

Q. You left him to use his judgment as to what should be done about the shooting? A. Yes.

* * * * *

Q. So that if a man started six inches from the former hole he would be justified in so doing? A. Yes, I made it six or somewhere close to six.

There would perhaps have been more difficulty in the respondent retaining his verdict if it had been established that he was directed to blast out any of the holes in which the rock had not broken away to the bottom of the hole, before drilling any new holes, but, as has been seen, no such direction was given to him, and he was left to use his own discretion as to what holes should be blasted out and what holes he need not blast out. The former direction would have been one that might have been safely carried out by a miner having as little experience as the respondent is shewn to have had, but the direction that was given involved the casting upon a comparatively inexperienced man the delicate duty of deciding what holes should be and what holes should not be blasted out, and running the risk that might result from an error of judgment in carrying out his instructions. The jury no doubt thought that had Grierson inspected the mine after it was reported to him that the holes had broken badly he should and would himself have determined, and pointed out which of the holes should be blasted out, instead of leaving that to be determined by the respondent.

It may be that as it stands the answer to the second question does not cover this view of the case, but it is certainly not inconsistent with it, and having before us all the materials necessary for finally determining the matter in question, the Court should exercise the power conferred upon it by the Judicature Act and make this supplementary finding, which there is ample evidence to support, and having made it, to affirm the judgment of my brother Latchford.

It was argued by Mr. Rose that there was not sufficient evidence to warrant the jury assessing the damages at \$3,250; that if the respondent is entitled to recover at all he can recover only under the Workmen's Compensation for Injuries Act, and that there was no evidence as to what was the equivalent of "the estimated earnings during the three years preceding the injury of a person in the same