

out which of the holes ought to be shot again or the condition in which the holes had been left by the explosions; and, though he was in the mine and but a few feet away from where the holes were, he does not appear to have even taken the trouble to look at them. . . .

According to the testimony of the respondent, he told Grierson that he wanted the holes shot again, and was told by Grierson to drill again, and that Grierson told him not to shoot again holes two or three feet, that is, as I understand, when the rock had broken away to that depth; that, having examined the holes and taken out the loose rock from them, and having found no trace of powder in any of them, he proceeded to drill other holes, keeping six inches away from any of the existing holes; that he had drilled one to the full depth and had partly drilled another, when the explosion occurred in an old hole next to it. Different theories are suggested as to the cause of the explosion: one of them that the hole the respondent was drilling was not being truly bored, with the result that the drill went in at an angle and came in contact with the powder that remained in the adjoining hole; and another, that the jarring caused by the drilling had caused the powder to explode.

The jury, in answer to questions put to them by the learned trial Judge, found that the accident was caused by the negligence of the appellant, and that the negligence consisted "in the captain failing to inspect after report made to him of incomplete shots before resuming operations;" acquitted the respondent of contributory negligence; and assessed the damages at \$3,250; and judgment was thereupon entered for the respondent for that sum, with costs.

There was, in my opinion, evidence to warrant the findings of the jury.

Among the rules which, by the provisions of sec. 164 of the Mining Act of Ontario, 1908, are required, "so far as may be reasonably practicable," to be observed in every mine, are the following:—

10. A charge which has missed fire shall not be withdrawn, but shall be blasted; and, in case the missed hole has not been blasted at the end of a shift, that fact shall be reported by the foreman or shift-boss to the mine captain or shift-boss in charge of the next relay of miners before work is commenced by them.

31. The manager or captain or other competent officer of every mine shall examine, at least once every day, all working shafts, levels, stopes, tunnels, drifts, cross-cuts, raises, signal apparatus,