or not. There is available a mines inspector who is willing to co-operate and the Department is prepared to inspect and give an opinion: One would have thought it would be for the benefit of everybody concerned and full co-operation is necessary. One would have thought they would not take a point of law as to whether the inspector has power.

MR. SULLIVAN: And on the point of law I think they may have been wrong about it.

HIS HONOR: That is not the real issue.

MR. SULLIVAN: There they were, they had the men here and it is incredible when the co-operation between Mr. Ryan and Mr. Muir had been so fruitful, and apart altogether from General Rule 3 one would think the services of these highly trained inspectors would be employed. In my submission, however, according to Mr. Muir's evidence that was the end of it. The role of the Department at that stage, at any rate, particularly in relation to this A.I.S. colliery seemed to be shrinking.

HIS HONOR: I do not know whether there is compliance here with the second part of Rule 3. The Rule says, "The manager shall give notice to the inspector.....". From the plan Mr. Reynolds produced yesterday of the final development it would appear portions of these areas were parts of a mine which could have been ventilated by the main ventilation system, whereas they were not so ventilated. The fans were used to ventilate the working area but there is a cessation, as I see it, of ventilation of that part of the area from which there has not been complete extraction. There is certainly a part of the area here which is not what one might accurately call goaf which was left, where coal had not been removed, and it is part of a mine, as I see it, which has to be ventilated.

MR. SULLIVAN: What happened in 1964 obviously was that the Department probably had these points of law taken on it by certain managers and decided to put it beyond doubt. It may be of some importance to note that the amendment which inserted that change was assented to on 12th May 1964 so that came into force on that day. That makes it even more interesting as far as any raising of points of law about it is concerned.

Proceeding from there, on 29th June 1965 inspector Longworth visited the panel. He says a fan was working in that section, they were working in solid work at that time and they were working a three heading system. He gives a general description of the system. Mr. Longworth looked around and found no inflammable gas - they were working in solids at the time and he does not seem to have directed his mind - and I am not blaming him - because he was there inspecting something else at the mine - as to whether they had ever got any permission to use the fans that were being used in this position. However nothing happened then and they went ahead to drive their three heading system on to the fault and then proceeded to snatch coal as is shown in this particular coloured drawing which is pinned to the board.

Your Honor notices that when Mr. Ryan had to bring fans into a position where there was some difficulty about

ventilation he was on to Mr. Muir and got his permission to use the fans and Mr. Muir came out and they discussed the general position but these fans seem to have gone straight into operation without any approach to the Department whatsoever and, at a later stage, on 26th October 1965, well after the passing of the amended legislation, and Your Honor will see this at p.166, another fan was introduced and put in series, clearly in breach of general rule 3. I think my learned friend said, when I asked Mr. Puddle about this, "A technical breach". The point about these technical breaches is that if Rule 3 is carried out the inspector goes and has a look. That is the point. When an application is made, "I want to put two fans in series" "We will see what will happen first. Why put them in series because a second one does not pull much more than the first" - the inspector would have a look and he would have seen what was going on. Remember that is 26th October 1965, it is getting close to the fatality and if they obeyed General Rule 3 the district inspector would have been out there and seen the conditions that produced the tragedy early in the following month - a technical breach of the law can have dire consequences.

HIS HONOR: I do not think there is any such thing as a technical breach of a code.

MR. SULLIVAN: If A.I.S. Limited had obeyed General Rule 3 it is highly probable that this tragedy would never have happened. In giving their evidence the Departmental inspectors, particularly in evidence in-chief, concentrated on a fundamental engineering weakness. When I say "engineering" I mean a mining engineering weakness in the system of ventilation in force at the time of the fire.

Following the adjournment I would like to take Your Honor to p.172.

(Short adjournment)

MR. SULLIVAN: I was going to refer Your Honor to Mr. Longworth's evidence. He was the first Departmental expert called, Your Honor will recollect. I want to refresh the Inquiry's recollection of that evidence. At p.174 he was being examined in-chief by Mr. Lee and about two-thirds of the way down the page there is a remark by Your Honor about being shown the fault on Your Honor's inspection, then Mr. Lee said "Q. Have you satisfied yourself that you are familiar as to the pattern of the workings.....up to the top of the plan?A. Yes." He was referring to the large plan then. "Q. Will you tell us if you can when you think the ventilation system.....that goes in just below the yellow?A. Yes." He was then back on to the coloured plan. "Q. What is the fundamental reason why you say that this problem would develop.....increase a little." This very stage, and Mr. Longworth could not have known this at that time, when Mr. Lake and Mr. Stewart give evidence, that the lamp was extinguished - and a theoretical examination of the situation by an experienced mining man led him to anticipate that, and that evidence had not been given at that stage, so it is not a question of hindsight. Then Mr. Lee said "Q. No. 2 is the drive that goes in just behind the yellow.....this fills up with gas." Mr. Longworth was indicating the slide down on the contours. "His Honor: Q. Would you turn that around so that we can see it.....this area," and he is referring to the 3-heading system at that stage, "Would have to go this way....without crossing that working area?A. Yes." So once they started in on No. 2, once they went to the left of the 3-heading system, according to Mr. Longworth they had a problem. I do not remind Your Honor of his qualifications. Now, if Mr. Longworth

was capable of estimating that problem, why should not the people in control of mines, employed by the Australian Iron & Steel, be capable of appreciating it also?

Then Mr. Lee said, "What do you say the alternative would be.....must fall in the goaf." Contours again. "If the roadway had been driven that way.....on this side" - this is reversing the airway - "you would have had a tendency for the air to go along here.....what we have here."

HIS HONOR: To what was Mr. Longworth referring when he said, "If the roadway had been driven that way"? The transcript does not show.

MR. SULLIVAN: I just cannot remember that, but the point I am anxious to make at the moment is that the first witness to say that the airway should have been reversed was Mr. Longworth.

HIS HONOR: Yes. He also was the first witness to suggest that the contour was such that gases would fall into the goaf. That is what he means when he said that?

MR. SULLIVAN: Yes. That is the other point I wish to make on that, that an experienced mining man looking at the set-up knew what was going to happen and he knew it would happen from No. 2.

HIS HONOR: I suppose, contour or not, one would say that gases like bottom gas would tend to fall?

MR. SULLIVAN: They certainly go to the lowest level, but here of course the position is so much aggravated by the contours of the working.

HIS HONOR: Certainly if there had been an inspection of the contours as you say, there should have been, then gases would fall back into the goaf until they spilt out. That is perfectly clear, I must accept that?

MR. SULLIVAN: Yes, it is perfectly clear, and we do not wish to quarrel with Mr. Sellers, but it is so obvious.

Then at the bottom of p.176 in the evidence of Mr. Longworth, "Q. What is the system as you understand it from your experience.....I think mining at Bulli Colliery is planned ahead." The only planning ahead of which we have evidence is from Mr. Stone, and that is that he blocked out what was supposed to happen on the left after they developed their 3-heading system. It was not done in the heading in the way it should have been, in our submission. Going from there to further evidence from Mr. Longworth, that is the first thing. Given these contours and the fall of the gas into the goaf, given the other problems, the airway should have been reversed. I know Your Honor has had some evidence that it might be a major undertaking. We have heard evidence from Mr. Puddle that the contours made it difficult with wheeling and so on and the placing of the loco. In our submission that does not matter at all. If the Australian Iron & Steel Company has the resources to get out the coal, it has got the resources to change the track.

HIS HONOR: To put it another way, if the difficulty of the situation is such that they know or ought to know that ordinary rules for safety are being breached, then if it is not prepared to undertake the major undertaking, it must find a satisfactory alternative or cease operations in that area?

MR. SULLIVAN: Yes. May I say that, as Your Honor has probably seen from the Coal Board reports, coal production is about

23 million tons in New South Wales. The resources of the industry are capable of moving a wheeling road, a travelling track, from one position to another. We submit that cannot be an excuse.

At pp.210-11 Mr. Parkinson was cross-examining the witness and he said to him, "Q. Is it most desirable to eliminate any quantities of gas.....and this was what they did." Now there were two other things they could have done: stopped working in that place and got the men out; and there was a third alternative which has appeared during the course of the case, but not a desirable alternative. Mr. Parkinson said to him, "Q. Didn't you tell me this morning that if you found conditions such as those which you found on Wednesday.....only one way and that is to neutralise or dilute gas as it is given off." That is not hindsight. He has considered the workings, and I emphasise that what Mr. Longworth could see, Mr. Stone could see, Mr. Puddle could see and Mr. Wright could see.

Then at p.224 I was asking him some questions. Perhaps I should go back to p.223. I am examining him on 10th December 1965 which was a Friday and it was before the test when they re-put the brattice back. That is the second test. It was early on in the Inquiry. We had only been going three days and we did not know what the result of the simulated tests were going to be in those days. I said to him, "Q. As to the simulated conditions on the day before yesterday.....dilute those gases?A. Yes." That is Mr. Longworth's evidence. Starting from the situation as it appeared on No. 2 on the Colliery plan, they were developing ventilation difficulties of a type which must lead to an accumulation of gas in the sump. As they went on it got worse and worse and it reached its climax, as Mr. Longworth said, when they got to the extension of No. 2 cut-through. Bad as it would have been, I submit they could still have got a sufficient dilution of gas, even with their bad system, by bringing sufficient air round in A heading to dilute the gas coming from the goaf edge. They didn't even leave it, they deliberately put up a stopping to prevent the only feeble improvisation that was in their hands from being carried out. Hindsight? They knew what they were doing, Your Honor. The question I asked of Mr. Menzies later, if they had not had the brattice in the shunt gas would have been brought down A heading and because of the bad system and the position of the intake and the return it would have inevitably have been carried past the working place which at that stage was down the extension of No. 2 cut-through. They had auxiliary fans, two in series, with a vent tube going down to the face which was drawing air in across the miner. Any gas that would have got in at the intersection of No. 2 cut-through and A heading might have been into the miner place - I mean down to the working place, down the extension, if there were no brattice across there. Indeed there is evidence that when they first started driving No. 2 cut-through they did pick up some gas in the working place, Your Honor will recall.

HIS HONOR: You say that would be because of the fans?

MR. SULLIVAN: Yes, because of the fans. This is an incredible improvisation from an engineering point of view when one looks at it.

HIS HONOR: It is not necessarily incredible, I suppose?

MR. SULLIVAN: Well, we believe, because of what happened. Perhaps it is not incredible.

HIS HONOR: Let us put it this way: it is extremely unwise. Then the question is: Would you expect such from these people? That is a question I have to determine. You urge upon me that these men are so experienced and so competent that they could not possibly have made such a stupid decision? Are you putting it as high as that?

MR. SULLIVAN: They did do it.

HIS HONOR: I qualify that by saying they could not have made it, at any rate, without taking a tremendous risk.

MR. SULLIVAN: Yes, they did, because they actually put this up.

HIS HONOR: Of course, Mr. Reynolds argues against that, that when it was in No. 3 cut-through it was not such a bad thing and the deputy or somebody decided merely to repeat the pattern in this one.

MR. SULLIVAN: No, Mr. Puddle agrees with everything, and may I say that the inference Your Honor could draw, with respect, is that these officials were not looking for gas, they were looking for coal. They are in the business.

MR. REYNOLDS: That has been conceded right from the beginning. It has always been conceded that we are in the business of winning coal and that my friends' clients get their wages for winning coal. This must never be overlooked.

MR. SULLIVAN: And they have to pay pretty heavily for those wages, sometimes. Of course, because they wanted to get coal, they are keeping the gas out of the miner place where the miner has a lamp, because once he picks up gas on his lamp he stops the miner. The deputy would get a "Please explain" about why the production had dropped off. It was much better to have it in the shunt and if possible keep it back with a brattice stopping and hope to get out of the place before the level of the gas gets to a sufficient height to spill over. It is raiding.

HIS HONOR: This is fundamental to your argument on this aspect, Mr. Sullivan: that implies that they knew there was a pool of gas which was rising?

MR. SULLIVAN: They knew it was flowing over.

HIS HONOR: They obviously knew there had been some gas there at times, but was it such a problem -

MR. SULLIVAN: They must have known - they are mining men.

HIS HONOR: They should have known is one thing; that they must have known is another.

MR. SULLIVAN: But they are mining men, Your Honor. They know that gas forms in goaves. They know it consists of carbon dioxide and methane.

HIS HONOR: I suppose what you put is a feasible proposition if they knew the gas was there but thought it was only black damp?

MR. SULLIVAN: What about General Rule 1, Your Honor? It does not matter whether it is carbon dioxide or methane.

HIS HONOR: I am not talking about whether they were doing the right thing, but whether in those circumstances they knew there was a pool of gas there and continued to take this risk. I say that proposition is one which becomes easy to accept if they believed it was black damp and not methane.

MR. SULLIVAN: Yes, it could be, but there is no reason to believe it is anything, Your Honor. They are mining men. Your Honor can of course take two views - that they did not know, and I would say to that, they ought to have known. If they did not know, Your Honor can report to the Minister the company's employees' incompetence or Your Honor can report to the Minister that they are competent but they are more interested in coal than in gas. They are the only two alternatives. That is why people have to have certificates, so that they do know these things and they do know what happens to goaf gases in contour areas. Mr. Longworth assessed the position. He was not the clearest of witnesses because we had not been going long enough to get the general idea, the lay people here. But Mr. Longworth was speaking then not in relation to the reconstruction and a great deal of evidence had not been given. He was just speaking on the results of what he discovered while carrying out his statutory duties as an inspector, and he said that from No. 2 on, the only way they could have ventilated that place was by reversing the airway. Secondly he said that they just started to improvise, they had to do something so they did this, and that is a condemnatory statement of the management, in our submission, "They had to do something so they did this," and the management should have withdrawn the men from the place. That is the first Departmental inspector.

The next one was Mr. Menzies and I would like to refer Your Honor to his evidence at p.293. That is a lead-up but I will come to the real gist of the matter and it is at the bottom of p.295 where my learned friend Mr. Lee said in examination in-chief, "Q. Tell His Honor what view you hold as to the appropriateness of the ventilation system.....in the light of the results of your alterations." So first of all he says there is no method then he says, "Well, you might be able to experiment and perhaps you would find a method." Well, what do you do while you are experimenting? You withdraw the men. "Q. What is the position if the management tries a method and finds that it is unsuccessful.....not unless they change direction of airflow," so looking at it as a mining man, he looked at the panel and he said that there is no method of ventilating it successfully unless you changed the direction of the airflow. Mr. Lee then said, "Q. I will put it to you in a slightly different fashion.....the direction of airflow in the goaf is always away from the work face, the work area." The first rule in the book, Your Honor. "Q. With the ventilation system as we know, which did exist.....It was not feasible." That is with the thing as it was. They could not do anything except reverse the airflow.

He was asked, "Q. What would happen to any gas which might come from the goaf.....I would say Yes, Your Honor." (P.297) So much for the hindsight. Would that be obvious to the people in charge? These experienced mining men say "Yes." He was then asked about the bleeds and Mr. Lee said, "Q. Again, forget about the ventilating system as we know it was.....practice been applied in various coal mines in New South Wales?A. Yes." That is a very general question. I think we would like to look at the working systems before we could say it was comparable to this, as it was in Purple panel. It goes on, "Q. Assuming that the plan.....dealing with here? A.Yes," and that is the spilling over of the goaf gases. So even the bleeder system which they actually did adopt for a while created difficulties and in our submission created difficulties so great after they had taken out No. 10 pillar on the coloured sketch that they could not even go on with that because the moment they tried to hole a bleeder through at the extension of No. 2 cut-through they were going to get a rush of gas from the goaf where the bottom of the pool was into the working place.

HIS HONOR: I put this for your consideration in this matter, Mr. Sullivan. I have already referred to something about ventilating what has been called the goaf here by the system of a bleeder. I find it puzzling as to what were the existing bleeders or headings that were there from which coal was being extracted. Could not they in themselves have been used as bleeders with some proper ventilation system to take gases from the goaf? In other words, it is true that when you extract a full panel you no longer have a bleeder, but there are places here where no such full panel was extracted; why they could not have been used as you work back from them.

MR. SULLIVAN: I am afraid my position here is that I would not have enough knowledge of mining practice to assist Your Honor there. I could not help you there.

HIS HONOR: It may have something to do with the fact that once you have extracted the coal and have already been extracting it, then you form none and therefore you have no actual bleeder, but for example if you look at No. 7 it strikes me that so much coal is standing there and so little has been extracted, and again that pillar formed between 2 and 1, that bleeders could not have been left there and used for taking the gas from where it was being made at the time. Somebody may be able to answer me.

MR. SULLIVAN: As I say, my resources prevent me from being able to answer Your Honor's question. I rely a good deal on what my learned friend Mr. Reynolds has said about the system because we know he has certain people behind him who are experts. But at any rate, there is ^{and} no doubt that whatever the inadequate bleeder system was before -/in our submission it must have been inadequate when you get what happened at No. 3 - they did not even use that when they got to the extension of No. 2 cut-through. They just let it drift there and tried to hold it back with a tight brattice. Anything that Mr. Menzies thereafter suggests like running a bleeder ventilation system through to the brattice up over the top of A heading, he says it would have been an improvement but he does not resile at all from his position that it would have been must better than what they did. When I cross-examined him later I asked him some questions about setting up the panel in the same way as it was when Mr. Parkinson, the check inspector, and I went in, and he said Yes, you would get a low count as Mr. Parkinson did on the day we were there, but still it was not the answer though it was 100 per cent better than stopping goaf ventilation altogether.

That is Mr. Menzies' evidence. I have no doubt your Honor will look at these witnesses in more detail when Your Honor comes to prepare your report, than I have done. I have just referred Your Honor to particular passages. Then at p.302 - and this is why he does not like the bleeder heading very much - he goes on to say what I read to Your Honor yesterday about the consequences of breaking into the goaf with that pool of gas there. That is when we were dealing with the question of bleeder headings. At p.358 he deals with this piece of brattice and at the top of that page he points out, where I said to him, "Q. So we had the position that when the extraction was reaching the stage which is shown on this plan.....if methane to an extent greater than 1.25" - and I was wrong there, as long as inflammable gas appears at the working place in any quantity - "production would have had to be stopped.....not necessarily." So there we are; you either put up the brattice to keep it out of the working place and hope it does not become too much in the shunt, or you ventilate the edge of the goaf and you might get some inflammable gas in the working place and you do not get any coal. It is not hindsight.

HIS HONOR: That is assuming you know it is inflammable gas. What is the position if noxious gas is coming into the working place? Do you have to stop?

MR. SULLIVAN: Yes. It is a breach of General Rule 1 which says you have got to introduce sufficient air to the working place.

HIS HONOR: You have to stop work if any inflammable gas appears near the working place; what about noxious gas, in any concentration or proportion?

MR. SULLIVAN: Noxious gas is the same. If noxious gas appears, the rule is laid down by General Rule 1 that you have to pass sufficient air into the place to dilute it. The Act says "Air from a purer source.....". According to Mr. Menzies, that is the position with the brattice.

The next Departmental witness was Mr. Muir and from what he said at pp.383-4 it is obvious that he would not have worked the section if the airway had not been reversed. He gave evidence on 16th December, 1965. At the very last question on p.382 he was asked by Mr. Lee, "Q. Does the system of ventilation in 8 Right as at 9th November accord with the scheme which Mr. Ryan and yourself discussed and which he proposed for your consideration on at least three occasions that you have mentioned? A. No." So much for any attempt to say it was a construction of a system of bleeders in the same way as in the other panel. "Q. We probably know the answer by now but you had better tell us.....If that is the intention then I would reverse the air." Mr. Muir first says, "As far as I am concerned, with the panel as it was and the three gentlemen in charge of the working of this panel for the Australian Iron & Steel were working it, I would not work it at all." And he is not dealing with roof safety because roof safety had not been mentioned. He said, "I would not work it at all," and when asked "If you were forced to work it" - presumably if the Department descended on him and under s.53(B)(b) said "You have got to work it" - he would only have worked it if he had reversed the air.

HIS HONOR: Which he said would be a considerable nuisance at the time, but not a large operation.

MR. SULLIVAN: This company has resources, Your Honor, and I remind you of that when it comes to putting one of these fiddling jobs through like changing the wheeling road from B to C heading.

Coming further with Mr. Muir's evidence, he again adverts to the position at pp.389-90. I will not read this to Your Honor but it is part of what I asked him, and he also said it was a rule of mining to ventilate the goaf areas. There are some exceptions to that which we accept from Mr. Sellers, that if it is likely to ignite spontaneously or something like that, you do not do it. But as a general rule, Mr. Muir agrees that you ventilate the goaf edge. But of course the point about it is that before you do any of those things you make sure that you get an adequate supply of air to dilute the noxious and other gases and render them harmless.

Our submission to Your Honor on that Departmental evidence is this. The evidence given by those men does not rely, insofar as this is a matter of mining engineering, on any hindsight. Of course they knew there had been a fire there but the question of whether there was or was not a fire did not affect the fact that they were telling the Court what were the rules of ventilating a place. That is the point.

They are given a panel to ventilate and, looking at it, they all say, "Well, I would not have worked it." Mr. Menzies said, "I would have withdrawn the men," Mr. Muir said, "I would not work it," and then "but if I were forced to work it I would reverse the air," but at first he said he would not work it. Mr. Longworth said virtually the same thing and that does not depend on hindsight because they were speaking whether there had been a fire or not. If they had been brought down and shown the panel at that stage they would have said No, and the same goes for the bleeder system which they did not even carry out. It was not the perfect answer either. You can see what happened here on their bleeder system. If I may go over to the coloured plan, they got to the stage with their so-called bleeder system that they had a number of gas sumps that spilled over at the intersection of 3 cut-through and A heading to such an extent that they had to create a bigger sump to take them back again. They were then confronted with the position that if they tried to put a bleeder heading in below that at No. 13 they were going to hole into the bottom of that gas and the grade being against the gas coming up in No. 13 it was going to accumulate down the bottom again. That is why Mr. Muir and Mr. Menzies say it should not have been worked. They must run into difficulties with that situation.

The only alternatives which have emerged from these experienced men, if it was intended to work to the left of A heading, the airway should have been reversed to take the goaf gases away. If the reversal could not have been effected the work in the section should have been stopped. Then if you were forced to work the panel - and you would have to have presumably in the case of Mr. Muir a lot more force exerted on you to work it not only with the airway not reversed but without the bleeder headings - the brattice in A heading was the complete negation of well known mining practice of ventilating the goaf. These factors produced the inadequate ventilation which again produced the fire.

This must surely be deduced, that despite what Mr. Menzies says about not interfering with colliery management, if it appears to Your Honor after examining the evidence of these Departmental experts, not given the hindsight but on inspecting the panel, that those who are developing panels like this are either too incompetent or heedless to carry out proper mining practice. If they break every rule in the book there should be a recommendation from Your Honor that before they make any new section they should notify the Departmental inspector, provide him with plans and tell him what they are going to do. If they are going to break every rule in the book as they did here, there is no alternative recommendation Your Honor can make. If Your Honor does not think it is necessary to do it in the case of solid work, then I submit Your Honor ought to recommend it should be done in the case of pillar extraction. And of course it certainly should be done in the case of introducing auxiliary ventilation and that does not only include fans but things like that elephant's trunk, as it has been called. It not only did not do what they hoped it would do but it must inevitably have filled up with gas and whilst it was not inflammable, it burnt as long as there was flame in its vicinity. It should not be used in that way. Improvisations of that nature just should not be used without the permission of the Department.

If what my learned friend Mr. Reynolds said to Your Honor was right, that Your Honor is carrying out an extension only of the Departmental inspector's activities as an administrative tribunal with just slightly more powers than the Departmental inspectors, you have got those findings on their

investigation and it is a solid body of evidence that this should not have been worked.

HIS HONOR: I need not trouble you on the question of whether I only have the powers of a mining inspector. I am of the firm opinion that I act as any Judge does in determining questions of fact; that I make a report to the Minister stating what I find, and also my observations.

MR. SULLIVAN: I am grateful to Your Honor for informing me of that.

(Luncheon adjournment)

MR. SULLIVAN: I am going to deal with the position in this disaster of the colliery manager. His duties, of course, are laid down in the broadest terms by the sixth schedule of the Act and the very breadth of the duties which are assigned to him by the schedule shows he is there for the purpose of exercising general supervision over everything that happens in the colliery. I refer to p.171, para. 1, under the heading of "Manager" (read).

A suggestion was made by one witness that the term under-manager meant the underground manager. The manager of a colliery by virtue of the statute cannot say "my duties cease at the pit top". The schedule says he shall have full charge and control over all those employed and of all operations in the mine so he cannot say "I am the manager and the under-manager is really the underground manager". He must take responsibility for all operations anywhere in that mine and to ensure the obligations are carried out, including general rule 1.

The manager in this case is Mr. Dennis Stone. He holds a first class certificate under the Coal Mines Regulation Act and he became manager of this colliery within the year in which the tragedy occurred. He was appointed in February 1965 and had no previous experience in the Bulli pit nor, indeed, of any mine working the Bulli Seam north of Wollongong on this side of the escarpment. He had experience of the Appin Colliery and that is of some importance because we know from evidence now that the Appin colliery has methanometers in common use and, indeed, the evidence is that they are there carried by deputies. He had been the holder of a manager's certificate since 1961 and indeed his qualifications, his theoretical qualifications at any rate, are much the same as the Mine Inspectors who were able to assess the position in that panel in the way in which they did and which they gave in their evidence. He holds his position by virtue of his qualifications and experience and where it comes to a mining difficulty and he and the men under him create an unsafe situation, he cannot come in our submission to this tribunal and say "I did not know".

When Mr. Stone took over the management the under manager was Mr. Jack Puddle. Mr. Puddle had been in the colliery since 1957, at this particular colliery, and indeed had been under manager since 1959. Having regard to the size of the colliery and the shortness of his experience in the colliery it is doubtless true that Mr. Stone leaned rather heavily on Mr. Puddle. This is an inference that could easily be drawn and perhaps tended in our submission to leave Mr. Puddle with too much discretion. However, Mr. Stone does not for one moment suggest anywhere in his evidence that he should not accept his full statutory responsibilities in this case. In the Inquiry here he elected, apparently on advice, to give his evidence in-chief by way of statement prepared by the company's solicitor.

HIS HONOR: That was the decision of counsel after speaking to me. I think the decision was partly mine.

MR. SULLIVAN: Is that so, Your Honor. At any rate in that statement which he put before the Court he says he was responsible for extending the workings to the left of A heading. He takes full responsibility for that and he says he did that by blocking out the workings but he says nowhere did he consider the question of ventilating these new workings so as far as the overall plan of ventilation of these workings to the left of A heading was concerned there is no evidence before us that when he blocked out the workings he also laid down a system of ventilation.

He last visited section 8 Right before the fire on 3rd November 1965 and in his statement he did not mention he was with Mr. Puddle, however it came out in evidence in cross-examination of both Mr. Stone and Mr. Puddle that they were in fact together on that occasion. At that stage A heading was stopped-off with the brattice.

MR. REYNOLDS: In his statement he said he was with Mr. Puddle. "When I arrived the under manager.....".

MR. SULLIVAN: That is not the way it comes out later. He was there with Mr. Puddle - not that Mr. Puddle was just leaving. If a false impression is created I am not responsible for it. At this stage A heading was stopped-off with the brattice and what has been referred to as the bleeder tube was in operation and despite the fact that there was a bleeder tube in the shunt it was stopped-off with a tight brattice screen and quite near to the day of his visit he seems to have shown no curiosity on the evidence as to why it was there, none at all. He says he looked at the ventilation and he left the section. In his statement he said that the situation in 8 Right necessitated a compromise between roof safety and ventilation. If Your Honor turns to the General Rules dealing with each of those factors the main Rule dealing with roof safety is Rule 22 and, at p.107 it says - (Read). How do you compromise with that? We go to General Rule 1 and it says - (read). How do you compromise with that? As soon as any person with any authority in a mine starts to compromise with the absolute safety rules which are laid down by s.54 of the Act it means they are not carrying out one or the other. You do not compromise with the s.54 rules.

In his statement he said further that Mr. Puddle, without consulting him, had changed the system of working laid down by him, that is, the bleeder heading, for what use they were. He says this also at p.623 and at the bottom of p.622, I think this is Mr. Lee asking the questions, "Q. You say there was a reason why.....still in good condition". Your Honor said, "You say you had no problems.....". He did not answer that question, he said, "Well, when I say no problems.....handle the situation". It goes on "Q. But Mr. Puddle changed the system?.....it would not be effective again". He is responsible for everything that goes on in the mine and the observance of the regulations including General Rule 1. Then Mr. Lee asked him, at the top of p.624, "Q. Now you say that simply to keep conditionsI think we knew what we were doing". He was looking at the situation. There is no question here of this not being done deliberately: "I think we knew what we were doing". And, further down, "Q. Let us get it clear.procedure of ventilation adopted?A. No." Also, p.624 shows without any doubt that he knew the set-up, he looked at it and it was a deliberate choice - "I think we knew what we were doing". He knew about the presence of noxious

gases and he reveals that Mr. Puddle knew about them and he said that all the deputies had reported noxious gases. Where did he think the gases were coming from? Where did he think they had gone to? That is the point. He knew where they had gone to, he knew when Mr. Puddle decided to take out those pillars he was making a sump for them to go back into and he adopted no substitute procedure for the dispensing with the bleed tube or the bleeder heading, for what they were worth. At p.627 again, and I think my learned friend Mr. Lee is asking the question, this was the extent of his consideration of ventilation problems at this stage: "Q. When you considered the ventilation set-up.....with gas coming from the goaf?" He doesn't dispute that but he said, "I saw this set-up on the 3rd.....that things were good". Perhaps that might be regarded as being a sufficient discharge of his duty qua ventilation under the Coal Mines Regulation Act as the certificated manager appointed by the company to make sure the provisions of the Coal Mines Regulation Act were observed, perhaps that may have been regarded as sufficient compliance with the provision but in our submission it is not, it is an abrogation of authority. I would like to take Your Honor to p.689. I was asking him some questions then and about four questions down from the top of the page I said, "You were aware of the set-up in 8 Right.....". I then asked him about Mr. Menzies' statement that the source of the methane was the goaf. I referred him to previous evidence at the bottom of p.697, the very last long question when I read some of his own evidence to him: "On p.617 of the transcript you said.....we knew the goaf had gas in it, that is what I mean." How could they not know? They had reports of noxious gas which is heavier than air from every deputy, from Mr. Puddle and everybody else who inspected. Noxious gas is heavier than air therefore the goaf must have had gas in it. Then I asked him about the question of why he used B heading as a shunt and apparently it is nearer to the working place.

In the following pages which I will not read in any detail we are asking him about the ventilation set-up generally with the brattice across. Then, about two-thirds of the way down the page I said to him, "The main object of the mine ventilation.....I cannot say that." He only had to look at it. Then I go through the headings there. Then Your Honor at p.700 at the bottom said, "You were asked is it contrary to mining practice.....". You see, he had been hedging somewhat in the evidence beforehand, if I may say so with respect. "Is it contrary to mining practice.....". How could he think so? "You tell me how it was ventilated if you had a bit of brattice.....edge of the goaf?A. Yes". There were other questions Your Honor asked which probably Your Honor will look at at a later time.

The bleed tube was dealt with at p.702, the first question from the top: "I have suggested to you if you were ventilating.....no, it did not cause me any concern." Well there are responsibilities on him and when Your Honor is enquiring into an accident which caused loss of life to the extent this one did can the manager, in effect, come before you and say, "Oh well Stewart and Puddle told me it was all right. Yes, the bleed tube could have indicated the presence of noxious or inflammable gas in the shunt. I saw the position it was in up against the brattice. Yes, I knew it was noxious gas there and knew there was noxious gas in the goaf. I don't worry about it". That is what it amounts to. The same applies to his stated ignorance of this file. He took over the colliery in February I think it was, as manager, and at p.703 he was asked, "When you took over the management.....at that stage". It doesn't seem to be in accordance with the facts. Mr. Ryan seems

to have consulted the Department extensively judging from Mr. Muir's file. I said (p.704) "Was that your view?.....
...everything seemed to be in order as far as that was concerned".
Is that the limit of the manager's responsibility when he is charged with the duty of seeing that everybody in the mine carries out the provisions of the Coal Mines Regulations including Rule 3. I am putting this not in criticism of Mr. Stone, I am putting it to show that the laxity which resulted in the situation in that heading both as to ventilation and compromise is reflected right up to top management in this case. He seems to seek to evade responsibility. Some of it rests upon him, in our submission and he seeks to evade it by saying "Well, I showed no curiosity about anything, therefore I didn't know." When Your Honor reports on that that is, in our submission, the contribution of the manager to this incident by this astounding lack of curiosity as to what was going on in his own pit - it was a heavily contributing factor.

We move briefly to the responsibility of the under manager in this case and I do not move to the responsibilities of the under manager to free the manager from his responsibility. Mr. Puddle holds a second class certificate of competency. He knows this pit thoroughly. He has been under manager there since 1959. However, his certificate of competency does not, in our submission, unless in the absence of the manager entitle him to make decisions and take from the hand of the manager decisions which are the province of the manager. He is another compromiser between roof safety and ventilation. He doesn't explain how he compromised between those two general rules but he again, in his prepared statement, compromised. He gave the order of extraction on which I relied yesterday at p.721. He says on that page when dealing with the driving of the extension to No. 3 heading - I am sorry - I cannot find the passage I require. It does seem he definitely was the one when the gas had spilled over in the intersection of 3 cut-through and 9 heading who decided to try to hold it back by putting up the brattice. It was he who decided to take out pillars 10 and 11 and thus form a sump before driving the extension of No. 2 cut-through. He seems to be definitely the one. As far as his knowledge of the presence of gas was concerned, apart from what the manager said, that he found it, and the deputies and anybody who had done any testing, he admits to knowledge of gas at p.731. Your Honor said to him, "Tell me why.....behind the screen." So, there is no question about him not having knowledge of what was behind the screen. Then Mr. Lee said to him, at p.732, "I take it from what you have just said... ..that could happen, yes." Then Your Honor, at p.733 "You thought you were dealing with noxious gas.....out of the shunt". I was informed by my learned junior that when Mr. Lee was addressing Your Honor had some doubt as to whether there was evidence as to why they put the screen up. There is plenty of evidence from the man who put it up.

HIS HONOR: I do not think I put that.

MR. SULLIVAN: Your Honor may have been misreported. There is no doubt about it, in our submission, there is ample evidence from the man who is responsible for putting it up. Incidentally, speaking of it as to mining practice Mr. Lee's question on the next page is interesting, "This is the first time in the whole of the development.....". If he is dealing with No. 2 that certainly is not so because they were repeating the same set up from 3. In relation to his knowledge of his responsibilities at p.739 this question was put to him, "You correct me if I am wrong but is not this the position.....had to be kept clear". That was fully understood by all the people

in the place. So, he knew what he was doing - they knew what they were doing - he knew what he was doing. He knew what his responsibilities were also when Mr. Parkinson said to him at p.766, "Then I asked what happened to any accumulation.....joining up with the main current". Your Honor then said "The area behind the stopping back to the goaf edge.....it was not being ventilated at all.....through there, or gas". "It was not being ventilated.....that is correct, it was not". I will now take Your Honor to p.828. He said in his evidence in-chief that they had never detected inflammable gas in this panel. I said, "You have told us on a number of occasions.....". I produced the reports and said "5th October 1965 was a time when pillars were being extracted". He said, "Yes." I showed him the report and got the acknowledgment of his counter-signature. I showed him the report and got him to identify his signature again in relation to 6th October and there was again the report of inflammable gas. In relation to 14th October he took my word for it as to inflammable gas. Then there was a report which I thought was as to inflammable gas but Mr. Reynolds was good enough to correct me. On 4th November 1965 there was a report of noxious gas. There were reports of inflammable gas counter-signed by Mr. Puddle prior to this fire. At pp.841 to 843, and I am only selecting things more or less at random as to demonstrate the attitude of the under manager, p.841 deals with the bleeder heading and is introductory to what appears at p.843. At the top of the page I said, "What if the creation of the bleeder heading.....it did have some advantages." The most mysterious thing in this case, and I noticed in the Press reports Your Honor stated you had the feeling the whole story had not been told - I have had it confirmed that Your Honor said that - but there is the question of holing into the goaf. First of all it was obvious if they were going to create what they called a bleeder heading by the driving of two cut-through into the goaf they were going to drive into the bottom of the pool of gas. That is completely obvious. The results of that were at least highly uncertain as far as the miner crew was concerned. Even if you think Mr. Menzies put it perhaps extremely, at least they were uncertain. Now, Mr. Puddle, on his own evidence, was last in that section when he was there with Mr. Stone on 3rd November and set up this system of the ventilation tube. On the other hand Mr. Wright was there every day and his designation has been given as assistant under manager. I think it was Mr. Cambourn said he did not hole into the goaf because he thought that he had missed the goaf. It was at the end of the shift and apparently Mr. Wright was communicated with and Mr. Wright said, "Don't hole into the goaf, bring the machine to the next position, move the machine to the next lift and take your lift from there." Your Honor will be assessing Mr. Cambourn on demeanour, bearing in mind the various answers he has given to questions here and his evidence as a whole. Do you think, and it will be open to Your Honor to think about this, having regard to the opinion you form as to the veracity of the witness, and I am not urging one view on Your Honor or the other, but will Your Honor think when Your Honor comes to prepare the report that there was any such mistake? May it not be, and the inference is, of course, that everybody in charge of that panel, including Mr. Cambourn, knew exactly what might happen if they holed into the goaf because it was after that that the machine was brought back. The goaf was not holed even though there was a surveyor's peg and a T-piece splitting the pillar into the goaf in the middle. Remembering that Mr. Puddle was last in the panel early in November and it was decided not to hole but to split from end to end, may it not be that everybody was well aware of the situation there and Your Honor is not getting the whole of the story.

HIS HONOR: I wonder whether the operation of holing into the goaf would in some way come to the knowledge of the men who were working there, for example, the miner driver.

MR. SULLIVAN: We will never know that, Your Honor, he is dead.

HIS HONOR: The other men who were working on the shift aren't dead.

MR. SULLIVAN: Your Honor is speaking about the previous shift?

HIS HONOR: Yes.

MR. SULLIVAN: I am sorry, I am confused.

HIS HONOR: It has not been made clear to me whether the men operating the shift know to some extent what is going on: the miner driver would know that if he keeps on going in a certain direction something will happen. I have not heard any evidence about what the men understood was going to happen.

MR. SULLIVAN: The trouble is that under the Coal Mines Regulation Act the miner takes his orders first of all from the deputy and the deputy takes them from the under manager and the miner takes them from everybody round the place.

HIS HONOR: But from a practical point of view am I to believe that the men are automatons and do not ask questions and know nothing about what is happening until they are told? I do not mean that the miner driver knows what the whole plan of the development is going to be, but would he know where the next lift is going to be taken? He may not, but at least when a driver is to hole in the direction of the goaf and he knows that the previous shift has gone in one direction and it has been taken back and put in another direction, surely he must start to ask questions himself?

MR. SULLIVAN: That is why we called certain evidence. It was from three men who had made complaints about dusty conditions.

HIS HONOR: But this has nothing to do with a complaint. We are assuming by this that the only people who knew what was intended were the management and the deputies, and I mean immediately intended. I do not mean two or three shifts later; what was intended in a particular shift.

MR. SULLIVAN: They have very little idea. They are working in the dark down there. They are working on a miner. The situation is that the deputy sets the continuous miner on the line and the miner driver drives it and the shuttle car driver brings down his shuttle car, fills it and then shift men timber. You have got to do what you are told, Your Honor, otherwise you are sent out. I do not follow the inference to be drawn from what Your Honor says. Are they to take control of the operations - is Your Honor suggesting that?

HIS HONOR: No, but one would have thought if there had been any contrary intention to that expressed by the deputies and the management here, without any sinister reason, for example the machine being pulled out of position and being started again, there would have been some evidence from the men available as to what was said or done. You say the miners work in the dark?

MR. SULLIVAN: But the position is this, is it not: evidence was called early on to say that certain men in the miner crew were given instructions that if they holed the goaf they were to immediately withdraw the machine and go. Your Honor will

recollect that, so that there is no doubt about it, they were told at one stage that they were going to hole into the goaf. But what I am putting to Your Honor is that even though they might have thought they were going to hole into the goaf, the fact remains, that by an alleged mistake on the part of the deputy who lays down the lines of the miner driver, they did not hole into the goaf and there was then consultation between Mr. Eager and others as to what they do next.

HIS HONOR. Yes. It has been said by Mr. Kent, for example, having gone so far someone realised it was exceeding the length of cable that was being used. He realised that and thought he might have made a mistake. It started to run out of cable. Surely there must be some evidence available as to some conversation about the cable between the men employed in the place? Does the deputy look at things, make a mental note that he is running out of cable, rush to a telephone and say, "What do I do now?" Surely he says something to the men working on the miner, such as "Are you running out of cable? Is there some mistake somewhere?"

MR. SULLIVAN: No, it occurred in the middle of the shift. At p.866 there is a question in the middle of the page, and this is Mr. Cambourn being questioned by Your Honor, "We have been told here that this represented two attempts to hole into the goaf, the first of them, the furthest of these drives, resulted in the withdrawal of the miner....." "Tell them to put it back on another lift." "It is not as though there was a sudden withdrawal of a machine. That refers to a telephone conversation after the stop.

HIS HONOR: But the situation he was reporting must have occurred during the course of the shift. It strikes me, if you are going to rely on this argument as to what the intention was, some people from the work may have some knowledge of the circumstances and some may have been called to say what happened during that shift.

MR. SULLIVAN: Well, they cut coal on the first lift up to ten past ten, till the end of the shift, and then I do not suppose they all went to the telephone to join in the conversation with Mr. Eager. Mr. Cambourn rang Mr. Eager and had a conversation with him and he was told to change the lift, and of course we have not seen Mr. Don Eager.

HIS HONOR: Is there anybody to say there were only three rolls of cable left on the drum? Can nobody confirm that that was so or not so?

MR. SULLIVAN: The next thing we have to consider in relation to that is this: we now know that whether there were three rolls of cable on the drum or not, he was not in fact going to miss the goaf. He was in fact on the right line.

HIS HONOR: That is if the drawing is right, but Mr. Murray tells me the drawing is not right.

MR. SULLIVAN: The witness Cambourn said so, that he was dead on the line. Furthermore there is evidence that they did have a map which was left in the crib room and I think one witness, Stewart, said they were taken up and another witness, Cambourn, said they were destroyed by the fire. So where does this evidence of mistake come into the matter, Your Honor? In fact he was not making a mistake. What we do know for certain is that instead of holing into the goaf which would have had the consequences that Mr. Menzies in one degree or another said it would have had, they didn't. I would submit as a matter of

inference that it is quite open to Your Honor to wonder whether the circumstantial evidence here, the sequence of circumstances, does not to some extent suggest that it was well known to persons concerned what was the danger of holing into the goaf at that point.

Now, the position is that we look at the situation from this point of view. I have dealt with the manager briefly, perhaps too briefly. The same applies to the under manager. I have only picked out particular passages. The position is there is just as great, if not greater, dereliction of duty on the part of John Puddle as there is on the part of Dennis Stone and he cannot escape responsibility because he did not know of the presence of noxious gas in the goaf, because he did know it. He cannot escape responsibility because of the presence of methane in that section because he did know of it. He cannot escape responsibility by saying "I didn't know there were gases in that shunt," because he did know, and he must take the full responsibility in every sense for having tried to conduct a dangerous operation of holding them back in the goaf until he could get the coal out of the section to the left of A heading.

Your Honor is not a coroner, and it is probably unnecessary for me to say that in other circumstances that negligence, before another tribunal, would be looked at to see whether it is criminal.

MR. REYNOLDS: If it is unnecessary to say it, don't say it. That is a sound rule.

MR. SULLIVAN: It would be looked at for that purpose. This man was fully aware throughout of the dangers of work in this section --

HIS HONOR: Mr. Sullivan, let me relieve your mind and the minds of other counsel. I have not considered this and I do not say there is evidence of criminality arising. I have not made up my mind one way or the other, but if I did come to the conclusion that there was some form of criminal liability in this matter, I shall make that part of my observations.

MR. SULLIVAN: I am grateful to Your Honor for that indication. However, that is the situation as we see it. In the end, I suppose in Your Honor's report you must make a choice between what has been put to you on behalf of these men by the Australian Iron & Steel Company and what has been put to you by the Department. The burden of what Mr. Reynolds says, as I see it, is, "Put yourself in the place of the officials. They did not know there was Illawarra bottom gas there_fore they did the things they did under a misapprehension. You would have done the same thing." That is the burden of my learned friend's remarks. That is no answer to this, Your Honor. They had no right, with mens' lives in their hands, to assume this was anything. They had a duty to carry out their obligations under the Coal Mines Regulation Act to get rid of any gas and they had no right to assume this was not Illawarra bottom gas. Once a heavier-than-air gas got into the shunt at a stage when it extinguished an oil flame safety lamp, that gas should have been tested. They had facilities, as Mr. Puddle said to me, for analysis of gas. To block it up so that it could not be obtained or analysed or even tested on a flame safety lamp - and as Mr. Sellers said, if you put your lamp into it it would have gone out where it was at the goaf - to put up this piece of brattice and leave that gas uninvestigated in that shunt, is the grossest dereliction of duty on the part of the management. The invitation to any Judge or jury to identify themselves with the approach of anyone before them is quite

contrary to judicial practice. What we submit Your Honor will do is to look at this case objectively, as I said yesterday.

As far as the weight you give to the evidence is concerned, as I see it there is on the major issues here very little discrepancy between what Mr. Longworth, Mr. Menzies, Mr. Muir and Mr. Griffiths have said and what Mr. Sellers has said. If you are looking for expert testimony to show that their practices in this panel were improper, you have the evidence of the Departmental inspector. They were improper from the moment they started to take out the coal. They did not reverse the air, they did not continue with the bleeder system for what it was worth, and then having got themselves into a hopeless, inexplicable mess, they tried to block off unidentified, heavier-than-air gas with a brattice screen.

The conclusions actually reached by the inspectors which I put to you and which are implicit on their evidence and in all the evidence given in the case are these. From the time the manager blocked up the extracted areas to the left of A heading he was creating a ventilation problem which was contrary to good mining practice. If the goaf gases were to be kept from the working places, the only practicable way was to reverse the airways, to draw by ventilation the gases away from those working places. This would be standard mining practice. That is the evidence of each Departmental inspector. It is standard mining practice to draw goaf gases away from working places.

The second thing is a departure from this practice might perhaps be sanctioned in certain circumstances by the creation of bleeder headings, and it was done by Departmental Inspector Muir in Green panel, the one we discussed. It was done on that occasion, as Mr. Muir said when he was shown that - not the same position at all. One can just dismiss any suggestion from my learned friend that putting in bleeder headings here was the same as what was sanctioned by the Department in Green panel. This system had been put into operation by the under manager in 8 Right, but he had abandoned it without the authority of the management. He created an impossible mining situation which led him to the compromise of the bleed tube and the brattice which was so dangerous that one could excuse Your Honor for saying to me "You could not surely submit that people of this experience would do something like that?" Well, they did do it. He said roof conditions forced him to take pillars whilst they were still green and thus to abandon the ventilation heading to get the coal. This led to a compromise between roof safety and ventilation. Well, I pointed out to Your Honor that those two rules, General Rule 1 admits of no compromise, General Rule 22 admits of no compromise. When you say that you have effected a compromise, all you are saying is, "I am not obeying one of the Rules," and the Rule he was not obeying on this occasion was of course Rule 1. At any rate, apart altogether from those things, in effecting this compromise this is what he did: he failed to ventilate the goaf edge, standard mining practice, good practice. He deliberately and designedly - "We knew what we were doing" - created a dead-end at the shunt in the ventilation system. He put up a stopping which he well knew would let the gas through, that blocked the gas from coming into the working place through the action of the fans. He prevented his safety men from testing the level and the nature of the gases rising below in 11 from the lower contours of the goaf. He ordered the miners to hole into a pillar of gas which could result in the sequence that Mr. Menzies outlined. He saw the lack of ventilation and he did exactly the same as the manager; he turned his back on it on 3rd November 1965 and he never came

near the section or the panel again. That is the indictment against the Under Manager, and do not forget that the Manager knew what the Under Manager was doing, in some cases saw the set-up and did exactly the same as the Under Manager.

Now, I will be brief on this: What of the position of the deputies? Well, first of all the brattice stoppings were put up by the Under Manager, Mr. Puddle. Mr. Puddle says he told them, so they cannot be blamed for that. Mr. Puddle made no attempt to test those gases with a methanometer, despite the fact that they had spilt over in the way in which they had to No. 3. The deputies did not have any methanometers, and there is no evidence that the company will give them a methanometer if they ask for one. Then, in our submission, they were lulled into a sense of false security by the way the people who are supposed to know about mine ventilation - that is, Mr. Puddle and Mr. Stone - behaved in respect of this. That of course does not free them entirely from blame. Some of them called here- and I say this subject to correction - did not show that frankness to the Inquiry which one would have expected in a situation as serious as this. In many cases their testing methods leave much to be desired. All those things; but they are not the ones to blame, primarily. The people who are to blame are the people who set this up. As I said to Your Honor this morning, it is not a question of detecting gas and then ventilating it. It is a question of putting in a proper system of ventilation which conforms with the provisions of Rule 1, and then using your safety men, your deputies, to find out where that system is falling down by testing for gas. Here there was never a system established which complied with the normal standards of ventilation which have been deposed to by mining experts - I mean by that, the inspectors. It does not get back primarily to the deputies. What Your Honor says about the deputies is Your Honor's concern, really. They are valuable men and the miners depend on them a lot for their safety. It is clear that Your Honor is going to make, I would submit, recommendations that a methanometer be made available to them on every possible occasion. Some questions I asked Mr. Stone about training; whether they could not be trained more adequately under practical conditions; matters like that are for Your Honor to consider. But here they are not the villains, even though they may have missed gas. They are not villains; the villains are higher up in this case. It is so easy to say, "Oh, all this management is lily white. It can turn its back on a dangerous situation and say 'Leave this to the deputies' ". It is so easy, but that is no answer to this.

We have some recommendations to make. As Your Honor probably has gathered, I do not altogether agree with everything that my learned friend Mr. Lee said were undisputed facts yesterday. For instance, I would not be prepared to concede for a moment that nobody suspected the presence of Illawarra bottom gas there. I would not concede that; look at Mr. Puddle, who has worked on the Coast here.

HIS HONOR: We have Mr. Stewart saying that he suspected it and tested for it. Whether I accept his evidence that he suspected it or not is another matter, but he said both those things - he both suspected and tested for it.

MR. SULLIVAN: Yes, but Illawarra bottom gas is no great mystery to people who have worked in mines. It is no great mystery to the people who prepared the gas chart, and to suggest that it is a mysterious demon in mines in this area is playing a long bow, and is to do something like the sailors did in the Voyager Inquiry when they saw a lot of lawyers at the Bar table. It may be sheerly an attempt on the part of some people to pull the wool over Your Honor's eyes, in our submission.

HIS HONOR: Frankly, Mr. Sullivan, my remarks yesterday were to that intent. I am still not satisfied that the attempt is not still going on. I am not referring to counsel at the Bar table.

MR. SULLIVAN: We do our best, Your Honor.

MR. LEE: Before my friend goes on; when Mr. Sullivan says he takes issue with my statement, I recall that one of my points was that nobody ever suspected bottom gas. At p.109, Mr. Stewart said, "Q. You never suspected bottom gas, did you? A. Not suspected it, no, but I had been looking for it." I am not aware of any evidence of anybody saying positively, "I suspected it was there." They all maintain they looked for it, but that attitude - there is a difference between suspicion and doing something. My view of the evidence was that deputies, taking their case at its best, looked for it, but never thought they were going to find it. That is the way I took "suspicion."

MR. SULLIVAN: Of course, one of the first things - and I am putting this very generally and I say it with no derogatory intent at all - is the necessity perhaps for a more broadly based Mines Safety Committee, not only with departmental inspectors and gentlemen of great experience like the Mines Department Chief Inspector, men like Mr. Donegan and others, but also representatives from collieries and from working miners. That is a matter I throw open, Your Honor.

The other thing we recommend is a reconsideration of the position in relation to check inspectors. Of course the powers of the check inspectors have been increased with the last series of amendments, but we submit that because of the assistance they give to the Department - and, we think, to the collieries, though often the collieries do not recognise this assistance - we think the district check inspectors, if I may say so, are primarily concerned with safety, that their remuneration should not entirely be provided by the members of the union.

HIS HONOR: Whom do you suggest would pay them - the colliery or the Minister?

MR. SULLIVAN: The Minister or the Joint Coal Board. The Commonwealth is coming into the coal areas now. It is foreign exchange now, as well as rapidly becoming unlimited power for industry.

HIS HONOR: How many check inspectors are there?

MR. SULLIVAN: There is one district check inspector in each district, and that is one of the reasons this matter is being put.

HIS HONOR: I am told by Mr. Mahon there are four in New South Wales. Whoever has to pay them, if I did make such a recommendation and if it were accepted, in those circumstances would not have to assume a great burden.

MR. SULLIVAN: No, it is not a great burden/all. I understand Mr. Mahon may be able to better inform Your Honor on this than I can - that there is such an arrangement in the State of Queensland.

HIS HONOR: Mr. Mahon tells me that in Queensland portion of their wages and expenses is paid by the Mines Department and portion by the union.

MR. SULLIVAN: The first recommendation I would like to put to the Inquiry is that maps of proposed development work, extraction and development work and proposed pillar extraction, together with the scheme of ventilation, should be approved by the Chief Inspector of Mines or the Minister.

Secondly, that a regulation should be introduced making it a breach of the Act to seal off a goaf without the approval of the Chief Inspector or District Inspector - goaf or waste workings in any way, with brattice or with stoppings, without approval.

It appears from some of the evidence that has been given here that deputies are not given precise plans of developments, proposed development, and precise written instructions as to method of extraction and order of extraction of pillars. We make a recommendation that it may be made necessary under the Act for that to be done.

The other matter is the form of report - and again perhaps the Assessors may be able to assist me - both for gas and other things in the mines, which the deputy has to make. It has been before us at the Bar table, but I had never looked at one with particular attention before. In our submission, the actual form of it should ask for greater detail.

HIS HONOR: I must say that struck me.

MR. SULLIVAN: Yes. "Noxious gas being diluted" conveys nothing.

HIS HONOR: What it can do is to say to the management, "Well, it is there," and the management can then say, "Don't worry." But it may be quite necessary for some officer to go and check on it.

MR. SULLIVAN: Yes, and that is a matter which we submit should be looked into.

As far as the shuttle car position is concerned, in our submission the brake situation has been proved to be highly unsatisfactory. I am not sufficiently experienced in mechanical matters to formulate some recommendation about that, but in our submission it would fall well within the class Your Honor described at the beginning of the Inquiry. To go to all this trouble to make sure these cables will not overheat and short and then to have a shuttle car with disc brakes that reach a temperature that makes water fizzle, as a matter of common working -

MR. REYNOLDS: And approved by the Mines Department.

MR. SULLIVAN: Perhaps they were not intended to be used in the conditions they were used here. One could not expect any brake to be efficient in a one in seven grade, and with 20 tons of coal on it, in a heading. But that is the situation; it seems fantastic that in gassy places, whilst there is such precise care about electrical matters and such a widely regulated thing, these brakes have got to be. It is not much good leaving it to the manufacturers because they do not know anything of the circumstances in which they are going to be worked. Certainly one thing arises from this - on the weekly maintenance inspection recommended by the manufacturers on the inspection sheet produced as an exhibit, weekly maintenance is not sufficient. If you are going to get a build-up of coal and other material, you will get it on the shift, so with all due respect to the manufacturers, they should be ignored on that and a pre- and after-shift inspection conducted, or at the same intervals as the deputies, four-hourly.

The respirator equipment; of course, I suppose Your Honor has no doubt that we strongly support Mr. Murray's submission about the self-rescue, and undoubtedly of course we strongly support the foam machine at each pit, rather than wait for an emergency. I do not join issue with him on the methanometers

or the fire-fighting equipment, but I certainly join issue with him if he is going to take the flame safety lamp away. It is the protection, because it goes out if you get into a place where the gas is likely to suffocate you. That is the value of the safety lamp.

Then, General Rule 3: We still think it is not sufficiently comprehensive. Not only in installation, but its transfer from one place to another should, in our submission, require the inspector's approval.

MR. REYNOLDS: We cannot move it an inch without asking the inspector.

MR. SULLIVAN: That is the situation, because every time they move it, supposing the requirement previously was that it have a loose brattice behind it and in the second place they put a tight brattice round it, it would interfere with the circulation and ruin the whole set-up. They can either be trusted with these fans or they cannot; and now they can't be trusted, so why trust them? If the evidence was that it was a loose brattice, things may have been quite different; it would have caused re-circulation.

HIS HONOR: As regards the fans, I think it is a problem of mental attitude to them. It seems to me on the evidence that fans are an auxiliary method of ventilation of working places - and that is precisely what they are - which tends to bring about an attitude to them that tends to divert attention from the real source of the peril - the areas which in fact are not being adequately ventilated outside of working places - and it seems to me that whatever view one takes of the evidence here, whether it is a sudden onrush of gas or otherwise, there is gas there in these worked-out and partly worked-out places, which I think in error here have been called the goaf. One sees the impractical situation here, which is in the evidence, that in the weekend the fans are stopped, gas accumulates, then they are started up and they get rid of gas from the immediate working area of the working place, and during that time there has been a continual accumulation of gas and a continual build-up. If that is the case, then there must be a change of attitude by the management as to what fans may do and what they are capable of, and I think that is the fundamental problem, rather than whether they should be shifted from place to place.

MR. SULLIVAN: We say the General Rule here is necessary and should be extended. That is our submission.

The other question, we would submit it can only be done by some system that a mine should provide facilities for giving practical training to people who propose getting their deputies' tickets; that deputies as well as attending the theoretical courses laid down by the Department should be given practical training by managers, deputies and so on at mines, once they have enrolled for a deputies' course. A modified apprenticeship system - and Mr. Stone said it would not interfere much with their procedures. I am thinking particularly of gas detection. Gas tests should be done in mines and not in boxes at technical colleges, in our submission.

As I said in the course of my address, these "elephant's trunks", as they are called, should be banned without the permission of the Department; without the permission of the District Inspector or Chief Inspector. Whether the insertion of that elephant's trunk in that T-piece is a breach of General Rule 3 or not, I am not prepared to discuss. I do not think it is worth discussing, but they are a dangerous thing when they are used irresponsibly, as this was - very dangerous because

they neither ventilate by bringing in fresh air nor apparently do they exhaust. The greatest pull of that thing was 1200 to 1500 cumins in a shunt having the capacity of this court room, according to Mr. Sellers. It is only a deceiver.

HIS HONOR: They only work at the point of application.

MR. SULLIVAN: Yes - they are hopeless. It is not a ventilating device at all. It is only something put in to give people a psychological sense of comfort because every witness who knew anything about it said it did not make any difference, from Mr. Menzies onwards.

MR. REYNOLDS: You should have another look at their evidence, Mr. Sullivan.

MR. SULLIVAN: 1200 to 1500 cumins in an air volume like this. And the entrance of this shunt, 30' from its mouth.

The other question is that of the assistant under manager as against the under manager; the question of whether the present Sections dealing with managers and under managers are sufficiently stringent. It appears now from what has been happening at this colliery that the assistant under manager, Mr. Wright, whilst he has some sort of qualifications that we have not heard of, is in fact doing the statutory duties which fall on Mr. Puddle. And he is not an official such as is contemplated by the Coal Mines Regulation Act. Furthermore, after Mr. Buck spoke to Your Honor, I think Your Honor and Mr. Buck thought it would be a good idea to have training for someone to be an under manager, and I would not disagree with that for a moment, but the point about that is that these mines are big. The Bulli Pit is a big mine and it is probably a physical impossibility under modern conditions with the working places so scattered, for the under manager, with one under manager there, to carry out his statutory duties in every district of the mine. There is now provision in the Act for the existence of other under managers. There can be more than one under manager under the present Coal Mines Regulation Act. May it not be taken a step further and require that where a mine reaches a certain area, the owner or agent should be required to appoint more than one under manager? Mr. Puddle had not been in this panel since 3rd November.

HIS HONOR: In other words, you would limit the area of control for one man to perhaps a number of sections?

MR. SULLIVAN: Yes. You see, you do not give a deputy a whole mine.

HIS HONOR: You also have the problem of not having them on all shifts; the under manager cannot be expected to be there 24 hours a day.

MR. SULLIVAN: That is so. Someone has suggested that under modern conditions the whole Act ought to be reviewed, and indeed the Miners' Federation has been urging that for a long time. But that is just one of the aspects. These are different sorts of mines now from what they used to be.

The last recommendation that we would put to Your Honor is that the deputies should be employed exclusively on their statutory duties and not be given other duties without the approval of the District Inspector. They should be responsible directly to the manager and under manager or under managers. There should be no intermediate person such as overman coming into the panel.

HIS HONOR: You are against overmen, are you?

1101. Mr. Sullivan's address.

MR. SULLIVAN: I am not against anybody, Your Honor, but the trouble is that these statutory duties must be performed in accordance with the statute and not in accordance with the directions of some person who himself has no statutory duties. I am not against anybody but I am saying that these things creep in and the tight chain of responsibility starts becoming disrupted at certain links. That is what I am saying.

I do not propose to put any more to the Inquiry except this, and I think I can finish: In the case of the people whom I represent we are going to ask Your Honor to make an order for our costs. Under Your Honor's powers you have the power to do so, because the widows particularly have had a vital interest in these proceedings and not only from the point of view of any actions they may or may not have in the future. I have no instructions about that, but because they feel that the loss of their husbands may perhaps mean the saving of the loss of the loss of other peoples' husbands. They have engaged us to represent them and we feel that we may not have been much use to Your Honor, but we have been no hindrance to Your Honor, and we do feel that if you consider you have the power to make orders for our costs in these matters, we do ask for them.

HIS HONOR: I have looked at the Act in connection with this; it is not the first time the matter has crossed my mind. The Act gives me certain powers - I will hear Mr. Lee on this because his client would have to bear the costs of any order I may make.

MR. LEE: We would suggest that the briefing of counsel is a long way from investigation expenses ordered by the Minister.

MR. REYNOLDS: Your Honor would have to say you had power under s.33(10). Our submission would be to the contrary.

HIS HONOR: It states that costs of any proceedings shall be in the discretion of the Court. At any rate, I will consider any argument on costs as a separate matter.

MR. SULLIVAN: If I may with respect raise something else here, Your Honor, we were notified on behalf of the Minister that we give notice to appear.

HIS HONOR: You were given notice of the hearing, and notice also to nominate an assessor?

MR. SULLIVAN: Yes, and that seems to have been done under s.33, does it not? I am surprised to hear counsel representing the Minister now raising his voice in this Court to deprive the widows --

MR. LEE: I understood my friend Mr. Sullivan was appearing for a Federation.

MR. SULLIVAN: I am appearing for certain organisations, but I am asking for the costs of appearing for the widows, not the Federation.

MR. LEE: My position is controlled by interpretation of the Act.

HIS HONOR: Mr. Murray must also be involved in some way, not that he is representing a widow, but he is representing a party who is properly interested in the hearing. This is an important matter.

MR. SULLIVAN: Section 33 having been used to bring us here, s.33 cannot be used to give them the cost of the proceedings;

it is as simple as that.

HIS HONOR: I suppose one can say they were not brought here, they were given notice and they chose to come. They were not compelled to be here. They might have been compelled to come here as witnesses, but in fact they were not. They are not compelled to attend this Inquiry and be represented; on the other hand they have every right to be. That is the way it strikes me. The real issue is this: having exercised their right, have I power to compensate them for any loss they have sustained as a result of their being here?

MR. SULLIVAN: I notice Your Honor made an order regarding the expert called by the Australian Iron & Steel the other day, Mr. Sellers.

HIS HONOR: I do not see why he should not have costs in the ordinary way as a witness here. The section is mandatory - it says they shall be allowed expenses. There is the specific sub-section, sub-section 2, but the question is whether professional costs of the party can be covered.

I am prepared to hear this matter argued after I have heard the argument on the matters which are germane to this Inquiry, at any convenient time but within a very short time. I would wish to hear Mr. Lee on this subject since under the Act his client would have to bear these costs if I were to make an order. You might consider the matter overnight. Are there any other matters, Mr. Sullivan?

MR. SULLIVAN: No, no further matters on the other aspects of the Inquiry, Your Honor.

HIS HONOR: As to the proceedings tomorrow, who will address next - Mr. McNally and Mr. Parkinson? I would like to know in advance.

MR. PARKINSON: I understand Mr. Crane wants to make short submissions.

HIS HONOR: I understand that he does not now intend to do so. I have received a message that said Mr. Crane was involved in some Court proceedings and was not intending to make any submissions although earlier he indicated he did. If he appears tomorrow he may do so, but have you, Mr. Parkinson and Mr. McNally come to any arrangement?

MR. PARKINSON: Mr. McNally may have his wish now - whichever way he wants to go is all right with me.

MR. McNALLY: I prefer to follow Mr. Parkinson.

MR. PARKINSON: That would be quite satisfactory.

HIS HONOR: Then you will have something further, Mr. Lee?

MR. LEE: There will be a short reply.

HIS HONOR: Are there any other counsel who at this stage think they may wish to reply to anything which has been said? If there is anything that has come out and may have taken anyone by surprise, I indicate you may have a right of reply.

(Further hearing adjourned to Thursday,
17th February, 1966, at 10 a.m.)

IN THE COURT OF
COAL MINES REGULATION
HOLDEN AT BULLI

)
) No. 1 of 1965.
)

BEFORE HIS HONOR JUDGE GORAN
ASSESSORS: Messrs. MAHON and BUCK
THURSDAY: 17th February, 1966.

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

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(PART HEARD)

HIS HONOR: The arrangement made made yesterday was that
you were to address before Mr. McNally, Mr. Parkinson. Are
you ready now?

MR. PARKINSON: Yes. Your Honor will recall on 2nd December
last year at the commencement of this Inquiry when appearances
were being taken, I gave an undertaking to Your Honor on that
day that to the best of my ability I would endeavour at all
times to refrain from any repetition whatsoever. I think I
can truthfully say that I honoured that undertaking up till
today.

HIS HONOR: I agree with that, Mr. Parkinson.

MR. PARKINSON: After the addresses by Mr. Lee, Mr. Murray
and Mr. Sullivan, I think Your Honor will have a full
appreciation, being addresses on one subject, but it might be
a little difficult during the course of my address to refrain
from repetition to the same extent as I have endeavoured to do
previously. But I can assure you that I have endeavoured to
do so in the preparation of my address. For instance, there
are many things that Mr. Sullivan raised yesterday - and I
would like to say that he handled them in a much more eloquent
manner than I would have been able to handle them - which I am
now eliminating from my address.

Now, there have been twenty days of sittings on
evidence alone in this particular Inquiry. That is not
including addresses, and 995 pages of transcript. Much time
and energy has been expended to deal with a tragedy that should
never have happened if ordinary accepted elementary mining
practices and directions by the Mines Department had been adhered
to by the management. My submission will be to the effect that
safety principles on the issues involved leading up to the
tragedy were almost totally disregarded by the management in
the interests of coal production, and coal production only. And
my submission will be that the evidence adduced during the
course of these proceedings clearly and emphatically confirms
what I am saying. The tragic facts are that four miners lost
their lives, four women were widowed and six children were left
fatherless, and it was most certainly only good luck and not
good management that the actual death roll did not reach a much
larger figure. I venture to say that the gas which had
accumulated in the shunt and behind the brattice in the shunt,
had it exploded instead of igniting, this in turn could have
triggered off a chain reaction, dust explosion, which could have
had results which would be too frightening even to contemplate
here, because the explosion that the miner fears most is not

just the ordinary gas explosion. The explosion which the miner fears most is the chain reaction dust explosion. And what were the precautions at the fan in relation to stone dusting? There were no precautions whatsoever. When I cross-examined Mr. Stewart on evidence of stone dust, the only evidence Mr. Stewart could submit to me was in C heading. And yet the Act is very specific, clear and definite on what has to be done in relation to stone dusting.

There is not one miner who goes underground today or tomorrow who can say with any degree of certainty at any time that the next time he sees daylight, if he ever sees it, he will walk out of the mine, that he will be carried out of the mine or that he will be blown out of the mine - and that is the undoubted history of this industry.

In Mr. Lee's opening remarks in his address, I took particular notice when he said that only good could come out of this Inquiry. Your Honor, I hope with every fibre in my being that some good does come out of this Inquiry and I want to state now that I have a full appreciation of the manner in which Your Honor has applied and exercised your mind on this particular problem, and I have a full appreciation of what Your Honor will do and the time it will take to sift through this evidence and through the addresses before you reach a final report. But the whole history of my industry and my own experiences do not inspire me with any confidence that whatever observations or recommendations Your Honor may make will be implemented in the interests of safety. At this particular stage I think it would be most appropriate, as just a little background for us, to give these figures on disasters in New South Wales: 1886, Lithgow Valley, 4 deaths; 1887, Bulli, 81 deaths; 1899, A.A. Mine, Newcastle, 11 deaths; 1896, Stockton, 11 deaths; 1898, Dudley, 15 deaths; 1900, Greta fire, 5 deaths; 1901, Burwood, 3 deaths; 1902, Mt. Kembla, 96 deaths; 1923, Bellbird, 20 deaths - and Your Honor may recall the last body in Bellbird was only found last year, or at least skeleton remains since 1923. And then of course there was the CO outburst at Metropolitan, Helensburgh, in 1954. There was the Metropolitan outburst in 1929. There was the Metropolitan outburst in 1904. And now we have this particular disaster in 1965.

I would also like to draw to your attention very very briefly some figures which will give you some understanding as to why we come to the conclusions that we do. This (indicating) is the quarterly summary of Australian statistics, December 1965, by the Commonwealth Bureau of Census and Statistics, Canberra, Australia, and here for the year ending December 1964: Heart disease including chronic rheumatic hearts, arterio sclerotic conditions, degenerative conditions and other forms, up till December 1964 for that year accounted for 3,219 deaths per million of mean population in Australia. All forms of cancer accounted for 1,263 deaths per million of mean population in Australia. The road toll in New South Wales ending December last year for the year 1965 was 1,149 with a population of four million in New South Wales, giving us a rate of 287½ per million of mean population in New South Wales. But then when we go to the mining industry, we find that last year in Australia, excluding Broken Hill, excluding metalliferous mines, only including black coal mines with the exception of Leigh Creek and Collie in Western Australia, the mine workers lost 19 men and in a membership of 14,000 that gives a ratio of 1,357 deaths per million of mean population in Australia, making us as big a killer as cancer - the second biggest killer in Australia.

Now, Your Honor, briefly I just want to have something to say about the statement you made immediately prior to lunch

on Tuesday of this week, and I think Mr. Reynolds was making his last comment in his address on the typewritten paper which he submitted. That is where the word "conscious" was the one that was used. Your Honor asked Mr. Reynolds did that mean "deliberate" and Mr. Reynolds indicated Yes, and you sat back then and you said, "Well, I will have to state frankly that I am disturbed that something is being concealed from me and I am not getting the true picture." I want to say unequivocally that things are being concealed, Your Honor, but it is purely and simply on the basis of your Terms of Reference. How many times have I been objected to on the basis of irrelevance? And I was agreeably surprised and I thought you were going to go on with it yesterday, Your Honor, or maybe it was the day before, when you recalled Mr. Stewart and you started to ask Mr. Stewart questions relating to production. When I started to ask questions of Mr. Cambourn, did he receive any other remuneration other than his award conditions, an immediate objection was taken, and if public inquiries such as this are to be confined to just really bare issues, then obviously, Your Honor, you cannot get the real picture. I have a full appreciation of the task which confronted you. Your Honor came in green, if I may use that term, to deal with a most complicated industry, to get used to the terms, to get used to the methods of work pertaining, because there is not another industry anywhere in Australia, anywhere in the world, like coal mining industries. They cannot be compared with any other industries. And I am not for one moment suggesting, despite the fact that we asked the Minister to have a public Inquiry that would take in the question of general safety, until such times as we could have something in regard to that and in relation to it, I feel certain that there will always be this feeling of concealment.

I want now to point out to you 995 pages of transcript notes on this question and I will say without any fear of contradiction that 90 per cent of what has transpired during those 20 sitting days in evidence centred around one thing directly or indirectly and that was the question of ventilation: a most paramount issue, the most paramount issue in mining. Ventilation is indissolubly linked up with every facet of safety in the coal mining industry. It is basic. But my submission is that the company did not view ventilation as the No. 1 requirement. Now my submission is that production was the omen which commanded priority, and safety was conveniently pushed into the background and I am going to prove this purely and simply on evidence that has been submitted to this Inquiry, on admissions by the company's witnesses themselves.

I want to take Your Honor to p.238 of the transcript notes and Mr. Reynolds is there cross-examining Mr. Longworth: "Q. Likewise it will be working in the same position in the pillar.....so far as it can be consistent with the solution of other mining engineering problems?A. Yes." I want to say the inference of that question on its face value cannot be denied, that there are other problems than ventilation in mining but I submit that the question here was implicit inasmuch as it meant that the ventilation problems were of no more major issue than any other problem that may be confronted in the mine. That was very early in the proceedings. I want to take Your Honor to p.325: "Would you agree with me unless there is an adequate.. .." and it is very significant this was objected to by Mr. Reynolds but it was allowed by Your Honor. It was significant in the light of my last statement about the company and their attitude to ventilation "Would you agree with me unless there is an adequate.....coal production whatsoever." It was objected to by Mr. Reynolds. That is the significance but Your Honor allowed the question because obviously you saw the significance. "Will I answer the question.....". I repeated the question for him and Mr. Menzies agreed there could be no coal production

unless there was an adequate and correct system of ventilation. Over the page, at p.326, I asked, "Therefore it is true to say...it is a prime consideration". Only ventilation can dilute and render harmless concentrations of gas encountered underground. Only ventilation can remove harmful airborne dust and this is an indisputable fact, that if roof conditions are bad coal can still be produced in safety only if ventilation is adequate but you can have the best roof conditions in the world, it is as safe as a church, which is a term used in the mining industry, and if ventilation is inadequate you can't produce coal and that is precisely what happened on this particular occasion.

Any company which would try or endeavour to disprove, belittle or disregard this undisputed fact reveal themselves as unfitted to be charged with the responsibility of the safety and welfare of employees under their supervision.

I want to deal with a question which has not been, in my opinion, adequately dealt with: the reason why the ventilation method was changed. The evidence established there was a big fault in this particular area to which the A, B and C headings were driven and you do not have to have any special mining qualifications to know that when you drive to the fault you are almost sure to encounter some roof difficulties and every possibility of gas. Of course it is only natural to expect that with heavy conditions or difficult roof conditions when pillar extraction commences that particular area could become much more difficult. So, you see, it was only mining logic and these conditions that they were anticipating should have been no surprise to them when they encountered them. They knew what the area was. They knew what they were going to. They know what a fault does and it was also reasonable to assume that as the workings retreated from the fault these roof conditions could improve. Mr. Puddle emphasised the reason why he changed the ventilation method was that roof conditions were so bad that it was necessary and imperative in the interests of safety, and if we look at p.723 we might get just a little more clearly what I am leading to. He said, "It is our practice after splitting the pillar.....". This is in connection with expecting the roof conditions to probably improve as we retreat from this faulted area. I think Mr. Lee is cross-examining him. "Q. Having not had trouble before with the ventilation system...that is so as a fact, is it not?A. Yes"(p.724). So it is clear here that conditions were improving on the retreat, but two or three paragraphs further down Mr. Puddle gives another reason and I want to say that under ordinary mining conditions I can find no quibble with this, "In your opinion what time factor was involved.....five or six working days". He is obviously saying it would be much better in the interests of production if I dispense with the bleeder and form my pillar which becomes a green pillar and I extract my pillar quickly and then he advances the fact that by not doing this and having to drive the bleeder heading that created a time lag of five or six days which would enable roof conditions to deteriorate. At p.917 we see, and this is Mr. Sellers' 103rd paragraph: "With reference to that part of the district.....". This place, when this inspection was made, had been standing for five or six weeks. Yet, Mr. Puddle indicates that five or six days would make a difference and that is why, one of the reasons why, he did not drive the bleeder heading. I go to p.757 where I was cross-examining Mr. Puddle in connection with whether he had discussed with the manager this major question of the change in the ventilation as a result of roof conditions. "His Honor: Q. I think your answer was that you thought you had.....restrict production in any way?A. Yes." "Q. And I would suggest to you.....substantially reduce production?A. Yes". You may then see the third question from the bottom of the page after I had asked another seven or eight questions. Mr. Reynolds said:

"I suppose this will be connected with the fire shortly, Your Honor?" I will connect that with the fire as I develop the point I am on now. We go to p.756. We establish from the witness himself that coal production had been seriously restricted. This is in the third paragraph from the top of the page "You stated about these roof conditions.....solids and pillar extraction, yes." The witness himself admits in the final analysis that the roof conditions at this area where ventilation was changed is no worse and in fact is better than some other conditions in the general run of the mine, both in pillars and solids. So the picture becomes a little clearer when you link up the restricted production, and of a substantial character according to Mr. Puddle, and then a picture begins to form that confirms what I said in my opening remarks, that safety was disregarded on the basis of coal production and coal production only. I am sure the interjection of Mr. Reynolds on p.757 was because apparently he had not quite grasped the importance of the cross-examination of his own witness because at this time in the proceedings Mr. Reynolds witness, Mr. Puddle, had, and this is my submission, clearly been compelled to admit under cross-examination the reason why he changed the method of ventilation in this area was in the interests of coal production and not in the interests of safety as he claimed in evidence in-chief. So this is my summary of this particular portion of my submissions. From pp.723-4 the roof conditions had improved. Mr. Puddle gave the length of time of five or six days it took to drive a bleeder heading as a reason also why the ventilation was changed because this time, he claimed, induced better roof conditions. I have already submitted the roof conditions had changed and Mr. Sellers evidence indicated that roof conditions, when he examined the disaster area, were only slightly less than average and a high degree of extraction could be expected, this despite the fact the pillar in question had been standing for quite a number of weeks, not five or six days - five or six weeks. Mr. Puddle unequivocally admits at the bottom of p.726 that there was substantially reduced production and admits the general roof conditions relating to other areas of the mine were worse than in this particular area. He said the miners always worked in safe conditions and Mr. Puddle was very adamant on this point. I want to take Your Honor through that particular evidence because Your Honor asked some questions here also. I think Mr. Lee is cross-examining at p.725 and he is in the middle of his cross-examination: "Do I understand you correctly.....a decision to do a certain thing?" - that is the change in ventilation - "A. Yes. Q. And that decision was one.....in operation before?A. Yes." "I want you to tell us now if you can add anything further.....a greater extraction of coal consistent with safety." "You decided that in the interests of production.....safety and production." "In the interests of safety you dispensed with it.....that is the choice you made?A. Yes". Here again is an admission of safety compromise and it was not compromise in the interests of safety but was compromise in the interests of getting out more coal, more production. These are some very interesting questions. "Mr. Lee: Q. When you say you addressed your mind of course it is common mining practice that a miner makes his own place safe as far as roof conditions are concerned. "They have to make it safe.....we work in a condition that was unsafe". You were very quick, Your Honor, to seize on that particular answer and you immediately said, "Q. Would you please repeat that?" Mr. Puddle said, "I said that we had extracted..... ...I don't think the men themselves would work under unsafe conditions." Then there is another question by Mr. Lee, "That is what I put to you, or I was trying to put to you.....They are experienced men."

Your Honor may recall another question of mine that apparently motivated some idea that it was a bit of a joke or silly,

when I asked Mr. Puddle what were the regulations in relation to pick mining when he was digging coal and he said he could not be any further than six feet from the face and then you may recall I asked him, "What is the distance..... 15 feet, approximately". When I asked Mr. Puddle would he ask mine workers to work in heavy conditions like that, 15 feet of exposed roof, he said No, he did not ask them to do that and then he went on to point out how he cut the ribs with the continuous miner and how they advanced the timber to make the conditions safe and when I asked him whether this would take some time he said Yes, and I said, "This would have an effect on production?" and he answered that it would have an effect on production. So, what is the basis of this idea that the ventilation method was changed in the interests of safety as far as roof conditions were concerned?

The ventilation method was changed in the interest of production because all the evidence before Your Honor, and by admission by the witnesses themselves, clearly indicated the roof conditions had improved and clearly indicates roof conditions were better than in other portions of the mine and the idea of five or six days for the sake of driving the bleeder heading was, I think, very effectively answered by Mr. Sellers, when this pillar area had been standing for five or six weeks and I have already explained to you just exactly what Mr. Sellers' estimation was of the amount of extraction that would have been able to have been produced in the physical conditions he saw.

There cannot be any reasonable doubt, any reasonable doubt whatsoever that Mr. Puddle compromised safety in the interests of production. Can there be any compromise with safety anywhere, Your Honor? The Mines Department says No. Your Honor yourself clearly indicated that there could be no compromise with safety but apparently the company says Yes. That is the only conclusion that can be drawn and it is not implicit, this has already been stated in Mr. Puddle's own statement, in his evidence in-chief at the bottom of p.722 and, if my memory serves me correctly, you cross-examined Mr. Puddle at some length when I raised this question in cross-examination and this is what Mr. Puddle states, "In my experience an important function of an under manager.....but ventilation had been normal." I think I clearly established that the roof conditions were not as indicated in evidence in-chief. And I think it is most important, and certainly very relevant to submit that the manager, Mr. Stone, completely condoned the under manager's action. This cross-examination on roof conditions, in my opinion, had a very big bearing on the fire, and of course it is this question of production being the primary task that permeates other company staff members of lower grade as witnessed on p.97 when Mr. Walker had this to say. Charlie Stewart had apparently stated "How is things mate?" and Mr. Walker said, "They are lovely. They are very nice. They are as sweet as a nut and you should get a thousand skips today. You should fill a thousand skips today." Do you see the emphasis: "a thousand skips today"? Well, tragically, Your Honor, life itself has determined that we only got four skips and four coffins. That is what life has determined.

Then Mr. Cambourn during the course of cross-examination - and I think it was Mr. Lee questioning him - indicated that prior to or just shortly after the commencement of the No. 2 extended cut-through from the intersection of A heading, there had been some problem and there was no production taking place that afternoon and he referred to the fact that the overman came into the district. He was asked the question by Mr. Lee, "Q. What did the overman come into the district for... ..had not been producing." He did not come in to see anything

or to test anything in relation to that particular area - to see what had happened to production. These fellows might not be doing their job so we have got to have the watchdogs on them, the overmen, who have no statutory authority under the Act. Then there is of course a further illustration of this company's practice of production being of overall importance, in the statement of Mr. Reynolds on Tuesday morning. I cannot quote verbatim because I have not the benefit of the transcript, but Your Honor will remember Mr. Reynolds was dealing with the alternative methods that had been suggested and he was referring to Mr. Menzies. He said words to this effect, "Of course, Your Honor, you know Mr. Menzies indicated that the bleeder tube through a seal into the goaf out over into the main return airway but if this would have been achieved they would have been about 30 to 31 inches in diameter. I know Mr. Menzies was only thinking of some alternative that could have been done that would have been of interest, but obviously he had not taken into consideration that the 30 inch diameter tube would have prevented the shuttle car from getting into the shunt, so if it prevents the shuttle car from getting into the shunt no matter how safe that application would have been, well then, that was just too silly to suggest a thing like." You see, Your Honor, this is undeniable. It is therein black and white, just the same as the history of our industry has very very eloquently shown in every cemetery in a mining township. And of course there was the rib brattice and Your Honor will remember the evidence of Mr. Cambourn. He did apply an ordinary simple mining act of practice. When this gas was being complained of he immediately had erected rib brattice from the intake airway along the shunt. Does Your Honor remember that - the diverting brattice, the rib brattice - and then that rib brattice was taken down. When I asked Mr. Cambourn could he tell me who had taken it down he said he could not tell me who had taken it down, but then further cross-examination elicited the fact that had that brattice remained there then the shuttle car would not have been able to shunt in that shunt and this would have automatically had the effect of restricting production to the point - or at least restricting production by virtue of the fact that the shuttle cars would have a longer trip each lift. And of course there is nothing accidental about this because this company must derive profit from its operations. It must derive maximum profit - that is the law under which it works. Maximum profit demands maximum production and with maximum production, safety is invariably lost sight of and that is precisely what happened on this occasion.

Your Honor will recall I cross-examined Mr. Puddle as to why he had not discussed with the manager the fact that he intended to change the ventilation. Did he not think this was a major issue and warranted discussion with his superior? But all that could be extracted from Mr. Puddle was that he did not think he had discussed it. He didn't think he had discussed this major problem of changing a ventilation method that was directed by the Mines Department, that was agreed by the company. He did not think that was necessary. This apparently was one of his day to day jobs. As Mr. Reynolds was putting it on Tuesday, in a really philosophical way that Mr. Puddle was a miner; he had come from the ranks. Mr. Reynolds did not use those words and again I cannot quote him verbatim, but he was a miner, a practical man who had come up from the ranks. Who were capable or qualified to make decisions such as this? Was it necessary, Mr. Reynolds said, in making these decisions that the under manager should know how many cubic feet of gas were in there and how many cubic feet of air was coming through here? Well, Your Honor, if that is the attitude then there have got to be more refresher courses than refresher courses for deputies. And this is further evidence of the complete lack of recognition of the adequacy and importance - I should say for adequate

ventilation. But of course in the final analysis it did not matter much whether Mr. Puddle discussed it with the manager or not because the manager had already indicated in evidence he agreed. To what was he in fact agreeing? He was agreeing, in effect, with a compromise of safety in the interests of production.

My submission to Your Honor is that the changing of the ventilation method by the under manager resulted in the new method of ventilation playing a major role in the subsequent disaster. I would just like to interpose here that I hope the Court Reporter, if he finds I am reading or talking too quickly, will let me know because I have a full appreciation of the task they perform. But of course, they are workers.

I submit it played a major role in the subsequent disaster, that the under manager and the manager were both guilty of gross negligence, a disregard for safety, and a breach of a moral, important trust placed in them by virtue of their certification and authority, and I say that the evidence before you is very clear on that particular point. So is it any wonder that miners go in this morning and they do not know whether they are going to walk out, be carried out or be blown out, when these things are being perpetrated.

I want to deal briefly with the bleeder tube and I think my first reference is on p.729. Incidentally, and just for interest, before I leave this question I would like to point out that it was a funny sort of a goaf area, if you understand what I mean. You only have to look at the map Exhibit JJ, the coloured plan. It is like a pakapoo ticket, but I am not in any way being derogatory of anyone who drew up that particular plan. When I say it is like a pakapoo ticket, I think Mr. Sellers made some reference to it, but you see there is not a great deal of goaf there, Your Honor, until we come to 11 and until we come to 10.

HIS HONOR: I have already remarked on that.

MR. PARKINSON: And of course, with that amount of coal in, but bear in mind the evidence that there is quite a fair amount of dyke intrusion in that particular part and of course dyke intrusion would have a high ash content, I would say that the company would not be too keen about mining that particular type of coal.

HIS HONOR: There is no evidence before me.

MR. PARKINSON: No, that is so, but it should be perfectly clear to Your Honor that the amount of coal which was left in that goaf area would have been a source for the emanation of gas, and a very big source.

HIS HONOR: That is amply proved.

MR. PARKINSON: I will not go into that. Now, Mr. Lee is asking these questions about this bleeder:

(Short adjournment)

Briefly I want to deal with the question of the bleeder. On p729 about one third of the way from the bottom it is Mr. Lee asking questions, "Q. When you introduced it - earlier on - did you regard it as experimental? A. No." That is when it was introduced in No. 3. "Q. You had no bleed there, did you..experimental."

HIS HONOR: The first reference was introducing a piece of brattice and of course the bleed tube to go with it?

1111. Mr. Parkinson's address.

MR. PARKINSON: Yes. "Q. So you were dispensing with the bleed..
.....did not regard it as experimental?A. No." This is
perfectly obvious and is my submission, that this is clearly,
on the evidence, not an experiment despite the fact that it
was the first time used in this area and I think the inference
which can be drawn from this is if it was not an experiment it
was then to become a permanent feature of the method of
ventilation. And of course, you see, if that submission be
accepted this then entirely cuts across the submission which
has been made and brought out in evidence that they intended to
split the pillar that had been formed by the extension of No. 2
where the situation developed because there they said they were
going to go back to the old system of the bleeder heading. Does
Your Honor follow me?

HIS HONOR: Yes, I see what you mean.

MR. PARKINSON: And I think that this is evidence that they
had no intention of going back and resuming the old bleeder heading
type of ventilation system. Mr. Puddle was asked, "Q. You
did not consider you might have to determine whether it worked
satisfactorily, as you could not assume it would?A. I did not
assume it would." I can only infer from that that it was not
an assumption, that it was an accepted fact by Mr. Puddle that
it would work, that it was not an experiment.

HIS HONOR: I do not know what that answer means, Mr. Parkinson;
it may be capable of the meaning you say you give it. It is
also capable of the inference that it could mean "I believed it
would, it was not mere assumption."

MR. PARKINSON: He is asked whether it is an experiment and he
says "No, it is not an experiment." Then surely that person
must be convinced in his own mind that there is no need for
any experimentation. So, at the bottom of p.722, and this is
where I link this up again, and following the concession to
roof control, Mr. Puddle says this in his statement, "I therefore
formed the conclusion that, for a short time only, the bleeder
from the goaf could be omitted." I do not want to deal with
that portion any further, only in a final submission. "This
appeared to be working satisfactorily and I believe that it would
have continued to do so had it not been for a build up of gas
which must have either been very sudden or escaped detection."
He said, "that it would have continued to do so" - now, no
experimentation. My submission is a conviction in Mr. Puddle's
mind and in his own statement that "it would have continued to
do so" does not indicate to me by any stretch of the imagination
that there was any intention on the part of the company to
resume bleeder headings and he split the No. 12 end-on. Of
course, that is not my statement; that is the statement of
Mr. Puddle himself, the man who was in charge of the district
underground and the man who introduced the bleeder tube.

I want to touch briefly on this in passing because I
think it is rather interesting. On p.732 it is Your Honor
who is questioning Mr. Puddle, and I know Your Honor has to
sift all the evidence. You asked him, "Q. Is this what you
said: you used two things.....That is the position you put,
is it?A. Yes." Then Mr. Lee goes on. He followed the
cross-examination, "Q. I take it from what you have just said
that you considered the quantity of gas.....It had to be
controlled, yes." There is no talk about dilution but there is
talk about controlling it which could imply a certain amount of
dilution and dispersal. "Q. You would not maintain, would you,
that to contain gases in a goaf.....actual gases were not
contained - they were not sealed in." It becomes a question of
degree here. "Q. But it was quite obvious to you that you were

inviting a build-up of gas.....It could happen, yes."

Would Your Honor then go to p.115 and you may recall that Mr. Puddle also indicated he had given certain instructions that this had to be inspected regularly. I think there is a great deal centred around this question of the word "regularly." This is Mr. Stewart's evidence about halfway down p.115, "Q.What did you understand by that, what did ventilating the shunt mean.. .. apparently little to do with removing any kind of gas; is that right?A. That is right." Then there is further evidence from Mr. Stewart that this question of regularity, keeping an eye on things, boiled down to ordinary routine inspection. I would now submit, in fact I would say that if I have a statutory duty which compels me to make an investigation X times per shift, if I was told to see that it had to be regularly inspected, that could only mean X plus.

HIS HONOR: Or it could mean that the under manager who told him that did not believe the deputy was going to carry out his X inspections per shift that he was required to do and was reminding him he would have to do that.

MR. PARKINSON: That is an implication also and I refrained from putting that forward because I accepted the fact that the deputies carried out their routine inspections. I want to go to p.814 and at the top of that page - your Honor had asked a couple of questions on the previous page. I think I must have been cross-examining at the time because Mr. Reynolds has interposed there. Mr. Reynolds said this "It is conceded at all times in his statement" - that is Mr. Puddle's statement - "and it will be by me at the end" - there seems to be something left out there - "that when the pillar marked 11 was extracted.....and never will be." Now there is no issue that the method was departed from. "Then this cross-examiner goes on to say" - that is myself - "and debates with the witness.....and this will possibly be a matter for argument later." Well, Mr. Reynolds did make a submission on this in his address - "between the danger that exists when we were extracting from No. 11 and the danger that existed at the time of the fire"- well, the only danger that existed when they were extracting No. 11 or prior was these so-called bad roof conditions and of course if Your Honor accepts my submission and accepts the admissions of the witness himself, then Your Honor can only come to one conclusion that the conditions on Mr. Puddle's own evidence indicated that there are worse conditions in the mine than those obtaining in that area, "because at the time of the fire, depending on the view one takes.....not precisely identical perhaps but akin to this ." Then Your Honor put something to Mr. Reynolds and he said, "Precisely so.....it is being hashed and re-hashed when it is not an issue." Well, I don't know how many cooks we had on this occasion but I certainly do say that this is an issue Mr. Reynolds in his address submitted another plan but for purposes of my own I want to use the original document Exhibit JJ. Mr. Reynolds still maintained in his address that it was a return to the methods previously adopted. This I seriously contest. You see the first extension, the bleeder heading No. 1. Then they went back a pillar length and drove No. 2 and then before doing anything else they came right down and drove No. 3. That meant they had two pillars of coal prior to the extraction of No. 7. If you have a look at the Exhibit JJ document you will find that that is portrayed very clearly. You will see the purple No. 1, the next working was the pink No. 2. It was driven in and connected with No. 1. Then No. 3 - I think it might be called a salmon colour, was driven. It was unsuccessful in its link-up and then they drove No. 4, they came further back No. 3 and drove No. 4, and then they had to go into No. 1, drop back to hole the brown and pink. That was before there was any extraction in No. 7.

MR. REYNOLDS: That is not the evidence.

MR. PARKINSON: Well, if that is not the evidence this cannot be right, Your Honor, and what I am submitting is what is on Exhibit JJ. Am I incorrect in my surmise that these figures only determine the sequence? Am I correct in saying that Mr. Reynolds at one time during these proceedings did say there could be a matter of difference of opinion between the under manager and the manager on this particular question? Is this right or is it wrong? I do not know. I did not submit this document. Mr. Reynolds submitted it, and then Mr. Reynolds submitted another one to fortify his argument. If I may go to the big plan (approaching board) Mr. Reynolds' submission - apart from whether this is the evidence or not - is that this was to be a bleeder heading and that would become a bleeder heading by virtue of the fact that it would hole into the goaf and then the intention was to split end-on in the pillar. I want to say to Your Honor that it is my submission that at no time in the operation of this area has such a split as that contemplated been driven, and I put it to you that this is a 55 yard centre pillar. That gives us somewhere in the vicinity of 48 yards of coal, approximately. To split this pillar I would say that we would drive 21 feet and with fretting ribs possibly reach 24 feet - another 8 yards. So if we take 8 yards off 48, the original, that leaves us with 40 yards of coal to be split with a 20 yard pillar at each side.

Now, I defy anyone, Your Honor, and I am submitting that nowhere during the working was that operation put into effect and yet Mr. Reynolds in his submissions says, "This is identical", or words to that effect, and in that transcript of the notes there is precisely so in answer to a question by Your Honor. In effect it is my submission that that could not have worked - they could not have extracted that pillar and our men would have been subjected to working alongside what was the equivalent of a gasometer. So again you will see this clearly reveals the attitude of this company to have this important question brushed aside as not an issue. Why does His Honor want to worry about this, there is no issue in this - this is the attitude of the company. And of course it is a very very designed attitude, grasping at any straw - any straw at all.

I want to go on to the question which I know has been fully discussed - maybe that would be the wrong term to use, because I am sure and it would be my submission that Your Honor would not be satisfied with the question on what has been explained to the Court relating to the withdrawal of the machine. Early in the proceedings Your Honor may recall I was cross-examining on what instructions had been issued to any members working in the close vicinity of the face in the event of the goaf holing - does Your Honor remember that - and there was an objection. At that particular time Your Honor asked me what was the relevance of this particular question and I pointed out to you that my concern was the safety of our members. And so you see the relevancy of holing into the goaf has become very important in these proceedings.

HIS HONOR: It has become far more important than I realised at the time.

MR. PARKINSON: That is true, Your Honor, but if I may say so, without inflation, it was obvious to me at that particular time of the necessity -

MR. REYNOLDS. Is this p.135 to which you are referring, Mr. Parkinson?

MR. PARKINSON: I have not had time to go through - it may be.

MR. REYNOLDS: There was no objection taken there. You may be making a mistake?

HIS HONOR: There was a question about this holing into the goaf, on the question of whether a bleed tunnel was to be driven or not. This became an important issue of which I was not aware at the time.

MR. PARKINSON: I would now like to go to p.800 on this particular matter and while there may not have been an objection at p.135, at the very last paragraph on p.800 I had been cross-examining Mr. Puddle on the withdrawal of this machine. Mr. Reynolds stated, "Your Honor will remember on Friday I objected... ..it had little or no relevance to the problem." That was the Friday which would be 4th February. This appears in the transcript of Monday 7th February. So the company's attitude here was that it had little or no relevance to the problem because this is only a question of ventilation and this only links up very very closely with what I have said previously this morning about the importance of ventilation and the lack of recognition by the company. Mr. Reynolds goes on, "Whether Your Honor thinks that somebody has told lies about the matter, I do not know.....complete confusion between fact and the relation of facts between other people." If there was any confusion between fact and the relation of facts, this was entirely the responsibility of the company because on a question of this importance there should not have been any necessity whatsoever. "His Honor: This problem does not arise through hearsay.....That is all I wish to say." There must be some link-up here. It is said it had little or no relevance to the question. Was the company becoming concerned because there was a probing into this? Then of course there was the adjournment. Then Mr. Reynolds had this to say, immediately on resumption after the short adjournment: "Might I make a suggestion...Would Your Honor accept my suggestion?" The implication is here, and I do not under any circumstances deny Mr. Reynolds right to discuss with his client during the short break but after discussing with his client to come back to Court and in effect say his company could be prejudiced is, in my opinion, a slur on this Court. Mr. Reynolds had the right of re-examination to clear up any confusion that may have existed in Your Honor's mind as a result of this fragmentary questioning and the fragmentary answers, apparently, that were being given. But let us have a look at this fragmentary questioning. If we go back to p.799 at the top and we count the questions, all leading up to Mr. Reynolds objection and to the conclusion of his statement prior to the adjournment we find that there were 27 paragraphs. I had asked five questions and in one paragraph made a comment as to the fact that the dogwatch deputy could be a man who could give us some lead on this. Mr. Reynolds made six statements out of 27. Mr. McNally 2, and Your Honor made 13. Let us have a look at what the situation really was on p.800. It is at the top of p.800, "His Honor: Q. What do you say about it Mr. Puddle.....in charge of the night shift." The note was left in the lamp room or in the crib panel. It could have been posted for all Mr. Puddle knew. ".....who was the night shift foreman.....and nobody at the moment can tell me psitively.....little or no relevance to the problem." That was what went on prior to Mr. Reynolds statement that also motivated the statement of an unfair situation. Is there sometimes a desire to forget this Inquiry is investigating the causes and the reasons for the deaths of 4 men?

I want to make it clear that we have made our position very clear. I do not know whether this particular question was cleared to the satisfaction of Mr. Reynolds because Mr. Reynolds said, "Would Your Honor be good enough to intervene?.....i

be too late." Now, I don't know whether it has been too late but I don't recall any re-examination on this question by Mr. Reynolds of Mr. Puddle. I don't know of any unfair situation that developed or could have developed but one thing is clear in evidence and that is the fact that the company did not want this matter ventilated because the statement that it had no relevance or very little relevance to the problem is a most remarkable attitude and quite in keeping with the previous attitude during these proceedings. Probably one of the reasons that the company did not want the matter ventilated could be found in the Coal Mines Regulation Act p.171, 2A (Read). All I can say, without in any way wanting to appear to be derogatory to the surveyor, if this instruction has been given to the surveyor then he requires a refresher course. What evidence has the manager submitted to this Inquiry that this Regulation was carried out in relation to that particular area? There is evidence that there is a surveyor's peg there. There is that evidence. The whole incident of the withdrawal of this machine is really Gilbertian and only for the fact that it is so tragic it would have been a joke. In the first place the under manager knew nothing about it till Monday morning, that the machine had been withdrawn - knew nothing at all. Mr. Puddle said in evidence he knew the width of that pillar to be a 55 yard centre. Mr. Stewart said in evidence he knew the width of that pillar to be a 55 yard centre. Mr. Cambourn stated in evidence he thought it was a 33 yard centre.

We are talking about ventilation here, Your Honor. We are talking about ventilation irrespective of the build-up of goaf gases. We are talking about who knew what was there, who knew where they were going. Then of course we had the plan that was in the crib room and that was drawn to scale with the A, B and C headings and then we have the evidence that workings from there on were pencilled in by the deputies not to scale but to what they thought it would be. I don't know if we step it out, we have travelled so many yards, and we use the scale and A, B and C and use our pencil and state we have travelled that far, that we have the scale, we will put that on. This is the manner in which this was developed, Your Honor, but of course according to the company things like this have no relevance to what Your Honor is investigating. And, of course, the plan was destroyed. Yes, the plan was destroyed. The heat of the fire destroyed the plan in the crib room but it did not destroy the deputies' reports, they were recovered. Could this be one of the reasons why this question was irrelevant and the company did not want it ventilated? I don't know, Your Honor, and you will have to draw your own conclusions.

I wish to refer to p.797. Halfway down that page I asked Mr. Puddle, "So it was very important.....not that particular lift." So here it was obvious that the company were not very concerned whether they holed into the goaf at that particular lift. On Mr. Sullivan's submissions yesterday about the sump, as he termed it and the heavy concentrations of gas that had developed, if the company had suspected heavy concentrations of gas along the same lines as Mr. Sullivan and did not intend to hole until much further retreated back up the cut-through, I want to refer now to what I think is very important on p.798. There I asked this question, "Couldn't this have been the situation.....that was set up with the Tee-piece and the vent tube". Does that indicate that they were going to split No. 12 heading end-on?

There is one inescapable fact and that is the fact that there was absolutely no method or plan associated with this venture and operation in No. 2 extended cut-through. Another approach by the company could have been that the company strongly suspected heavy concentrations of gas in the goaf at this point and had no intention of holing and no intention of splitting the

pillar end-on and intended to contain the suspected gas in the goaf area by the use of a fender and the use of a bleeder tube to keep the shunt clean. I think I have referred to the re-examination by Mr. Reynolds of Mr. Puddle on this question. If you look at Mr. Reynolds re-examination on p.864, he asked 22 questions of Mr. Puddle and not one on why was the miner withdrawn.

Mr. Lee's submission of being lax and off-handed generally, in his submissions, that the company were lax and off-handed, appears to be a most temperate point of view and, I would submit, an understatement. Clearly evidence on this question of why the machine was removed - the company's apparent reluctance to have the matter discussed on the basis of irrelevancy, when this question is such an important point of relevance. I would like to submit, in concluding on this matter, that this was one matter in this hearing that you were not fully informed on and the lack of information in my submission rests entirely on the shoulders of the company.

At p.828 Mr. Sullivan was cross-examining Mr. Puddle and he states, "You have told us on a number of occasions.... .when pillars were being extracted?A. Yes." These have been counter-signed. The finding of gas was of such little importance that from the 5th to the 6th, on this particular question Mr. Puddle could not recall. Linking the removal of the machine with Mr. Puddle's answers to Mr. Sullivan's cross-examination leads me to this submission: How long have our members to be subjected to this type of administration? I submit that Rafferty would blush on the evidence before Your Honor. Mr. Puddle comes to this Inquiry and gives evidence to the effect that inflammable gas had not been found between certain dates prior to the fire when he had counter-signed deputies' reports indicating that such gas had been found. He disregards the requirements and directions of the Mines Department relating to the bleeder heading. He can give only scant evidence about the withdrawal of the machine - gave the original orders to erect the brattice in A heading which prevented the area inby the brattice screen from being inspected and which finally developed in an area which could rightly be described as a gasometer. I think the amount of gas indicated by Mr. Donnegan was somewhere in the vicinity of 10 or 12 thousand cubic feet of gas behind a brattice screen immediately prior to the ignition. In some questions I asked he admitted you could not inspect between the brattice screen and the goaf edge in A heading - not because of roof difficulties - not, I submit, because of it being inaccessible but due to the fact of concentration of gas. Mr. Puddle went on to tell me that he as the under manager had never attempted to get round there to see what the situation was - introduced the bleeder tube, a ventilation which Mr. Wasson described at p.793. I do not think there is any necessity for me to go through the evidence Mr. Wasson gave. I agree with Mr. Reynolds in his submission that the company did not have any need to put Mr. Wasson in the box. Surely they did not think Mr. Wasson was going to say what he did say about the bleeder tube and the ventilation - about how it was totally inadequate - how it was a form of ventilation that he could not approve of - but then he did make the concession that some things might be different in mining practice - they certainly were different in this mining practice at Bulli, by the company.

With all this you are being asked, in Mr. Reynolds' submissions, to accept the fact that the practical miner has to make decisions on the job. That is what you are being asked to accept. Can you accept that? I submit not. I would like to make it perfectly clear that my references to Mr. Puddle so far this morning are not based on any personalities whatsoever,

it is based entirely on the evidence. I also want to make this clear: that I do not for one moment contemplate that Mr. Puddle would deliberately do anything that would create even injury to his own personal employees. I do not for one moment contemplate that but what I do say is that there was gross negligence here of a type that should not be tolerated in this year of 1965, when this happened, when we have Lunar 9 walking around the moon, when we have all the technological development and knowledge that we have at our hands, that we should be subject to these forms of so-called safety.

I want to have a few words to say about the manager and to develop that. I would like to refer to p.613 and I think this must be accepted. This is in Mr. Stone's statement: "As events have turned out.....and no Inquiry". Well, there is no ambiguity about this statement.

HIS HONOR: You do not have to convince me the method of ventilation was obviously inadequate. That has quite clearly been admitted by the manager and also by Mr. Reynolds on behalf of the management. I suppose the question is, was it obviously inadequate at the time the ventilation was installed and if it was so, was it so obviously inadequate that anything should flow from that.

MR. PARKINSON: Again, I link it up to what it does. Again, this lack of approach to the question of the cardinal importance of ventilation and where inadequate ventilation can lead us. As I pointed out to you it was not my intention to go along the lines that had been submitted to you in addresses by Mr. Lee, Mr. Sullivan and Mr. Murray but I think this is a very very important addition. It says, "There would be no fire and no Inquiry". Then, if we can go to p.617 Mr. Stone there says, "Of course there was a gas problem, there always is, - detection and dispersal". At p.622 Mr. Stone said, "So when you are extractingthat was correct". Now, you relate that to the gas problem previously and at p.618 Mr. Reynolds said, "Would you tell us briefly.....where there are dead-ends." You remember Mr. Sellers' evidence. Here I can agree one hundred per cent that we treat all gas as inflammable until proven otherwise but we must always treat all gases as dangerous. These are the instructions that have been issued now. Your Honor said, "Do you say you have asked them.....now we have ceased that practice". That has created some problems for them in the past but rather than stop the machine a matter of an hour or three-quarters of an hour and withdraw the machine to somewhere else, no, they rob and they rob in the interests of production and it creates some safety problems. That has now ceased.

I want to go to pp.856-7. I have to refer back again to Mr. Puddle to bring this point out. Firstly, from p.856, "You went out of the mine and telephoned Mr. Stewart... ..used for a shunt". This is when Mr. Puddle, you will remember, first found the gas in A heading and erected, or caused the brattice screen to be erected inby side of No. 3 extension cut-through. Do you recall what I am driving at?

HIS HONOR: Yes.

MR. PARKINSON: "You actually arranged for the bleed tube..... ..the manager who arranged that." I have heard Mr. Stone say in evidence that this method of the change of the bleeder heading had gone too far for him to stop it but there is one thing for sure, Mr. Stone must have known of the introduction of the bleeder tube inby side of three cut-through because they required certain materials and they contacted the manager about it

on October 5th, who in turn rang Appin Colliery to get the required material. Is it reasonable to assume that Mr. Stone would accept that particular telephone call from Mr. Puddle without saying, "What do you want this for?" Wouldn't he say, "What have I got to get it from Appin for?" Is it reasonable to assume Mr. Puddle would not tell the manager what the situation was? Is it reasonable to assume the manager should not have had some doubts at least about the system at that particular time? The evidence is that the machine was only in 100 feet from A heading in the extension of No. 3 cut-through. Is it beyond the realms of possibility that the manager should have seen that situation and should have endeavoured to devise some alternative method then such as withdrawing the machine from that particular area where it had only travelled 100 feet and probably connecting - commencing the No. 2 heading extension? I don't know. Surely it was something that required attention. I refer also to p.629. This is another question where production intrudes. I think Mr. Stone is being asked a couple of questions by Mr. Lee and then, of course, Your Honor asks questions. "That is so, you don't.....taking a risk at all?A. No". Questions are asked again by Mr. Lee of Mr. Stone about the side brattice and the question is, "You can take it the side brattice.....and put the tube in." Then I think this is very good, Your Honor, "In your opinion what would you say.....and around there". "The thing" is the way it is described. Mr. Stone indicates that the under manager, if he succeeded, told them nothing. Then he indicates that Mr. Ryan - his version of what Mr. Ryan said was that there was no necessity for any applications to be made to the Mines Department and authority given to instal fans but of course Mr. Muir, in his evidence, makes it perfectly clear that that was not his. I think this is rather remarkable, "I see you do not agree with the evidence.....I do not think it would do." But firstly he said he doesn't even know, and this is the manager of the colliery: "You do not think it would.....but I don't accept them." He admits he did not know about the pressure decreasing at the brattice but he disagrees with Mr. Griffiths' evidence.

Mr. Stone goes on about floor heave and, of course, there is no evidence whatsoever of that.

The last matter I want to deal with in connection with Mr. Stone is his inspection, at p.647, "You heard witnesses give evidence.....". This is when the manager made his inspection on 3rd November. He said he wanted to go in and see the face and the ventilation. "When you went to the extension of No. 2 cut through.....that is true." Mr. Stone went in to have a look at the ventilation and make an investigation and I don't know what he investigated. That was November 3rd, the deputies' reports clearly indicate that noxious gas was detected on the 2nd November and 3rd November. Mr. Stone did not see fit to make his own personal investigation. According to the evidence he could not get out of the shunt quick enough, as he may have been stopping some production or stopping the shuttle car from getting in or out. You see, when I asked Mr. Stone the question did he place himself in the same category as a captain on a ship - of course that got a little hilarity - but the fact remains the manager is the equivalent of the captain on the ship. I find it very difficult as a trade union official to brook what is called managerial prerogative. I say here without any qualms whatsoever that both Mr. Puddle and Mr. Stone, the trust put in them by certification and by their job, they are charged with the responsibility of safety and welfare of large numbers of men under their supervision and this has all been breached and there has been gross negligence. The company must accept this responsibility. If anyone in a motor car had been guilty of such negligence and killed four people I certainly would

not want to be confronting a Magistrate, in Wollongong, that would have been looked upon as a most serious thing. I am submitting to you that this must also be looked upon as a very serious offence and that it was gross negligence by the company relating to this particular disaster. I want to make a submission on Mr. Sellers' evidence but it won't be very long and I want to link it up with the general attitude of the company and then I would like to make some recommendations which I do not think will be very long because I thought last Friday you made it perfectly clear you did not want to hear any submissions of mine in connection with the Joint Coal Board and joint legislation as it relates to the Coal Mines Regulation Act, and I accept that.

(Luncheon adjournment)

MR. PARKINSON: I have given some consideration to my submissions during the luncheon adjournment and I do not intend to go very far with Mr. Sellers' evidence other than to say that I think it would have been much more preferable had Mr. Sellers gone into the box as a witness of the Australian Iron & Steel Company and not, as he was portrayed by Mr. Reynolds when he produced Mr. Sellers, as an independent witness. I have no argument with Mr. Sellers' qualifications. The only thing I found it very hard to accept on the basis of independence was the fact that Mr. Sellers had been requested to accept nomination as an assessor on behalf of the company, and then of course when that did not eventuate he was called upon to give evidence as an independent witness and this was regarded as a magnanimous gesture on the part of Australian Iron & Steel. It was done for the purpose of assisting Your Honor and Your Honor did ask the question as to whether we had been able to reach common ground of agreement and Mr. Reynolds said words to this effect, "Well, it was not necessary, there will not necessarily be much disagreement". I also wanted to point out that it would have been a cardinal error to take tests of gas and send them to the Australian Iron & Steel analyst because I think the witness would know full well that the Australian Iron & Steel have their own dust counters and our members will not accept dust counts of the Australian Iron & Steel. I find it very infrequent that the Australian Iron & Steel accepts dust counts of the Mines Department. And so this is the atmosphere in which this spirit of independency is developed. To save me wading through this, may I have your transcript, Mr. Bowie? (Transcript handed to Mr. Parkinson) At p.96⁴, this appears in the statement about halfway down the page, "Q. Then you go on to say 'it is not uncommon for mines to be worked with unventilated goafs.....I have never known of one case of heating in the Bulli Seam.'" I go on to cross-examine on the question of unventilated goaves. This was an expert in mining matters, allegedly assisting Your Honor. There had been much evidence and discussion around the question of unventilated goaves, and to my way of thinking this statement if left unchallenged would in no way have assisted Your Honor to a correct conclusion. We are discussing unventilated goaves in this instance, then the statement says, "It is not uncommon for mines to be worked with unventilated goafs," then he goes on to talk about where there is spontaneous combustion. I would say now that this was designed to lead Your Honor to the point of saying "This is an unventilated goaf, it is not an uncommon occurrence," but then Mr. Sellers admitted to me in cross-examination that there was no similarity between that goaf and the goaf in the northern district where spontaneous combustion does occur. There was no similarity, so if there was no similarity how could that in any shape or form be assisting Your Honor?

You will remember of course the statements of Mr. Sellers in connection with floor heaving and how he finally was brought down to the point in cross-examination that he found no evidence of floor heave whatsoever. Then, Mr. Menzies' answers to my questions on the question of floor heave where he too found no evidence of floor heave. Your Honor asked a question of Mr. Menzies, "Would you have found evidence of floor heave", and Mr. Menzies said he would have found evidence of floor heave. Then there is this theory of Mr. Sellers' that there was no 100 per cent degree of certainty that the holing in the goaf would have been able to bleed gases away. He then goes on to outline a theory of roof stresses, dykes, coal that had been left that could have been crushed to pulp and made into what we turn a tight goaf. But then you see Mr. Sellers knew on his own inspection that there was not a tight goaf. The goaf was not tight. He explained to Your Honor in his statement that the position in relation to the roof condition at the goaf edge, he went to No. 4 cut-through, and then the conclusions of Mr. Sellers were of course not accepted by the expert witnesses of the Mines Department, particularly in relation to pressures, and fans, and things of that description. I do not of course set myself up as an expert in coal mining by any stretch of imagination and what I know about pressures and fans, that would be one of the things you could write on the back of a stamp and then still have room for the Lord's Prayer. But the fact remains that this evidence of Mr. Sellers' I say without any fear of contradiction, if you accept that evidence in globo then all that happened at Bulli Colliery on 9th November 1965 was a negation of probably 95 per cent of what the Mines Department was saying through its inspectors. And if you accept Mr. Sellers' evidence as it was produced originally in-chief, then you would say, and it is my submission, that this was an act of God.

There is Mr. Sellers' evidence then in connection with the splitting of the pillar, the one that is formed by the driving of No. 2 extension; that he would not have holed into the goaf but he would have split the pillar and created two dead-ends. When I put it to him that he would have created two dead-ends, he said "At least you would have had two open places." But he was creating two dead-ends and you will remember I asked the question of Mr. Sellers that the manager had already instructed that there shall be no dead-ends and never at any time in Mr. Sellers' statement - that is his evidence in-chief - did he refer to that thing that Mr. Dennis Stone referred to as the brattice across A heading. I would have thought an independent witness would have given you some indication of what that would have done to the ventilation, what that would have done to the circumstances that surrounded the particular area at that particular point. So that is all I want to say in connection with that. The cross-examination of Mr. Sellers is there and the whole of his statement with the exception of that dealing with the analysis is a question of "may, possibly, it could, there is some probability."

Finally I want to deal very briefly with the company's attitude to these proceedings. They say ventilation was only one of the problems, the inference here being that ventilation is only equal in problem to other problems. They object to the holing into the goaf question as nothing, or having little whatsoever to do with the fire. Objections were raised to the question of the machine being removed, as irrelevant. Objections were made to certain questions on the bleeder; interjection on the roof conditions on the basis that "when are you going to get to the fire?" and on one occasion Mr. Lee, very gently I thought, had to rebuke Mr. Reynolds on the basis that he could not understand why Mr. Reynolds so consistently embarrassed

his client by prima facie placing him in the position of being the defendant. Then the legal argument developed before Christmas on the question of Your Honor's jurisdiction within the Terms of Reference and as it applied to s.31 of the Act. Legal argument developed again on the same particular question. As an ordinary layman, I have to work it out in my own crude way and I worked it out this way and I make this submission, that the company's position in this hearing was by no means a good position at all from the point of view of responsibility in this tragedy and it was tactical to suggest or prevent, if possible, legally of course, the ventilation of certain matters that could throw more light on to this tragedy and thus give Your Honor a better opportunity of being able to arrive at a decision. The legal argument then centred around the right of Your Honor to make a decision - or at least that is my understanding - and on my reading of the appropriate section of the Act I understand that there is no appeal against any decision which may be made by this tribunal. So, if there was a decision against the company, there could be no appeal against it and it would go on to the record for all time. That is my submission to Your Honor; that is my honest statement.

In his address on Tuesday morning, I think it was, Mr. Reynolds did not bring forward any recommendations from the company, not one, and I am not too sure because I did not hear what Mr. Reynolds said and I could be corrected here - whether he said he agreed on behalf of the company with the propositions put forward or the recommendations put forward by Mr. Lee; I don't know. Mr. Reynolds then said, and I can't quote him verbatim, that the minimum of regulations should become the maximum. Well, I can understand that too, because in the regulations that should have been carried out here in certain instances they were not carried out, or certain directions were not carried out, because Your Honor sees that the Australian Iron and Steel are a law unto themselves.

In my submission the company blatantly defied the Mines Department in relation to the bleeder heading. It defied the Department and it ignored the Department in relation to the installation of fans, and I gather maybe there is going to be some other legal argument as to whether the company's attitude in relation to fans, the ignoring of what is in the Act, as I understand it, or there might be some legal argument about that. The hallmark of being a good manager, under manager or overman or a deputy today is not necessarily the ability and knowledge, technical and otherwise, in mining lore but is determined by the greatest amount of coal they can produce from the mine, from the district, or from the panel. I submit that the weight of evidence at this hearing has been conclusive, is overwhelmingly to the point that I can say this: Safety was compromised in the interests of production and resulted in the deaths of four men. And I only hope they have not died in vain.

I want now to express through this Court the sincere gratitude of the Central Executive and Central Council of the Miners' Federation to all those people who lent their assistance on the day of this tragedy and particularly to those, irrespective of what organisation they belong to, who really endangered their own lives in an effort to try to save the lives of these unfortunate members of ours.

Very briefly I want to deal with recommendations. I do not say that I am dealing with recommendations briefly because I do not recognise the importance of these regulations. I do not say it from any point of view that I have become cynical. I say it because I agree with the recommendations in the main submitted by Mr. Lee. Also I agree with the recommendations

submitted by Mr. Sullivan with one exception, and here it is an amendment, that we as a union, and I recognise that Mr. Sullivan would have certain instructions from his district down here which is of course a branch of the Miners' Federation - but we would not want our check inspectors to be paid if it was going to mean that our independence in relation to their work was going to be placed in jeopardy but we would want and would accept annual expenses for travelling because the districts in the Miners' Federation in New South Wales, particularly this one and more particularly so the Northern District, are a very big item.

First of all I want to deal with the matter that was developed as the result of some submissions made by Mr. Murray to Your Honor, and this was the subject Mr. Lee asked Your Honor to make a statement about which Mr. Lee attributed to a personal attack on Mr. Anderson by Mr. Murray. It revolved around the question as to approval. Well, I was personally a little amused at the argument that developed on this, but I recognise that from a legal point of view it was not a joke. I recognise that Your Honor has a specific task to perform and that when it is performed and finally sent on to the Minister it has to be the type of job that one cannot shoot holes through. But it is true that the Chief can approve but that does not compel anyone other than that particular type of development that the Minister has approved. What we want are recommendations that will become amendments to the Act, will be policed, and that we will see the benefit of such recommendations arising out of this Inquiry. But just as soon as it becomes necessary to have an amendment to the Act, that is when the New South Wales Government Mines Department loses its identity because there is not one recommendation which Your Honor can bring down that will not have to be agreed to by the Federal Government or the department acting on behalf of the Federal Government which is the Department of Development of which the Joint Coal Board is a part.

HIS HONOR: I think you are a little pessimistic. I do not know about the history or what has happened in the past, but I have taken the trouble to see that it is worth my while making any recommendations. If they were not going to be accepted by anybody, then I would merely be writing so many words on pieces of paper. But I understand the attitude of the Joint Coal Board - and they are the ones which in the long run will count, and they are the ones you are talking about?

MR. PARKINSON: That is right.

HIS HONOR: I understand the attitude of the Joint Coal Board is that if the Minister accepts my recommendations and the New South Wales State legislature is prepared to have them made law, particularly since they are dealing with this Coal Mines Regulation Act which the Joint Coal Board regards as being in a peculiar province of the State Government here, the Joint Coal Board itself will in all probability see no objection to it and will advise the Commonwealth Government accordingly. That is what I am told by a very well informed source as to what the attitude will be to such recommendations if they are accepted, if they are approved by the Minister and of course if in turn they are approved by the New South Wales Parliament. Therefore I say you may be a little pessimistic there, and if I am to start making observations which contain recommendations as to the future which I thought for one moment were unlikely to be accepted, not by the Minister although it is in his province but by somebody else afterwards, I should feel very unhappy about making them. I understand this to be the position.

MR. PARKINSON: I have given consideration to this particular question during the course of these proceedings and I came to the conclusion that I could not visualise an inquiry like this and a Judge making recommendations that would not be acceptable or would be the basis for, shall we say, squabbling. I would not think that, but my experience has been over many many years that that has not worked out in practise, because I would like briefly to indicate that when we had the accident in Bulli in May 1964, a very serious accident, it took almost nine months. However, I can assure Your Honor of this, that whatever recommendations you bring down we will fight for them because that is our rule, to fight for safety.

HIS HONOR: It is good to know I have the support of the Miners' Federation.

MR. PARKINSON: We have fought for safety ever since this was an industry, and as I say, today in 1966 we still have to fight. Now, back to this question of approval. The Mines Department has approached every mining company in New South Wales pointing out to them that the Department would approve self-rescue equipment being installed, and that was done over two years ago. I think there are about three collieries in this district which have installed it. I think there is one colliery at least, up in the Gunnedah area, that has them, but in the majority of other cases the Department has been met with the statement, "We will wait and see how they work. We have no guarantee that they are the alpha and omega of everything. We will wait and see." That has been the approach to this question. Then of course I do not underestimate the possibilities and the necessity of us as an executive having to do something about this equipment, when and where it is installed, because I remember when safety helmets were introduced we had to wage a decent sort of campaign to see that safety helmets became an accepted fact so far as our members were concerned. I believe some of our members will say "Well, what is the good of them? We can't carry those about," but I think if there is a correct approach on this question I have no doubt we will play our part as a union in these recommendations that may be brought down. The only thing we want to see is the managements adopting the same attitude.

There is one thing that has disturbed me in this Inquiry and that is the fact that this No. 8 Right area, if my memory serves me correctly, was last visited by a Government Mines Department inspector on June 29th, 1965. I am not saying that the Government Mines Inspector was not at Bulli, but in this area, and this accident happened in November. That is a period of somewhere round about 5 months. Now I think there is a very good explanation, of course. I say now very very definitely, and I make it a recommendation to Your Honor, that the Government Mines Department from the point of view of Government Mines Inspectors is seriously under-staffed and that is a serious question - from Burratorang Valley down to as far as it is possible to get down the Coast, south-west to Berrima. An incident happened at Old Bulli the other day and we could not get investigation into that accident for about four days because the Government Mines Inspectors were completely tied up.

HIS HONOR: I suppose a lot of them were tied up with this Inquiry, were they?

MR. PARKINSON: No, this is only in the last few days. They have too much territory to cover, and I think Your Honor should give every consideration to this recommendation when you are considering what recommendations you will finally make because when anyone like a Government Mines Inspector who is called upon

to deal with safety is needed, surely safety becomes cardinal in the life of a community and in the life of society, so far as that is concerned.

Side by side with this I would like to make a revolutionary recommendation and in all probability I will see quite a number of raised eyebrows. I am firmly of the opinion, and I make this submission, that deputies as we know them today should be under the complete control of the Government Mines Department of New South Wales. They should be employed by the Government Mines Department of New South Wales. They should be selected by the Government Mines Department of New South Wales and they should be paid by the Government Mines Department of New South Wales. And this is a simple matter: a levy could be struck by the colliery proprietors on the same basis as they strike a levy for their rescue stations and this could be the pool from which the deputies would be paid. Under this scheme the Government Mines Department would have a pool of what could be termed junior government mines inspectors who were doing nothing else at a colliery but carrying out their statutory duties. I am telling Your Honor and I am making this submission that until we get to that particular stage we will always be caught up with the problem that confronts us. Who selects deputies today? The manager has the sole right of selection and immediately anyone is selected that person becomes inhibited. He becomes inhibited to the point that his statutory obligation can be impeded and is in fact impeded. On the one hand he has the under manager or the manager; on the other hand he has got the overman breathing down his neck, and I heard Mr. Stone in the witness box describe the overman as senior deputies - and they have absolutely no statutory right under the Act. So Your Honor sees this would then take away from the deputies the position in which they are today where they have statutory obligations, they are inhibited by other factors, but they still carry responsibility and in my opinion they should be divorced from them. To say that a deputy is a foreman is an over-simplification and a complete under-estimation of the responsibilities of a deputy. Therefore I make that recommendation and I only have three more to make.

I will never rest until I see every battery loco and every shuttle car withdrawn from the coal mining industry as they are a potential source of danger each and every moment. Here Your Honor heard the evidence and asked a question of overheating and you remember then Mr. Reynolds' question about this question of overheating on the basis of when does overheating become overheating and when does overheating become a danger point? Battery locomotives that give off their own gases - any short, a fire. In the first eight days of this Inquiry, nine fires, eight of them attributable to electricity. I think Your Honor should give every consideration to within a limited period of time, the same as the companies were given to remove flammable belting and introduce non-inflammable belting, that battery locos, shuttle cars and cable cars should be removed from this industry and replaced by deisels. Far be it from me to be advocating deisels, and I recognise that there could be a problem with deisels in relation to CO but in my opinion it is a problem that could quite easily be overcome - quite easily.

The other recommendation could be looked upon more as a minor recommendation but not to us. In the general context of the Act it could not be looked upon as minor. That is we feel provision should be made for the unions' right to have an electrical check inspector on the same basis as we have a district mines inspector. Our district check inspector, Mr. Parkinson, has a very high degree of knowledge in relation to mining industrial matters, but when it comes to the question of complicated involvement in electricity in a mine it is a different

question. So we feel a recommendation along those lines would be something that would be most acceptable to the unions. Of course it could well be argued that if you are going to remove shuttle cars and you are going to remove cable cars and battery cars, what electricity is there? But then you will notice - I cannot visualise anything at this particular stage that would replace the continuous miner, and it has electricity, and there are other things which require electricity.

I am not too sure whether this would be a superfluous recommendation, that bleeder tubes should be withdrawn and they should be taken to Ball's Paddock just up here and they should be set on fire in Ball's Paddock. I do not ask Your Honor to make the recommendation in exactly those words, but I think Your Honor gets the import of what I mean. I think that bleeder tubes should be completely condemned and they should not be allowed in the mines.

Arising out of this Inquiry, Mr. Anderson, the Chief Government Mines Inspector, Mr. Donagan, and quite a few of the check inspectors - I feel still that there should be greater supervision by the Mines Department on pillar extraction.

Those are the recommendations and that completes my submissions.

HIS HONOR: Thank you for your assistance, Mr. Parkinson.
Yes, Mr. McNally?

MR. McNALLY: Yesterday Your Honor directed Mr. Sullivan's attention to various recommendations concerning the percentages of gas that could cause work to stop and machines to be shut off. I say this only as a matter of assistance; those regulations are conveniently set out in Inspector Muir's report at p.977. There are four regulations, the first one being General Rule 1, s.54E in which it is stated among other thing that a place is not in a fit state for working or passing if the air contains either less than 19 per cent oxygen or more than $1\frac{1}{4}$ per cent carbon dioxide, so it is in the alternative. General Rule 7, Regulation 27, the 7th Schedule, and Regulation 69 of the 7th Schedule all deal with methane, inflammable gas (read).

HIS HONOR: If one used a methanometer it may be necessary to do something about that?

MR. McNALLY: Yes. The regulation itself provides that inflammable gas is found on an oil safety lamp. Regulation 67 in the same schedule provides - (read). It is roughly $1\frac{1}{4}$ per cent, so in effect things happen both in relation to carbon dioxide and methane at $1\frac{1}{4}$ per cent.

In an effort to shorten my address to Your Honor, we would say generally speaking that we agree with the 17 propositions of fact put forward by Mr. Lee, with possibly two exceptions, and these are only minor amendments to the propositions which Mr. Lee put forward. We do not have the confidence that the fire was caused by ignition of wood that Mr. Lee perhaps has. We realise that it is nevertheless significant that wood can ignite, that hydraulic oil can cause a fire, that brakes generally may cause a fire, but Your Honor will recall the evidence of Mr. Donegan dealing with the wood at p.444 of the transcript in which he expressed the view that it would be sufficient for the piece of wood not necessarily to ignite but to glow only.

HIS HONOR: I thought if wood did glow it could ignite? I suppose there is a fine distinction in terms. I suppose ignition means there is a flame.

MR. McNALLY: We do not concede even that the wood glowed and caused the fire. There is that doubt still in our minds, but when one talks of wood igniting one has a picture of a large fire. One is inclined to believe that Mr. Mangles looked around and saw the wood on fire; in fact this is most unlikely. On p.444 it was put to Mr. Donegan and he added this which in our submission is significant. It is the third last question on that page, "Q. You say the wood may have been glowing before the car went into the shunt.....ignitable composition." The reason I refer to that is that one does not have the picture here of a shuttle car going into a shunt, hydraulic oil or wood or whatever be the cause suddenly occurring there and then at the same time as it came in contact with the gas. It could well be that the wood, if it was the wood, had been glowing the time before and the gas may not have been there. One then starts to consider things, as to whether or not people would smell it. I think Mr. Donegan expressed the view that perhaps Mr. Mangles would not smell it, then later he suggests that miners could smell it, but he did mention the possibility that this was not the first time that the brake was in such a condition as to cause fire. It depends on two things, the wood being in that state and the gas being there in such proportions as to ignite. And we would make that distinction from the expression of fact that Mr. Lee put.

HIS HONOR: Is this your proposition: if in fact the wood had been glowing on a previous journey the gas could then in all probability have come into the shunt during the absence of the shuttle car on that previous journey?

MR. McNALLY: Well, not even exactly that. In our submission this is the difficulty in making a submission to Your Honor, that all these things must be possibilities only. I am not going to suggest any interpretation of the facts that we say should be found because it is a matter for Your Honor. We can only suggest alternatives. It could well be that the wood was glowing and the fact of the shuttle car going into the shunt itself as Mr. Mangles put it would cause gas to come through the brattice. It is possible the gas was not in the shunt until the shuttle car itself attracted the gas into the shunt. At all times it must be remembered that this fire was a gas fire, but not necessarily the gas that was in the shunt at the time the fire started because no one knows or will ever know at what stage the shuttle car went through the screen. And we know it is conceded by everyone that behind this brattice screen there was a big build-up of gas and it could well be that was most of the gas everyone thought they saw on fire. This is a possibility, but nevertheless it is conceded that there was gas in the shunt at the time of the fire.

Our second distinction, our second point of difference from Mr. Lee's submissions of 17 facts, is this: we do not concede it is beyond doubt by any means that the composition of the gas in the shunt at the time of the fire was the same as the composition of the gas on 12th and 15th November when the samples were taken. We say that for this reason: firstly one must remember there had been a fire and this may affect the gas itself. We do not for one minute suggest it was not Illawarra bottom gas, we simply say that the 53 per cent, I think it was, carbon dioxide may not have been of that percentage. We do not concede that the 40 per cent methane was of that percentage or the 2 per cent nitrogen was of that percentage. I am now speaking of the airfree mixtures, not the atmosphere as found.

HIS HONOR: In other words what you say is this, that it is bottom gas in both cases but different proportions, different components?

MR. McNALLY: I will shortly be submitting to Your Honor that in all likelihood there was more than one type of gas in this goaf, and there is evidence to that effect.

It was put to Your Honor by Mr. Reynolds and in substance we would agree with this, that the immediate cause of the fire was twofold. I do not necessarily say one must necessarily go further than this in looking for immediate causes, but they were twofold; the failure to ventilate the shunt as it ought to be ventilated, and secondly the fact that gas was not previously detected. For the sake of brevity, Your Honor has heard Mr. Murray, Mr. Sullivan and Mr. Parkinson on the question of ventilation. I only propose to deal with the question of detection of gas, whether anyone had failed to detect and whether it could be said that on the evidence one can only come to one conclusion that gas should have been found if tested for properly. We say that one cannot necessarily come to that conclusion. One might have one's suspicions but one might not. But on the evidence we submit there is one more possibility open to Your Honor. The possibility, as we see it, as to why the gas was not found cannot include the fact that the deputies did not test at all. There is not one witness to come forward either from the Federation or management or any other union to suggest that deputies in fact - and when I say "deputies" I am speaking of the four who were working in this section - did not test at all for anything at any time. We have the reports. It cannot be suggested that they sit down and make them up.

To our mind therefore that leads to three alternatives as to why the gas was not found before the fire: (1) It was due to faulty testing techniques; (2) It was due to faulty or inadequate equipment; or, (3) It was due to the fact that it was not present in detectable quantities in areas where the tests were made.

HIS HONOR: That covers up another possibility, Mr. McNally and that is that although I have to agree it cannot be said deputies did not test at all at any time, it could be that no test was made at the time before the fire, the particular time. That is the other alternative. What is your submission about that other alternative.

MR. McNALLY: Well, I feel that the main allegation I have to answer at this stage is the allegation made by Mr. Lee in his summation to Your Honor. His submission to you was, as I understand it, that the gas which caused the fire was Illawarra bottom gas. We agree with that. The gas had been there the week previously, and reported as noxious gas. It has not been suggested by Mr. Lee that the gas came there shortly before the fire. Your Honor is now dealing with Mr. Stewart separately, and I propose to direct some remarks to his evidence at the end of my address, but it is that allegation I seek now to face, that the gas was there. As best as I could I did get the words of Mr. Lee, that the finding of Illawarra bottom gas after the fire leads to the opinion that it was present before the fire and was being reported as noxious gas. We submit that that is not supported and not borne out by the evidence, that the presence at the time of the fire leads to the opinion it was there before the fire and reported as noxious gas.

There have been various opinions expressed as to the correct technique of finding Illawarra bottom gas. This has been discussed by witnesses around the floor and people have expressed opinions in Court, and this is a matter which since the fire has been a greatly debated proposition. To me at the outset, knowing nothing about the subject before coming into it, there was much room for argument as to the correct method of doing

the basic thing, and from that one must realise that little thought was given to this by a large body of people.

HIS HONOR: It is very disturbing, to say the least. It could also lead to the inference that people had done worthless tests for bottom gas since it was discovered there.

MR. McNALLY: I propose to come to this at a later stage, but the presence of that gas in that mine was not known to the inspector from I think 1957 to 1960. Its presence in the mine was not known to the manager till the day of the fire.

At some length I propose to deal with the descriptions of the various tests by the witnesses and firstly I want to go to the description given by Deputy Stewart at p.110 of the transcript. He was asked by Mr. Lee to describe the tests and he there described them. In order to save time I will not read a lot of it, but he turned the flame down from the normal carrying height and he lowered the flame, lowered the light. He was asked by Mr. Lee "Q. Was the flame used to detect carbon dioxide.....I am positive."

That, Your Honor, was his method of testing, the same lamp for carbon dioxide, a little below normal carrying flame and he is positive it will detect methane. Deputy Walker, at p.70, describes the test that he carried out in going into the shunt and his test is as described in about the 6th paragraph: "I turn my light down.....". It was tested with the testing flame. This was done on the shift before the fire. So apparently Mr. Walker was in the practice before the fire of testing the whole area with this small testing flame.

HIS HONOR: If you test at the floor with the small testing flame his attitude is you might find methane itself on the floor level. If he is doing it with the small testing flame he does not think he will find it in the presence of carbon dioxide, if he is going to start at the roof and go to the floor he is going to run the risk of it going out.

MR. McNALLY: He is there describing his tests.

HIS HONOR: I realise that.

MR. McNALLY: One does not rely solely upon the lamp to detect carbon dioxide. Your Honor will notice in Mr. Longworth's evidence where he says "I detected X percentage of black damp and I smelt the methane". Mr. Walker was apparently satisfied in his mind there was no black damp there when he did that test. In fact he did not lose his light so it could not have been there.

HIS HONOR: Why is he testing with the little flame for methane at floor level?

MR. McNALLY: To detect for inflammable gas. It is a test he carried out. I am simply trying to point out, without saying it is the correct method, that various methods were used.

HIS HONOR: I realise that, but this is causing me some thought.

MR. McNALLY: Mr. Longworth demonstrated almost the same manner of testing. I speak subject to correction here because this is not clearly shown in the transcript, but my recollection is that Mr. Longworth reduced the small testing flame and lowered his light ever so gently with the small flame showing.

HIS HONOR: For methane at the floor or methane in the presence of bottom gas?

MR. McNALLY: He lowered the small testing flame from high up down in the direction of the floor. That is what Mr. Walker does. The only difference apparently being that Mr. Walker holds the lamp underneath so that he can readily turn the flame up if it shows any tendency to go out but Mr. Longworth holds the hook at the top. Inspector Menzies describes his test at p.339. I realise by now Your Honor may have worked out your own way of finding gas, as I have. Mr. Menzies has never detected it himself. He was asked by Your Honor what was the right method of detecting Illawarra bottom gas and he said, "When Illawarra bottom gas is being detected.....of the flame". That is the method of testing that Deputy Stewart adopts.

HIS HONOR: You see what follows?

MR. McNALLY: Yes. I intend to go on. Where they differ, and this may well be explained by the fact that Deputy Stewart has never in fact encountered Illawarra Bottom Gas like Mr. Menzies - Mr. Menzies, Your Honor will recall, had encountered it but in proportions where it would not show on a flame safety lamp. He

goes on: "We take the further step.....as a cap on a flame safety lamp." There are therefore two steps to find the existence of the methane and to then assess the percentage. That is as described by Mr. Menzies. I am not suggesting that is sufficient in itself because one might say even if you did not detect the increased luminosity on your carbon dioxide flame you would nevertheless still test the fringe area. Mr. Longworth said you may miss the increased luminosity but the first leg of the test described by Mr. Menzies is the test Deputy Stewart used. Now, if on one occasion he noticed the increased luminosity, who knows, he may well do what Mr. Menzies said he would do and say, "There is methane, I wonder how much is there". It is highly likely that is what he will do. He is asked in the witness box early in the piece and he knows he is always working with that flame, he has always done the first test Mr. Menzies does in the operation of finding methane. One asks is there a great deal of difference. One knows, now the fire has occurred and everybody has discussed the matter, what course to adopt.

A further test was demonstrated by Mr. Sellers, being the scoop method at p.908 where the lamp is lowered quickly into the mass of gas and raised and then examined for the presence of methane. This test was rejected by Mr. Menzies at p.337. The significant part of Mr. Sellers' evidence is at p.966 where it is put to him the method that Mr. Stewart adopted. The first question that was asked by me, in the middle of the page was, "If one were to use the safety lamp.... that is the methane causing it?A. Yes." He is describing what would happen if one were using the method Mr. Stewart was using, or using the first leg of Mr. Menzies' test and he said you would get this increase in flame caused by the methane. I think it is fair to say because of the complicated nature of the Illawarra bottom gas that it would not matter what method one adopted in using the flame safety lamp. On some occasions, depending on the skill of the operator, he would miss Illawarra bottom gas. This appears to be evident from the opinions expressed by various people but to say that in the circumstances before this fire all the people who tested with the flame safety lamp had missed its presence I would submit would be stretching the evidence a little too far. The evidence is undoubted, there were 13 people in the section who tested at various intervals of time.

HIS HONOR: In the shunt?

MR. McNALLY: No, not all in the shunt but the suggestion is that the gas was elsewhere than the shunt previously and reported as noxious gas.

HIS HONOR: You say the gas was elsewhere than the shunt around this time?

MR. McNALLY: It is suggested by Mr. Lee that the gas that caused the fire was Illawarra bottom gas and had been reported as noxious gas during the week previously. That presupposes one gas only. How can one say the gas found earlier in the week was necessarily Illawarra bottom gas without asking someone to accept the proposition that there was only one gas at a time.

HIS HONOR: It could have been both Illawarra bottom gas and CO2?

MR. McNALLY: There could have been more than one composition of Illawarra bottom gas. There could have been black damp there. There could have been methane.

MR. LEE: That is not what Mr. Donnegan said, his evidence was that there was only one gas in the goaf, Illawarra bottom gas.

HIS HONOR: I asked a question as to whether there was free methane and when Mr. Donegan's evidence was recalled to me I realised I was wrong. Mr. Donegan's evidence was that any methane would be in the form of Illawarra bottom gas but there was only one gas in the shunt. I think that is the effect of it.

MR. LEE: That is the effect of it.

MR. McNALLY: My friend's submission must presuppose the fact that there was only one gas in the shunt.

HIS HONOR: The goaf or the shunt?

MR. McNALLY: Well, in the goaf.

HIS HONOR: I don't know if it goes that far, there may be gas in the goaf but the only gas in the shunt at a particular time may be Illawarra bottom gas or any other gas, for example some kind of mixture of bottom gas and CO₂, you might have a bit of both.

MR. McNALLY: It is pretty obvious on the evidence the gas in the shunt came from the goaf. I thought Mr. Donegan suggested there was only one type of gas in the goaf. I think my friend would agree with that. From this fact my friend then takes the next step of saying with one gas in the goaf what was reported the week before as noxious gas must have been that one gas.

HIS HONOR: If there was only one gas in the goaf obviously any gas that came out into the shunt must have been that gas.

MR. McNALLY: It is our submission that there is a high possibility there was more than one gas in the goaf.

MR. LEE: At p.405 Mr. Donegan said "The goaf gas is this mixture of carbon dioxide methane and nitrogen". The whole effect of his evidence was that the goaf had Illawarra bottom gas, that that was the gas in the goaf.

HIS HONOR: Only Illawarra bottom gas plus nitrogen.

MR. LEE: Yes.

MR. REYNOLDS: That is a component of the bottom gas, I should think.

HIS HONOR: Yes, it has some nitrogen. You are suggesting the evidence shows there was more than one gas there?

MR. McNALLY: Yes, the evidence shows it is possible. How could Your Honor hold that what the deputies reported as being noxious gas was in fact Illawarra bottom gas unless it was established it was only possible there was one gas in the goaf?

HIS HONOR: I could do it as a matter of inference.

MR. McNALLY: It is possible there was more than one type.

HIS HONOR: An inference can still be drawn from the circumstances. For example say the situation was that five minutes before the fire broke out a deputy had tested in the shunt and said it was CO₂ and then the fire breaks out and immediately after the fire it is tested again and we know it contains inflammable matter from the fact that it burnt and we know that the immediate test afterwards shows it is Illawarra bottom gas, even

though it could be shown there were other gases in the shunt I am entitled to draw the inference the gas the deputy tested was Illawarra bottom gas but on the other hand I am most interested in your proposition of the possibility of other gases in the goaf.

MR. REYNOLDS: Does my friend mean it was not of the same composition all the time although it was there?

HIS HONOR: I take it as meaning there were some other gases, for example CO₂, free, or methane, free of CO₂.

MR. McNALLY: Or, a different composition of Illawarra bottom gas - all of those must be possibilities.

HIS HONOR: Free methane, free CO₂ and then bottom gas varying as to its composition?

MR. McNALLY: Yes.

HIS HONOR: Where do you get that from?

MR. McNALLY: On the day the tests were taken by the Department on 12th and 15th November tests were also taken by the company. I understand these tests were not taken by Mr. Sellers but by the company. In Mr. Sellers' report you will see two certificates of analysis, one dated 17th November 1965 where samples were taken on 16th November 1965, that is the same day as the ones taken by the Department. The only sample there that is not nearly pure air is the fourth sample which is almost exactly the same, the airfree calculation works out almost exactly the same as the airfree calculation in Mr. Donegan's table 4 in Exhibit X. The only calculation I have made on the company's quantities is the one that is not almost pure air and the airfree sample of that includes 57.2 per cent carbon dioxide, 38.8 per cent methane and 4 per cent nitrogen which is almost the same gas as the sample 1A taken on 12th November 1965 so that it would seem that two days after the fire, or three to five days after the fire the gas that was present near the edge of the goaf and in the shunt is roughly speaking what my friend said in his address, assuming the air is taken out, 58 per cent carbon dioxide, 40 per cent methane and 2 per cent nitrogen.

If one looks at Mr. Donegan's tables the samples which are not very close to being a lot of air, 96 per cent, and 99 per cent and thereabouts, all almost calculate to 58 per cent carbon dioxide. For example, samples 1A, 2A and 4B - 58 per cent carbon dioxide, 40-odd per cent methane and 2 per cent nitrogen. If one goes to the samples taken by Mr. Sellers on 18th January 1966 there are four samples. This is Mr. Sellers' report, the certificate of analysis dated 20th January 1966. 4 samples of gas were taken, two were taken at the floor, one was taken halfway up and one was taken at the top and they calculate, dealing with the first sample, that is 56.9 per cent air and 43.1 per cent airfree - I have had the assistance of Mr. Donegan and Mr. Sellers in making these calculations to some extent - it is an airfree content of carbon dioxide, 62.4 per cent - methane, 30.1 per cent and nitrogen 7.5 per cent. The second sample is 51.7 per cent air and 48.3 per cent airfree. No. 3 contained - firstly, the airfree content works out at 63.3 per cent carbon dioxide, 24.4 per cent methane and 7.3 per cent nitrogen. The third sample gave 62.2 per cent air and 37.8 per cent airfree. The content of the airfree sample is 62.9 per cent carbon dioxide, 28.6 per cent methane and 8.5 per cent nitrogen. The fourth sample is 84.2 per cent air, 15.8 per cent airfree. The airfree content is 62 per cent carbon dioxide, 27.8 per cent methane and 10.2 per cent nitrogen. I will hand Your Honor a

document which sets this out.

(Document tendered and marked Exhibit "00")

The four samples show a consistency and, Your Honor, dispensing with the decimal figures they contain 63 per cent carbon dioxide on the average, 29 per cent methane and 8 per cent nitrogen which represents a fall of 11 per cent in the methane content. So, this establishes one thing, that at least in that time, that is from November to January there was a different gas in 8 Right section than there was 3 to 5 days after the fire, the methane content was reduced by 11 per cent.

MR. LEE: Mr. Sellers' samples were taken at the face, I am reminded.

MR. McNALLY: That is so. Your Honor will recall that it was on 13th January that he first noticed it and went into the area and it was 25 yards back from the place, there was an area of gas accumulated there and the area, in the meantime, had not been ventilated.

That creates a number of possibilities and it leads one to wonder whether in fact Mr. Donegan is right when he says the gas in the goaf was of the one sort - it may well have been on the day of the fire but one must wonder what it was before the fire. Your Honor will recall that at the foot of the extension of No. 2 there is a goaf area formed by the extra lift that was taken off. It would be impossible to say if this gas that was down near the miner place had come up from the big goaf and gone down or whether it came from the goaf area itself in 8 Right. In our submission one cannot necessarily say there is only one type of gas and that it is a gas which contains 40 per cent of methane in its airfree sample.

HIS HONOR: It would all be bottom gas on those samples, wouldn't it?

MR. McNALLY: I don't know. I don't know whether it is.

HIS HONOR: Otherwise it cuts right across not only the opinion of the experts but particularly Mr. Sellers' evidence of the collection of bottom gas which built up.

MR. McNALLY: One would wonder what would happen if at the same time black damp and Illawarra bottom gas were issuing from two different sources in the goaf.

MR. REYNOLDS: I think Your Honor might be slightly in error in saying it cuts across Mr. Sellers. As I understand it he was not necessarily denying the actual constituent parts of that gas might vary from a further emanation from time to time of excess CH⁴ or CO₂. I don't think it cuts across it in that way.

HIS HONOR: That was not put to Mr. Sellers. To accept Mr. McNally's proposition one would have to forget the significance of the inference to be drawn from Mr. Sellers' evidence.

MR. REYNOLDS: That is why I thought Your Honor might not be understanding the position. I thought possibly Your Honor had not appreciated what he was putting. He was saying this gas which caused the ignition, which was found afterwards, although there was a leak of gas before, it might have had different constituent elements, they might have not been of the proportions that were found. I might be wrong about that.

HIS HONOR: I realise what Mr. McNally is putting, that there

may have been different gases, gases in addition to Illawarra bottom gas and that the gas that was there as Illawarra bottom gas could have different proportions of CO₂ and methane and that the goaf itself might have been from time to time receiving injections of CO₂. I do not think he was suggesting it was receiving any methane.

MR. McNALLY: It leads to three possibilities; firstly to the conclusion that the gas in the goaf need not necessarily be the same from day to day, that there is perhaps more than one source and more than one type of Illawarra bottom gas in the goaf, or in 8 Right. It leads to another possibility, that there is a source of carbon dioxide in 8 Right. I would submit it leads to a conclusion that there may be a source of pure methane in 8 Right. The latter alternative is consistent with the three reports or four reports made during October. I understand there were other reports but during October there were four reports of inflammable gas. It is consistent with it being a source of inflammable gas. There are numerous reports of noxious gas which is consistent with two things, either there was in fact carbon dioxide and nitrogen or black damp or there was Illawarra bottom gas in undetectable proportions. Your Honor will remember there is the evidence from Mr. Menzies that where you have a combination of gas in which the carbon dioxide exceeds - the proportion of carbon dioxide to methane is 3.2 to one you will not detect it on the safety lamp. He said "Yes, you would find it" but he was dealing with it generally, but when looking for it with the safety lamp you would not find it.

We have a mixture which Mr. Sellers found where the methane content had reduced from 11 per cent - from 40 per cent to 29 per cent - if it reduced another 6 or 7 per cent you have that percentage where your carbon dioxide is 3.2 times the amount of methane. I only put this forward as a possibility - without our limited finances we have had some difficulty getting our own expert. It is a possibility. There are other possibilities from this fact and it would be our submission that one cannot say, as Mr. Donegan has said, and Mr. Lee has drawn the inference, that it was Illawarra bottom gas there on the day of the fire which must have been there the week before and was reported as noxious gas. What Mr. Lee says, of course, is a possibility but as long as these other possibilities exist one cannot say the deputies should have found it. The suggestion that there was a different type of gas there or perhaps noxious gas in the areas tested and the Illawarra bottom gas in the goaf, not yet built up, during the week before the fire, but in the areas that were tested there was noxious gas, is consistent with the fact that it was not found before and consistent with the fact that it was found so easily afterwards. If you take Mr. Sullivan's theory, and we do not dispute that theory as another possibility, and it is substantiated by a very significant fact that when Mr. Sellers went there on 8th January the bottom gas he found was back down the end of the extension of No. 2, it had not yet built up to the stage where it was closer up to A heading. I think he found it at some 25 yards back from the face. Mr. Sullivan's theory is consistent, as perhaps all the theories that have been expressed.

MR. SULLIVAN: It is not my theory, it is in the transcript. It is the experts' theory.

MR. McNALLY: It is consistent with what I put, Your Honor, it is not inconsistent with it, just as it is consistent with the possibility of the barometric pressure being the last straw that pushed it over the edge, just as it is consistent with the heave of the floor opinion expressed by Mr. Sellers. This could have been the last straw that pushed it through.

HIS HONOR: As far as I am concerned it is not a possibility unless there is some evidence of floor heave. I cannot guess at it.

MR. McNALLY: But I do not suggest the floor heave is anywhere where it would be noticed, it would be in the goaf. Surely it must always remain a possibility. I mean this is the common way for the gas to get in the goaf in the first place.

HIS HONOR: Ultimately I may have to use some standard such as that.

MR. McNALLY: It is a little hard to say on the probabilities that this happened and then therefore it should have been found on the safety lamp. Your Honor must have some regard to the standard of proof one is going to apply.

HIS HONOR: You may take it I am fully aware of the principles to be adopted as to what standard of proof to be used. I should need cogent evidence on which to base a finding in relation to one of your clients, a finding which placed his future or reputation in some jeopardy. Having said that, if I do so find, I must find there is very cogent evidence.

MR. McNALLY: All I seek to do is to point out to Your Honor that there are a number of possibilities that could happen. Mr. Lee's is not the only possibility, he starts with a proposition in his opening, and I do not say this critically, that barometric pressure caused the gas to come out. Well, people have expressed opinions about the effect of the barometric pressure but the fact remains that barometric pressure can have an effect on goaf gases. It may have been, according to Mr. Sullivan's theory, it may have been the last straw. Mr. Lee rejects the theory and relies upon the fact that it was always there - not Mr. Donegan. My friend cannot draw that from the evidence. There has been a lot of evidence directed to what the deputies did and did not do and what under managers did and did not do and who tested and there have been a lot of questions asked in that regard, but his theory is inconsistent with the fact that they did test. There are a number of other possibilities which are consistent with the fact that they did test. They are also consistent with the fact that the gas wasn't there then or wasn't detected then. We don't suggest that the faulty testing technique would account for the fact that the gas wasn't found, it is too much to say, too much to find, in our submission that 13 people could miss it.

We do not suggest that the equipment provided was such that we could not have found the gas. There is ample evidence before Your Honor as to the inadequacies, in some respects, of the safety lamps but it is not so inadequate that a number of people could not find the gas. One person using it may, because of the lamp, not find it, but not 13.

Now if I may direct Your Honor's attention to certain inadequacies from the evidence in relation to the safety lamp: Firstly, it cannot test near the roof and near the floor, that is established, and there is no argument about it. The second inadequacy is that it will not find the methane in Illawarra bottom gas - 3.2 to one part of carbon dioxide - to one part of methane - it will not detect. We submit that is an inadequacy of the instrument - methane at below approximately $\frac{1}{4}$ per cent, by which stage the concentration is reached when machinery must be turned off according to regulation 69 of the 7th Schedule. Is it sufficient to say "it is there, turn it off" or is it better to say "it is so much today and we will keep an eye on it". We would submit that is an inadequacy.

Similarly with carbon dioxide it cannot be detected till $1\frac{1}{2}$ per cent has been reached at which stage the rule, Rule 1, provides that the work shall stop. We would submit that is an inadequacy, you have to wait till you get $1\frac{1}{2}$ per cent before you know it is there. It will not indicate the percentage of carbon dioxide - the light may be lost and it cannot be re-lit. I think Inspector Griffiths actually lost his light. That is apparently a common occurrence. There is evidence from Mr. Donegan at p.441 that in bottom gas carbon dioxide tends to reduce the flame caused by the methane so that the possibility of detecting in the atmosphere even $1\frac{1}{2}$ per cent - I think we were then talking about 1.4 per cent - of methane in Illawarra bottom gas, may be reduced, so that if you have a mixture where you have got $1\frac{1}{2}$ or $1\frac{1}{4}$ per cent methane and you have got carbon dioxide there you may well miss it. Mr. Menzies, at p.339, expressed the opinion that the safety lamp will be extinguished at between 4 and 5 per cent. I think in fact it is a little above 5 - 5.4 or 5.2 per cent. If there is any per cent of methane in the atmosphere and the light is extinguished this surely is an inadequacy of the instrument. Even if you have got 6 per cent methane you have lost your light.

For testing generally for Illawarra bottom gas the instrument we would submit does not give the degree of precision required but despite these inadequacies we would agree that whilst one person might, because of the inadequacies, fail to detect the gas the number of people who tested in the section could not have failed to detect it because of the lamp, so we would agree that the inadequacy of the lamp was not the reason for the failure to detect the gas before the fire and that the true reason, or it is possible that the reason why it was not detected was that it was not there when people were looking for it, that for the reasons I have indicated it was either a different gas or it was noxious gas or there was just no gas at all. We would submit that whilst it cannot be denied the Illawarra bottom gas was there at the time of the fire there is no real direct evidence from which Your Honor can infer that it was there when Deputy Stewart tested before the fire. I say that meaning this: It may have been there, what he smelt may well have been it but he may have failed to detect it for a number of different reasons - it may not have been more than an inch or two inches from the ground - the lamp may miss it. For a number of reasons he may not have detected it. It cannot be said, from any part of the evidence, that it was there with any degree of certainty when he tested and it cannot be said that it was there in a detectable fashion when he went in. There was apparently, from his description of it, very little gas there at the time. He described how he tested, could not get it, smelt it, removed it, tested and left the shunt. It could be that in the half hour odd that elapsed between that and the fire, until finally the shuttle car went in and it itself attracted gas into the shunt - this opinion is expressed by Mr. Sellers - the operation of the shuttle car would have the effect of attracting gas. It may have been, alternatively, because of the barometric pressure. If you look at the chart you will notice that between 6 and 10 o'clock the barometer fell more than it had earlier. It may well be that in that half hour the barometric pressure began to have an effect and brought trapped gases out of the goaf which the elephant trunk was not removing. There are a number of possibilities. If one is told a person went into the shunt and tested for gas at 8 o'clock and he did not find it the assumption must be it wasn't there unless for some other reason one cannot believe that witness and we would submit that that reason here does not exist.

Another thing one cannot be sure of is the amount of gas that was behind the brattice. Just how much was behind the brattice or how much was out by the brattice or in by the brattice one cannot be certain. We know there was sufficient there when the fire started to burn. We do not know whether the fire would have continued if the brattice had remained there. It cannot be said with any degree of certainty that that shuttle car going through that brattice did not release a large volume of gas and thereby causing the fire to be much bigger than otherwise it necessarily would have been. It is of course a possibility that in any event the brattice would have been burnt down, if there was sufficient gas there to burn it down. Of these two facts one cannot be sure. And we cannot be sure of just how much, just what gas was there when Deputy Stewart tested. Your Honor will recall that Mr. Mangles described the shunt as being nothing out of the ordinary on that day. He did not suggest it was a day when he detected a lot of noxious gas. He said he had smelt it in the shunt while working there, but this was not any day out of the ordinary. Until such time as it can be known just how much gas was in that shunt, one cannot say it was there when Deputy Stewart tested, with any degree of certainty, because whether it had got into the shunt because of the barometric pressure drop, whether it got into the shunt because it had built up to that stage, or whether it got into the shunt because of the operation of the shuttle car - these are all possibilities and these are all consistent with it not having been there half an hour before the fire.

In our submission, it is significant that Deputy Walker was so impressed with the state of the place. This surely indicates, and must indicate to Your Honor, that things were pretty good in that section so far as gas was concerned. He had found none. Your Honor will recall the evidence that at 2 o'clock in the morning two men came in to prepare a shuttle car and they were sitting on the floor of the shunt. He mentioned to them, "You shouldn't be doing that. If there is any smell of gas or if you get a headache, come and let me know." They did see him on the way out and they didn't let him know. We have not heard from those men, so we may assume that at least there was no gas in the shunt. There were these two men sitting on the floor, working on the shuttle car for some time, so just when the gas got into the shunt or at what stage, one cannot be sure. Deputy Stewart says it was not there half an hour before; he couldn't get it on his light, but it was there when the fire happened and we do not know how much was there.

We would say that one cannot accept the proposition that there was noxious gas there in the shunt during the week before the fire that was not reported as Illawarra bottom gas, because it was reported as noxious gas not Illawarra bottom gas, and there are too many alternatives open to your Honor - other alternatives. There are too many other possibilities to accept the proposition which Mr. Lee submitted to Your Honor. If that in fact be true, that the Illawarra bottom gas was reported as noxious gas, in our submission one must have a pretty good reason for rejecting the other alternatives. There is insufficient evidence, in our submission, before Your Honor for you to reach a conclusion that the gas was there when Deputy Stewart tested. It came there at some time, but it may well have come there after he tested. I do not think I need say anything to Your Honor on the question of the standard of proof in the way Your Honor has indicated.

As recommendations: We feel sufficient has been said about recommendations, but especially we would like Your Honor to recommend the use of methanometers.

HIS HONOR: You will be particularly concerned about that?

MR. McNALLY: Yes, it is our earnest desire to have methanometers. I think it is sufficient to say that any other recommendation which Your Honor makes that will improve our probabilities of (a) finding gas and (b) reporting it, will meet with our full co-operation. Yesterday it was mentioned about the facilities for reporting on the Rule 4 form. We would agree that they are insufficient. It encourages someone just to put short words and not to describe particularly the percentage of inflammable gas found and just where it is found. I know Mr. Lee is going to say something further about various recommendations, and that is all we would say, unless Your Honor wishes to hear more.

HIS HONOR: Thank you for the way you have put your case, Mr. McNally.

(Short adjournment)

MR. LEE: If Your Honor pleases, there a few matters to which I would like to reply in regard to the addresses that have been given. In particular, there have been charges made in this hearing by certain of the interested parties as to the conduct of the management, and the Department is quite neutral in any matter which has come before this Court and it is concerned only to ensure that Your Honor will arrive at conclusions which will be accepted because they are correct. It has been said by my learned friend Mr. Sullivan and by Mr. Parkinson, for instance, that there was gross negligence on the part of the company, even criminal negligence and dereliction of duty, and such like phrases have been used.

Now, the Department has put to Your Honor, through me, that the true inference from all the evidence was that there was a laxity and an offhandedness both in the deputies and in the management which was basically responsible for the conditions that arose. And the Department wishes to repeat that submission because we submit that other descriptions of the conduct of the deputies or of the management lose sight of one very fundamental fact and that fact is this: Illawarra bottom gas was little known and little encountered before this fire, that the evidence shows that it was "known" (and perhaps that word should be put in inverted commas) by Mr. Puddle and Mr. Stewart - and I think they are the only two in the colliery who knew anything about it - and as far as that goes, Mr. Stewart had met it one one occasion several years before and Mr. Puddle's knowledge went back some years. But the fundamental fact is that the persons who were responsible for safety in this mine had had virtually no practical experience whatsoever with this gas, and one of the great benefits that this Inquiry will achieve is the publication of the fact that Illawarra bottom gas can be found in tremendous quantities in the Bulli seam. That is new knowledge, in our submission. One has to be fair about this. Mr. Menzies, and I am sure Your Honor holds him in very high regard, had no knowledge of the existence of this particular gas before this fire. Mr. Longworth had met it 5 years before but not since, as a practical matter.

And so we make our submissions on behalf of the Department to Your Honor, paying what we consider to be a proper regard to the fact that the persons who were involved in this Inquiry were persons who, whilst legally one may say ought to have done this and ought to have done that, none the less had very little if any practical experience in dealing with the particular gas which was the gas that killed the four men in this fire. It was not some other gas; it was Illawarra bottom gas, and there has been a tremendous benefit conferred upon all miners in the

Bulli seam, by this Inquiry exposing the fact that bottom gas is a real peril. Previously it was simply a gas which was known to exist in this colliery. I say those things because I do submit that Your Honor, whatever your conclusions may be, will have regard to the fact that it is very easy after the fire has occurred and after a great body of evidence has been put before this Inquiry to fall into the trap of rather forgetting that that procedure highlights knowledge. It does not take into account the fact that before the fire the consciousness of those concerned was, on the question of bottom gas, probably very little indeed.

The Department does not in any way suggest that it is not the duty of the management and of the deputies to be at all times conscious. Indeed, that is the whole basis of the submissions I put to Your Honor: that the enemy of the men in the mine is not gas but it is an absence of alertness to the dangers which follow if the full knowledge available is not brought to bear in any particular situation. It is for that reason here that I would criticise my learned friend Mr. Reynolds' submissions as to the practical miner dealing with a situation in practical terms. That is what the practical miner must do, but we now know he must bring to bear not merely an appreciation of what he sees immediately around him but he must also bring to bear the whole fund of his knowledge as to the colliery, its workings, its previous dispositions as to gas, however minute and insignificant they may have been, and I would put this to Your Honor because in my original address I did say to you that this Inquiry will no doubt achieve a great deal if it brings back into the collieries the necessity for that alertness to danger which must exist if safety is to be ensured.

Your Honor saw a number of deputies, a manager and an under manager, amongst other witnesses. It would be our submission that those deputies and the manager and the under manager are no doubt typical of the deputies, the type of man in the management of collieries in this seam and elsewhere; and further, that their attitudes, their methods, their approach to problems as revealed in evidence is in all probability the same as you would find amongst the deputies or the management in virtually all other collieries

MR. SULLIVAN: I think most of them obey basic rules in mine ventilation.

MR. LEE: I would point out to Your Honor that it is probably not idle speculation to say that many a deputy from another colliery, or a manager or an under manager from another colliery, when reading the reports of the cross-examination of the deputies and the manager and under manager in this inquiry, have not quietly said to themselves: "There, but for the grace of God, go I."

In this Inquiry a great deal has been learned and I do submit to Your Honor that you will bear in mind in coming to your proper conclusions that competent, able, highly skilled men like Mr. Menzies came into this Inquiry and openly admitted to having no knowledge whatsoever of the presence of Illawarra bottom gas in the Bulli Colliery. That is some indication of what I would refer to as the lack of knowledge and appreciation of the problem which in fact existed, which we know existed and which brought about this tragedy.

The Department repeats its submission that the laxity and complacent approach made by the deputies and the management to problems of gas and ventilation was the essential and basic reason for this happening. The high degree of alertness - and it is very high - that must be shown was absent. I wanted to make that perfectly clear, that the Department's attitude and

appreciation of this evidence here and my submissions in respect to it are along those lines.

If Your Honor looks at the evidence of the inspectors, I think Your Honor will find that thought which I have been putting asto the two positions: (1) "Yes, we know of bottom gas", and (2) "We don't know very much about it," emerging fairly clearly throughout the whole of the evidence. With that in mind, we will submit that Your Honor will properly come to the correct conclusions as to the extent to which this one or that one failed in carrying out a particular obligation cast upon him. Nor does the Department take the view in this Inquiry that it is proper for Your Honor to make any distinctions between those who may have failed in this regard and those who may have failed in that regard. Your Honor is concerned with the totality of the causes and circumstances surrounding this fire, and if the fact be that Your Honor finds that the deputies did not test for bottom gas - and I have already put my submissions on that - then there is no occasion, we submit, for Your Honor to weigh that against any failure by the management. It is a fact that is found and that is where the matter rests.

There are some comparatively minor matters to which I would refer Your Honor in the addresses of other counsel, and in particular Mr. Murray made certain submissions. Your Honor will remember that he counselled you against drawing conclusions adverse to particular individuals and then, having advocated the abolition of the Davis safety lamp, launced an attack upon the Department. I do not propose to answer that attack except to remind Your Honor briefly of a series of events which occurred from which Your Honor might feel the Department is very alert indeed as to its obligations. There was a fire in 1964 which came about because a safety lamp failed to detect at roof level a layering of gas. Immediately after that fire was investigated, the legislation was amended to require the use of methanometers in any situation where an oxy-acetylene torch was to be used, that being the cause of the fire on that occasion.

HIS HONOR: You say "immediately after" - Mr. Parkinson says it was about nine months after?

MR. LEE: That is not bad, for an amendment. Then, soon after that, the Chief Inspector went overseas and, as Mr. Menzies said, for the specific purpose of investigating an improved safety lamp. When he returned a report was made to the Minister. Your Honor has not that report, but I can put what I want to put in that regard in this way: If anybody has suggested that the Department has not recommended to the Minister the introduction of automatic safety devices, that report might have the lie to that if it were produced in this Court.

HIS HONOR: You tell me about it, and I will accept this from the Bar table.

MR. LEE: Mr. Anderson, Chief Inspector, when he returned from overseas made recommendations to the Minister in respect to the introduction of automatic devices in mines.

HIS HONOR: Has there been any recommendation regarding the self-lighting oil flame safety lamp?

MR. LEE: I will deal with that, Your Honor. In regard to the self-lighting lamp, that had been under review - I will not take time to point it out now, as no doubt Your Honor will go through it all - but it had been under review, and Mr. Muir mentioned it, that the Department was not satisfied with the particular stage of efficacy achieved by the lamps, the re-

lighter lamps, up till/^{very}recently when one was received from England. I think it was a few weeks ago. It has been tested and the Department is quite satisfied it is a safe lamp. That is the lamp Your Honor saw - it arrived only a few weeks ago. I do not think I would wish to say anything more about the position of the Department except that it is a pity Mr. Murray is not here to hear me say that his surprise that I should be asking Your Honor to make recommendations comes rather oddly from a man as practical as Mr. Murray is, because the fact is that the Department here quite openly admits that it willingly takes advantage of this Inquiry to bring about a situation that Your Honor will make recommendations which undoubtedly will have a far greater effect because they have been the result of a public Inquiry than recommendations which are merely inter-departmental between the Chief Inspector and the Minister.

HIS HONOR: I suppose some of the gentlemen in the Department who have been present at this Inquiry frankly admit they have learnt some new material just as we all have.

MR. LEE: I am quite sure that the inspectors have, and they have said so. In fact, Mr. Longworth quite openly came up with the fact that as far as this villain in the piece, bottom gas, is concerned, they have learnt a great deal about it since this Inquiry - and that is not an admission of any failure on their part, before; it is an event that has happened.

Then, Mr. Murray having advocated, as I say, the abolition of the safety lamp, also went on to reject Mr. Donegan's theory as to the wood, and Mr. McNally tended to follow his line in that regard. I do not want to refer to the evidence in detail except to remind Your Honor that Mr. Donegan tested the wood. He got the various temperatures; he established that it would burn at a lower temperature than either hydraulic oil or coal dust. In addition, he pointed out that the wood could have been charred, or being charred over quite a long period, and that that fact alone would be sufficient to account for it igniting at a much lower temperature than the wood itself would ignite at. In respect to Mr. Murray's and Mr. McNally's submissions, I can only say that you have the choice of accepting the firm opinion of a very highly qualified man or - and this is not said in any offensive fashion, but it illustrates the choice open to Your Honor - the suggestions of counsel, because there is no other opinion expressed in this matter in this case other than the opinion of Mr. Donegan that the wood was the cause of the fire.

I hope that Mr. McNally, and Mr. Murray if he were here too, will not object to my saying this but it is perhaps proper to say it, and Mr. Donegan can go into the box to repeat it: since the Inquiry has been going on, Mr. Donegan has in fact made some tests on the hydraulic oil, having it injected against the brake disc and in that area, and he has been quite unable to get any ignition. However, the evidence is quite cogent without any evidence of that nature, in our submission.

As far as Mr. Murray's recommendations are concerned, he gave quite a number and the Department takes exception to quite a number of them. In the first place, I am quite sure Your Honor will not make recommendations on every little side-issue that has come into this Inquiry. The type of recommendation I am confident Your Honor has in mind is a recommendation that directly relates to this fire and which arises directly from it, and which will achieve some positive result without tying down either the Department or the management or the deputy or any other source concerned to a recommendation which may be very good in a particular limited number of circumstances but of no value at all generally. Mr. Murray suggested to Your Honor that we put development plans up at the top of the pit,

and he said it is not practicable to have the proposals as to ventilation systems which I put forward put into operation. Well, Mr. Reynolds did not say that. He accepted the proposals and in fact this has been done, as we know, through the year 1959 and 1960 and without any inconvenience to anybody.

He wanted Your Honor to recommend that there be a map for fire-fighting purposes, including all stoppings. I simply prefer to quote the Mines Rescue Act which appears to be quite adequate to cover anything of that nature.

Then he wanted fire hoses in the crib-room. Well, that again is something which, made a general proposition, could cause inconvenience - unnecessary inconvenience and expense - because in the case where the mine is worked with a conveyer when the shuttle car delivers the coal on to the conveyer, there is specific provision already in the Act for fire hoses to be readily available, and Mr. Murray's submission could only apply to a situation such as you have here where you are not working with a conveyer.

Likewise, tap connections every seven feet - they are now at 50 yard intervals. In this situation there might be some good point in suggesting more tap connections but this is a particularly limited situation where that appears to be necessary and I would suggest Your Honor would give that very deep thought before you made any general recommendation. He asks for devices for carbon dioxide and nitrogen to be available to deputies when required. The probe lamp attends to the carbon dioxide and there is no need for any type of device in relation to nitrogen, nitrogen is in the atmosphere. He also suggested that Your Honor recommend the Act be amended to provide that counsel to assist the Inquiry be appointed. Perhaps Your Honor would leave that go?

MR. SULLIVAN: I don't see why.

MR. LEE: I would have thought a suggestion along those lines was quite outside the Terms of Reference. If I may leave Mr. Murray. Mr. Sullivan did deal with Rule 3 p.86 at some length. I do not wish to enter into a debate with him on the matter either for or against the contention which he put because it does seem to us as far as the fire was concerned the actual presence of the auxiliary fans made little, if any, contribution but it is the submission of the Department that there was a breach of Rule 3 - the only breach - in the introduction of the second fan. That, as I have said, is something which as far as the fire itself was concerned has had little effect, unless you go through a process of reasoning from there to the bleed tube and the inadequate ventilation and so forth but that is the breach which we submit occurred, in relation to Rule 3. As far as Mr. Sullivan's recommendations are concerned to a large extent I think they followed the ones we put and he has added some others. Your Honor may think that they are somewhat unnecessary in view of the other recommendations which will be made but one I can refer to is the one about the gas reports not being sufficiently illuminating. That would not appear to require any alteration to the Act or the form provided but rather an alteration by the deputies of the manner in which they fill in the form. The act provides for full information. It is Rule 4, p.87. If the deputies content themselves and the management contents itself with accepting such statements as "noxious gas being diluted", that is not compliance with the Rule and one would have thought that a person in the position of Mr. Stone or Mr. Puddle could very easily say to the deputies "When you put your reports in in future be more specific".

MR. SULLIVAN: You could put a place for the percentage.

MR. LEE: I am not going into precisely what should be done, it is a matter of getting the full information on to the form and then it can be of some worthwhile value.

Then Your Honor raised a matter which became apparent in relation to the fans, and that is the effect of cutting them off where you have a situation as did in fact exist here. That, to our way of thinking, was most germane to the likely build-up of gases in relation to the fire but would be completely covered by the general recommendation we ask should be made as to the submission of ventilation plans which require the positioning of fans to be shown and the number thereof, so that would be covered.

Then we come to where Mr. Sullivan and Mr. Parkinson came to some very interesting recommendations, somewhat different, but perhaps the thought was the same. Mr. Sullivan's was that the deputies be employed exclusively on safety duties

and not given other duties unless the chief inspector approved, and Mr. Parkinson suggested that the deputies be paid by the Government and be, in effect, Government employees. As far as the Department is concerned it takes the view that this is a matter which would require very close consideration and the taking into account of all factors that might bear upon the problem and we feel that this is a little away from any direct connection with this fire but it is clearly something which concerns the miners and it can be said that there is much to be said for the propositions that have been advanced. I would, with respect, suggest that should Your Honor consider that worth while referring to that Your Honor might well do so but any positive conclusion would hardly be open to Your Honor on the matter. It clearly concerns the men and it must concern the deputies, one would think, and it must, I would think, also be something that would probably worry the management and if there is a solution can be come to then if anything Your Honor says can contribute to the solution that is all to the good.

Mr. Parkinson also mentioned a matter which fell very favourably upon the ears of the Chief Inspector when he suggested that there should be an increase in the inspectors in the Department of Mines. I regret to say I cannot comment on that except to inform Mr. Parkinson that it did fall upon very receptive ears.

Then, if I may go to Mr. McNally's submissions very briefly in this very brief resume of the points which I feel should be dealt with in reply to Mr. McNally. He, in our submission, has to a large extent fallen into the same error which I submit Mr. Murray fell into when he would not accept the wood theory, Mr. McNally's error being, with respect, that he has put it to Your Honor that there are possibilities that the gas was of a different composition before the fire than after. That, Your Honor, again, and there is no offence meant in this at all, as Mr. McNally has obviously considered the evidence very closely, is in fact a suggestion which comes only from counsel. This is not a case of a misunderstanding of the nature of bottom gas, it is a misunderstanding of the nature of Mr. Donegan's evidence. Mr. Donegan's evidence, when Your Honor comes to read it, makes it perfectly clear that this goaf had a gas in it which was of a certain proportion and no other proportion and if that gas came out and got into the work areas that proportion would be maintained. I might just make one final reference to Mr. Sellers who supported that view, at p.933, "The gas that was found on 2nd and 3rd November.....goaf? A. Yes." He went on to say in his view that whatever came out of the goaf had to be, not some other gas of proportions different from Mr. Donegan but of the same proportions. The evidence that Mr. Sellers gave about the composition of the gas that he detected is somewhat significant because it is rather odd, if you look at his analysis, that the first gas he got on the sample, that the analyst got, was virtually the same composition as the one that Mr. Donegan got also yet the other samples are considerably different. Now, if they were all from the same place that could not be, and I do not make that statement from myself, but from Mr. Donegan's evidence. There is the possibility, we suggest, that the analysis may not have been made with the precise equipment as Mr. Donegan had available to him.

MR. REYNOLDS: This is evidence from the Bar table, Mr. Lee.

MR. LEE: That may be.

MR. McNALLY: Mr. Sellers did refer to the change in the character of the gas at pp.11 and 12 of his report.

MR. LEE: Mr. Donegan makes it clear that you can get bottom gas from different places in the same mine with a different composition but you cannot get it coming from the same place with a different composition and I am going to take the opportunity of asking Your Honor and my learned friends, because this is a matter of importance, whether they have any objection at this stage to the tender of a pamphlet called "Coal Mine Fires", written by Mr. Donegan and containing a chapter which is headed "Tendency to Ultimate Uniform Composition of Atmosphere of a Sealed Area". That goes right to the proposition that Mr. Donegan advanced in his evidence as to the composition of goaf gas. Of course if my friends object I cannot tender it but Your Honor has certain power ---

HIS HONOR: I want it, Mr. Lee.

MR. SULLIVAN: I have had a look at it and I would agree with its tender.

MR. LEE: I will mark the particular chapter which is so relevant.

(Pamphlet tendered and marked Exhibit "PP")

MR. LEE: I think those are the matters to which I wish to refer in address.

MR. PARKINSON: I would like to hear Mr. Lee's views, or the Department's views, on the recommendation I made in connection with the gradual elimination of battery cars and cable cars.

HIS HONOR: Mr. Lee may deal with that, I don't know.

MR. PARKINSON: Because that was directly concerned with this fire, with this piece of wood. With diesel we would have no problem such as that.

MR. LEE: That has not been given close consideration by me because it has been thought to be somewhat outside the scope of any recommendation Your Honor would make and I am not sufficiently instructed on the matter except to be able to say to Your Honor that the Department is considering, and has been considering for some time the question of the shuttle car and other electrical equipment in the mine with a view to attempting to make them safer than they are. As to the broad proposition Mr. Parkinson put I am not in a position to inform Your Honor of the Departmental view.

HIS HONOR: I think before I made a recommendation that diesels, for example, replace battery operated machines I would have to have far more evidence, firstly, as to the nature of diesels and secondly as to the safety of diesels. However, that is a suggestion which has been put forward and my view is it should be looked at by those who know. I am certain there are people in the department paying close attention to it.

MR. PARKINSON: Diesels are being introduced, you know, Your Honor.

MR. LEE: Those are the matters which, in the time available to me, I have thought were the most important to put.

There is just one other matter I feel I ought to refer to and that is that Your Honor has had the benefit here of an extremely extensive Inquiry and I think it is proper to say that that has been brought about not by the efforts of any one individual but by the combined efforts of all persons who

have been interested in this Inquiry. I have to some extent, indeed in the main extent, I hope, occupied the role of counsel assisting Your Honor and I would like to express the appreciation of the Mines Department to the contribution which has been made by all persons involved in this Inquiry to a solution of the problems and to the promotion of safety.

MR. SULLIVAN: There is the question of the awarding of costs and I understand Your Honor wanted to hear something from me.

HIS HONOR: I will hear you again if you want to add anything. I do propose to reserve my decision.

MR. SULLIVAN: It is quite a short point: The question depends on whether this is a proceeding under s.33. In construing a section of a Statute such as this one can always look at the situation as it was earlier, in construing the wording of the section and if Your Honor looks at s.33 as it was before being amended in 1964 Your Honor will see sub-section 9 was repealed and a substituted section put in later. There is a reference to Inquiries under s.31 as proceedings. I think, with respect, that gets over any legal difficulty.

MR. LEE: It has been repealed.

MR. SULLIVAN: We are looking at it for the purposes of construction and not for the purpose of introducing that section into the Act.

MR. LEE: Once it is repealed it has gone for all purposes.

MR. SULLIVAN: It is legitimate to look at it in its form from the earliest times in construing it. They refer to proceedings under s.31. The repeal of sub-section 9 was because of the new provision of s.33(2) (read).

HIS HONOR: I am inclined to the view that if a matter is referred to this Court, and I use the word "referred" in a general sense, it becomes a proceeding of the Court. Then, if that were the correct view I have a discretion as to costs. I would depend upon what principle I thought I should use in exercising that discretion. It could be that I would say the discretion should be exercised in a way that I should not award costs unless they were in fact parties. I know that would be a view adverse to Your present contention but that is one way I could exercise discretion. The other way is to say if anybody has an interest in any proceedings before this Court, and a right to be here, and they themselves have not been a party to anything which brought about the proceedings, that I should award costs. It is for me to consider on what principle I exercise my discretion. Have you anything to say about this matter, Mr. Lee?

MR. LEE: Yes, I should point out that Mr. McNally and Mr. Murray are also asking for costs.

MR. McNALLY: If I can clear this up: The Illawarra Deputies and Shot Firers Association apply and Mr. Murray asked me to make application on behalf of Barry Kent.

HIS HONOR: Not on behalf of the Association he represents?

MR. McNALLY: No.

HIS HONOR: But you are asking for costs for your Association?

MR. LEE: If you look at s.33 you will see what the jurisdiction is. It is to determine Inquiries, Appeals and references. May

I give Your Honor these references to show Your Honor what the section does: Section 15 is an inquiry. Sections 36(3A), 53B sub-section 1, 53B(a), 53B(4), Regulation 22, 5th Schedule, p.170, Regulation 5, 7th Schedule, p.213. Rule 1, sub-paragraph (d), p.80 and Rule 12A p.96 are all described as Appeals, in those sections and regulations. The following references are to references specifically so-called, they being the 3rd of the categories mentioned, s.28, sub-sections 5 and 6, s.57 sub-sections 5 and 6, Regulation 236, 6th Schedule, p.204, Rule 16B(2) p.105, Rule 23(5)(c) p.109. So, they are the parts which deal specifically with Inquiries, Appeals and References and when you come to look at sub-section 10 in the light of the jurisdiction conferred on the Court it is apparent in our submission the only proceedings to which that section can apply are those Inquiries, Appeals and References and s.31, in our submission, is a completely independent section which is brought into operation, not by the Court, but by the Minister directing a formal investigation and all he does is to use the services - not the machinery - the services of the Court of Coal Mines Regulation because s.31 specifically provides for the machinery to be used and if that were not so, if you were a Court of Coal Mines Regulation sitting, in effect, and using the machinery of that Court you would not need paragraph (3)(b) summoning people to come before the Court as witnesses.

MR. SULLIVAN: His Honor illegally appointed the assessors under sub-section (2) of s.33?

MR. LEE: That section has nothing to do with this, with respect. There was a misconception, apparently, in the early stages.

MR. SULLIVAN: Sub-section (8) does not apply?

MR. LEE: May I say with respect, because it is necessary, that in relation to sub-section (8) there was a misconception at the outset that this was a proceeding under s.33. It is of no practical value at all.

MR. SULLIVAN: Was it a misconception till the widows applied for costs?

MR. LEE: There it is and these comments my learned friend makes do not add to the legal situation. I can only put it that the matters I submit will enable Your Honor to arrive at a correct solution to the problem. May I refer to one matter that concerned some of us earlier in the proceedings and that is sub-section (6) of s.33 - (read). If you look at s.15 and others of those sections I mentioned you will find there are situations where you have to both come to a decision and also make a report to the Minister. It is clear in our submission that this investigation is one called by the Minister and all he does is use the Court of Coal Mines Regulation as his means of making the report which is contemplated by the section and that the only reference to expenses is that with regard to witnesses expenses, there are no powers in Your Honor, in our submission to do anything other than make the report. There are no powers to grant costs and, indeed, it would be extremely difficult.

HIS HONOR: Apart from having power it is mandatory for me to grant witnesses expenses.

MR. LEE: It appears that it is mandatory for Your Honor to do so, or the other view might be that Your Honor does not have to make an order and that they can merely apply although the machinery seems to be a bit defective.

HIS HONOR: I certainly have the power, furthermore I think I have the power to make certain "expenses".

MR. LEE: Where is that?

HIS HONOR: The fees, for example, for assessors are within my power to assess.

MR. SULLIVAN: They are illegally appointed if my friend's argument is right. These two gentlemen have been illegally appointed therefore Your Honor cannot make an order.

MR. LEE: Of course they are. I would have preferred to have said "Invalidly".

HIS HONOR: The section I was referring to was s.31 sub-section (6): Any expense incurred is to be paid by the Minister. I think I have not the right to incur expenses as such and charge them to the Minister. I think that is what that section means. Whether it enables me to pay somebody else's expenses is a further question.

MR. LEE: The Minister is protected from having a personal claim made against him, that is all. That protects him and he puts his expenses in as a Minister under the Act. There is one other fundamental reason why the construction we urge should be put upon it and that is upon what possible basis could Your Honor ever work out which party should bear the costs of this whole Inquiry?

HIS HONOR: I think it is their own costs they are asking for and I do not think anybody asks for anyone to bear the costs of the Inquiry.

MR. SULLIVAN: It is only in respect of the four.

MR. LEE: I imagine the Minister could be somehow or other ordered to pay his costs.

MR. SULLIVAN: They are not my costs, they are the widows' costs.

MR. LEE: It does not make any difference to the amount of costs. It would be rather a startling proposition to announce that the Minister, having called an Inquiry and the persons interested came forward and wanted to be heard and decided to brief counsel and that sort of thing, that they should be able to just place the bill at his door. Whether there is room for an approach in another direction, not through Your Honor at all, is a matter upon which I make no comment. We are concerned here with Your Honor's powers. I am sure Your Honor does not want to make an order against the Minister or the company or the Miners' Federation if you have no power to do so.

HIS HONOR: Is there anything further?

MR. SULLIVAN: It arises really from the question of the assessors. If Your Honor cannot draw powers from s.33 it is quite obvious that Your Honor has, as I said from the Bar table, no powers to appoint assessors. Your Honor's power to appoint assessors only comes from s.33 and then if you turn to sub-section (6) of s.31 you see this - (read). So obviously if the only power to appoint an assessor arises from s.33 this is regarded as a Proceeding. They need the word "Proceeding" in s.33 because of the first paragraph. Then, finally there is the repealed section 9 which bears out what is said in sub-section (6) of s.31. There is no doubt about the power, we would submit - no doubt at all.

Otherwise this whole thing has been completely illegal. My friend says it was based on a misconception - the Minister misconceived - he thought this was being held under s.33?

MR. LEE: The Minister did not misconceive, he did not send out the notices. That was done by the District Court.

MR. SULLIVAN: We got notices, obviously under s.33 - not that we may appear - "Take notice".

HIS HONOR: That was sent out by the Registrar under the rules made by the Judges of the District Court.

MR. SULLIVAN: Under s.33 and that power was given to them under s.33 and my friend says the powers under s.33 don't come into a s.31 investigation.

MR. REYNOLDS: Sub-section (8) of s.33 says the fees of the assessors, that the Rules should provide for the fees to be paid to such assessors out of funds provided by Parliament. The Rules did provide for it and they said, in Rule 21 - (read). That is out of the funds of Parliament. We go to s.31 and they pay the expenses of the Minister. I don't know how you reconcile those two sections, it is almost impossible. One can get a general view of it.

HIS HONOR: My view is they have to be read together insofar as they are not inconsistent with each other and when they are inconsistent you read them down.

MR. REYNOLDS: I disagree with Your Honor on that. Section 15 is another section which deals with an Inquiry and it has its own sort of code but it has to some extent to be read with s.33. When you look at sub-section (10) it is quite curious.

HIS HONOR: I will consider the matter.

Before I adjourn I want to thank all persons who have assisted in this Inquiry. I am obliged to them. As to my assessors, I shall personally thank them and any other person in an official capacity.

I propose to consider this matter and make my report to the Minister. I make no promise as to how long that is going to take excepting I shall do it as soon as it is humanly possible. All people who have been present at this Inquiry will not only realise the gravity of the matters raised here but also the importance of the issues that have arisen and therefore the consequence of any report I make. I therefore propose to make a report in as much detail as I properly can after a proper consideration of the detail available to me. I shall make my report to the Minister and I have the benefit of some information from the Minister as to the matters raised earlier, namely my giving my decision in this Court. I shall give, as a kind of judgment in this Court, such portion of the report I make to the Minister as I deem fit after I have reported to the Minister. By that I do not mean anything is to be kept secret from the public because obviously the Minister has the right, if he so wishes, to table the whole of it but it is virtually impossible to give the whole of a report as to proceedings including parts of the evidence and other details that generally appear in reports of this kind so I shall select what I consider the matters of greatest relevance and greatest interest to the public and shall read those in open Court here after I have handed my report to the Minister and I shall do that on a date to be fixed.

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