

According to the evidence, the operation which was going on in the mine at the time of the accident was for the purpose of blasting in a new draft at the 250-foot level. The respondent was in charge of a drilling-machine, which was used for perforating holes in the face of the rock, and was assisted by a helper named Mecca, who was killed by the explosion, and a man named Cassidy was in charge of a similar machine in another drift about 50 feet away from that in which the respondent was working, and Cassidy was assisted by a helper named Orak. Cassidy and his helper had assisted the respondent in drilling 13 holes in the latter's drift, and, after the holes had been "blown out," they were loaded with powder, and the respondent cut the fuse and lit it; the party then ascended to the surface and waited for the reports of the explosions and counted them as they occurred. There were 13 explosions counted, which indicated that there had been an explosion in every one of the holes. This occurred between 3 and 4 o'clock in the morning, and the men then went to bed. They returned to work about noon of the same day, when they were requested by the captain of the mine (Grierson) to do some "timbering" in the mine, which had become necessary owing to the timbers having been displaced by the explosions. When they got down to the mine, the respondent and Cassidy examined the holes and found that in some cases the rock had not been broken away to the full depth of the holes, which was about 5 feet, but only to the depth of about 2 feet; they then ascended to the surface and informed Grierson that some of the holes had broken badly; there is a conflict of testimony as to what next occurred and as to the instructions that were given to the respondent. According to the testimony of Cassidy, Grierson said to "fire" the holes over again, and asked how many there were to "fire out," to which the respondent replied that he thought there were eleven.

Grierson testified that they reported that "it did not break good;" that he asked the respondent "How many will you have to shoot over again? that the respondent's reply was "eleven holes;" and that he then told the respondent "to shoot them or as many as he thought ought to be shot before they started drilling again;" that he went down into the mine and assisted in timbering until about 5 o'clock, when they went "off shift" and did not come back until seven o'clock; that he then met them at the collar of the shaft, as they were going down into the mine, and said, "Be sure to shoot those eleven holes, or as many as you think should be shot again." Although this report had been made to him, no steps were taken by Grierson to find