

**American Agricultural Chemical Company
&
Cabin Branch Mining Company
Workers**

Dumfries, VA

1910-1920

Ronald R. Turner

The following description was taken from a Virginia Historic Landmarks Commission Survey Form and records of the Prince William County Historical Commission. The names of the employees listed below were gained through research of records at the court house, newspaper articles, and personal interviews.

In the late 1880s, pyrite was discovered in Prince William County, about 3 miles up the Quantico Creek from the Potomac. The mine was operated by Cabin Branch Mining Company, and later the American Agricultural Chemical Company. During its peak years, the mine had three shafts for extracting the ore, two vertical and one inclined. Number three shaft, the deepest, was 2,400 feet deep. The mine employed from 200 to 300 workers, including children. There were approximately 70 structures at the mine, in addition to the shafts. These included workers' housing, an assortment of buildings for processing the ore, machine shops, sheds, storage buildings, a company store, and several dwellings. A narrow-gauge railroad moved the pyrite ore around the site from the shaft to storage bins, to the sorting mill. The railroad would then carry the graded ore down the Quantico Creek, past Dumfries, to Possum Point. There at the docks at Barrows Siding, the ore would be loaded into ships for transporting to a refinery. Pyrite was mined for the sulfuric acid contained in the mineral. Sulfuric acid is used in the manufacture of a wide variety of products, including glass, soap, bleach, textiles, paper, dye, medicine, sugar, rubber, and starch. Sulfuric acid extracted from pyrite was also used for fertilizer, leather-making, sheet metal cleaning, and refining of precious metal. The Cabin Branch Mine was for about 31 years the basis for the economy of nearby Dumfries. The town of Dumfries had been a thriving port town from its founding in the 1740s to the end of the 18th century, when silting closed the creek to navigation, and the town began its long decline.

The federal government acquired the site of the old pyrite mine in the 1930s for inclusion in the Prince William Forest Park. The Civilian Conservation Corps dismantled the remaining structures on the mine site in the 1930s and used the building materials to build the cabins in the park.

Names, occupations, and race of some of the workers at Dumfries Mine are listed below.

Name	Occupation	Race as Listed
Abel, Joseph E.	miner	White
Abel, Walter Bryant	laborer	White
Abel, William Braxton	carpenter	White
Abel, William G.	laborer	White
Alexander, Thomas	miner	Negro
Amidon, Jonah B.	engineer	White

Anderson, George Frank	miner	White
Anderson, John	laborer	White
Anderson, William Jr.	laborer	Negro
Anderson, William Earl	miner	Negro
Arrington, James Erving	miner	White
Athey, Julian	laborer	White
Austin, Charles	miner	White
Austin, Willie Edward	miner	White
Baker, Roswell Cooper	laborer	White
Ball, Patrick	laborer	White
Barnes, John	laborer	Negro
Bates, Andrew J.	miner	Negro
Bates, Jesse	laborer	Negro
Bates, James Landers	miner	Negro
Bates, James R.	laborer	Negro
Bates, Mason	laborer	Negro
Bates, McKinley	laborer	Negro
Bates, Robert	miner	Negro
Bates, Taswell	miner	Negro
Bates, Tazel	miner	Negro
Bates, Thomas Isaiah	miner	Negro
Bates, Thornberry	laborer	Negro
Bates, Walter	laborer	Negro
Beaner, Harry	laborer	Negro
Beckett, William Arthur	miner	Negro
Bell, Joseph	miner	Negro
Bell, William	miner	Negro
Berry, John	miner	Negro
Bland, Charles	miner	Negro
Bland, Horace	laborer	Negro
Bland, George	laborer	Negro
Brawner, Claud Alfred	timekeeper	White
Brawner, Clay Alfred	engineer	White
Brawner, French	fireman	White
Brawner, George R.	bookkeeper	White
Brawner, John R.	laborer	White
Brawner, Rudolph S.	clerk	White
Brawner, Warfield Scott	bookkeeper	White
Brawner, William H.	foreman	White
Bridwell, Earl	laborer	White
Brown, Edward B.	miner	Negro
Brown, James Lewis	laborer	Negro
Brown, Willie	laborer	White
Bumbrey, Page	laborer	Negro
Burl, John	helper	Negro
Burl, Luther	helper	Negro

Butler, Charles	laborer	Negro
Butler, Henry	miner	Negro
Byrd, Charles Henry	miner	Negro
Carroll, Clarence W.	mine work	White
Carroll, John W.	mine work	White
Carroll, Owen Willis	laborer	White
Carroll, Samuel W.	loading cars	White
Carter, Lewis M.	fireman	White
Carter, M.	helper	White
Carter, Phillip	miner	Negro
Carter, Willis Duree	laborer	White
Chapman, James E.	timber man	Negro
Chinn, Peter	miner	Negro
Clark, Abraham	helper	Negro
Clark, John William	miner	White
Cole, Alonzo	miner	Negro
Cole, Cornelius	fireman	Negro
Cole, Daniel	laborer	Negro
Cole, Donie	miner	Negro
Cole, Frank	miner	Negro
Cole, James	helper	Negro
Cole, Phillip	miner	Negro
Cole, Silas	miner	Negro
Cooper, Frederick Cleveland	foreman	White
Cooper, Milton	helper	White
Crawford, Daniel	miner	Negro
Crawford, Delly Warren	engineer	White
Curly, Thomas Jefferson	laborer	White
Curtis, Ezrie B.	laborer	White
Curtis, Raymond Asmyn	engineer	White
Darnell, David Cowens	master mechanic	White
Davis, Benjamin	laborer	White
Davis, Charles	fireman	Negro
Davis, Eppa	laborer	White
Davis, Frank L.	mine worker	White
Davis, George M.	miner	White
Davis, Hooker	helper	White
Davis, Jackson	miner	Negro
Davis, James	miner	Negro
Davis, John	foreman	White
Davis, John H.	miner	Negro
Davis, Money Mostella	miner	White
Davis, Ollie	laborer	Negro
Davis, Richard	laborer	Negro
Davis, Samuel	laborer	Negro
Davis, William	laborer	Negro

Davis, William Francis	laborer	White
DeCator, Richard	Laborer	White
DeCator, Thomas Cleveland	machinist	White
Dobbins, William J.	superintendent	White
Doyle, Robert	laborer	White
Detrick, John U.	manager	White
Earley, Henry Logane	miner	Negro
English, Milton	laborer	White
English, George	laborer	White
Ferguson, John H.	laborer	Negro
Fisher, Jake Jr.	miner	Negro
Fisher, Manuel	miner	Negro
Fritter, Daniel	laborer	White
Foster, William	superintendent	White
Gallahan, Comos T.	miner	White
Gallahan, Johnnie Wesley	miner	White
Gallahan, Robert	laborer	White
Gallahan, William	laborer	White
Gallahan, Willie	laborer	White
Gardner, Charles	laborer	Negro
Gardner, William R.	miner	White
Garman, Robert H.	blacksmith	White
Garrison, Chancellor	laborer	White
Garrison, Kloman	engineer	White
Garrison, Roland	laborer	White
Garrison, William M.	blacksmith	White
Gladwell, Andrew J.	laborer	White
Goggin, William Francis	mine foreman	White
Green, Robert	laborer	White
Griffin, Charles	miner	Negro
Griffin, Cyrus B.	laborer	White
Griffin, William	miner	Negro
Griffith, William	clerk	White
Hanley, Eugene	laborer	White
Hardinger, Sanford Cleveland	mine foreman	White
Harper, Eddie	employed	Negro
Harper, George	fireman	Negro
Harris, Richard	blacksmith	White
Henderson, Henry	laborer	Negro
Henderson, Robert	laborer	Negro
Hicks, Thomas	miner	Negro
Holly, Guy	helper	Negro
Holmes, William	helper	Negro
Howard, James Alexander	miner	Negro
Howard, Lee	laborer	Negro
Howard, Lewis	helper	Negro

Humphrey, Wallace	laborer	White
Hutchison, Louis	fireman	White
Johnson, Arthur	miner	Negro
Johnson, August	foreman	White
Johnson, Howard	helper	Negro
Johnson, Joseph	miner	Negro
Johnson, Lloyd	laborer	Negro
Johnson, Peter	laborer	Negro
Johnson, Raymond J.	miner	Negro
Johnson, Sayvenus Allen	miner	Negro
Johnson, Thomas Jr.	miner	Negro
Johnson, Thompson	fireman	Negro
Johnson, Willie Peter	miner	Negro
Jones, Christopher	laborer	White
Jones, Walter	pump hand	White
Jones, Willie R.	miner	White
Karkans, John	employed	White
Kendall, James Edward	laborer	Negro
Kendall, John Thomas	engineer	Negro
Keys, Jaquelin Meredith	clerk	White
Keys, Willie Leachman	miner	White
Kincheloe, Ralph	miner	White
Kincheloe, William E.	engineer	White
Kindall, William Edward	miner	Negro
Lee, Jim Dorsey	miner	Negro
Lewis, Howard	laborer	Negro
Liming, Clayton	employed	White
Liming, Frank	laborer	White
Liming, Frederick Finley	engineer	White
Liming, John William	machinist	White
Lockett, Bernard Lee	miner	White
Love, George	laborer	White
Lovelace, Arthur	pump hand	White
Lovelace, Richard	laborer	White
Lowe, Leonard	laborer	White
Lowe, Phenous	fireman	White
Lucas, Walter	miner	Negro
Lucas, William	miner	Negro
Luckett, Bernard	laborer	White
Maddox, Harry	laborer	White
Maddox, John	laborer	White
Maddox, Randolph	blacksmith	White
Maddox, Robert	blacksmith	White
Maddox, William	miner/fireman	White
Mallory, Walter	helper	Negro
Marbaker, Earnest	locomotive fireman	White

Marbaker, Mountaville	laborer	White
Martin, Henry Richard	miner	Negro
Martin, Jessie	laborer	Negro
Martin, Martin	laborer	Negro
McGlone, Bernard	miner	White
McConaughy, John F.	laborer	White
McInteer, Hampton	miner	White
McInteer, John F.	miner	White
McInteer, John M.	laborer	White
McInteer, Murry L.	miner	White
McCuin, Edward	water carrier	White
McCuin, Richard	laborer	White
Merchant, Jacob W.	blacksmith	White
Miller, Granville	laborer	Negro
Miller, Raymond	miner	White
Moore, Frank	night watchman	White
Morris, Joseph	laborer	White
Morris, William	blacksmith	White
Najola, Isaiah V.	miner	White
Nash, Daniel	miner	Negro
Nash, Walter	helper	Negro
O'Neil, James W.	timekeeper	White
O'Neil, John	miner	White
Obermoyer, Preston	engineer	White
Patton, Harvey	laborer	White
Pearson, Frederick	miner	White
Peel, George	helper	White
Peel, Harvey	helper	White
Peel, John	miner	White
Peel, William D.	miner	White
Perry, Nally U.	engineer	White
Perry, Robert	laborer	White
Perry, Rosser	laborer	White
Pierson, Henry	laborer	White
Porter, Arthur	miner	Negro
Porter, Charles H.	miner	Negro
Porter, George	miner	Negro
Porter, Herman	miner	Negro
Porter, John	miner	Negro
Posey, Joseph	miner	White
Posey, Samuel	laborer	White
Posey, William	laborer	White
Powell, John	engineer	Negro
Randall, John	laborer	White
Randall, Richard Devanard	miner	White
Randall, Thomas A.	miner	White

Randall, Walter Lee	miner	White
Raney, Kerby	laborer	White
Reid, Ewell	laborer	Negro
Reid, Joseph	miner	Negro
Reid, Samuel	miner	Negro
Redd, Ervin	miner	Negro
Reid, Samuel	laborer	Negro
Reid, Wallace	miner	Negro
Reiner, Moses	laborer	White
Reynolds, Benjamin	miner	White
Reynolds, Joseph	engineer	Negro
Reynolds, Sam Lee	miner	Negro
Reynolds, Thomas Lee	engineer	Negro
Reynolds, Walter L.	laborer	White
Rison, John William	mechanic	White
Rogers, William E.	laborer	White
Roles, Eldron	laborer	White
Roles, William Embrey	laborer	White
Ross, William	helper	Negro
Simms, Issie Alvin	miner	Negro
Simms, John D.	miner	Negro
Sisson, Irving	laborer	White
Sisson, Willis W.	blacksmith	White
Skidmore, McDuff	laborer	White
Slingerland, John	foreman	White
Slingerland, Willie	miner	White
Smith, Bord	laborer	Negro
Smith, Robert	laborer	Negro
Sorrell, John	laborer	White
Southerland, John W.	miner	White
Speake, Henry	foreman	White
Stewart, George	miner	Negro
Stewart, John	miner	Negro
Stoll, Arris	pit foreman	White
Sullivan, Leroy	miner	White
Sutherland, Grover	helper	White
Sutherland, Walter	miner	White
Taylor, Caston	laborer	White
Thomas, John	laborer	Negro
Thomas, Owen	laborer	Negro
Thomas, Robert	engineer	Negro
Tibbs, Henry	helper	Negro
Timmons, Herbert	laborer	White
Timmons, Irving	laborer	White
Tuell, Fred D.	mine	Negro
Varga, Mitchell	miner	White

Waite, John R.	laborer	White
Waite, Norman	laborer	White
Washington, Nelson	laborer	White
Watson, Andrew S.	foreman	White
Watson, Napoleon	miner	White
West, James Robert	laborer	Negro
Wheat, Randolph	office boy	White
Wigginton, Charles H.	laborer	White
Williams, George	miner	Negro
Williams, Harvey H.	laborer	Negro
Williams, Howard Ira	miner	Negro
Williams, James C.	miner	Negro
Williams, James Frederick	carpenter	Negro
Williams, Jerry Dodson	miner	Negro
Williams, Lemuel Annis	carpenter	White
Williams, Milton	Miner	Negro
Williams, Preston	laborer	Negro
Williams, Robert	miner	Negro
Williams, William	miner	Negro
Williams, William	laborer	Negro
Williamson, James	laborer	White
Woodbridge, Sidney	helper	Negro
Yates, Annis	laborer	White
Young, Francis	laborer	Negro

In the Circuit Court for Prince William County, Virginia
Quinton L. Hutchinson's Administrator
vs
Cabin Branch Mining Company

In The Circuit Court of Prince William County, Virginia
Climentia Hutchinson
Administratrix of Quinton L. Hutchinson, deceased.
Vs
Cabin Branch Mining Company

DECLARATION

The plaintiff, Climentia Hutchinson, administratrix of the goods and chattels of Quinton L. Hutchinson, deceased, complains of the Cabin Branch Mining Company, a corporation duly incorporated under the laws of the State of Virginia, of a plea of trespass on the case for this, to wit:

There heretofore and at the time of committing the grievances hereinafter mentioned the said defendant was the owner and proprietor of a certain mine in the County of Prince William and State of Virginia aforesaid, which mine the said defendant was then and there working, operating and taking minerals there from and being such owner, proprietor and operator of the mine aforesaid, heretofore, to-wit; on the 3rd day of March, 1909, the said Quinton L. Hutchinson, plaintiff's intestate, at the special instance and request of the said defendant company, became and the hired servant and workman of said defendant company and was then and there employed by the said defendant company as its workman and servant in operating said mine and in mining and getting out mineral matter from the said mine for the defendant company, and for which services plaintiff's intestate was paid certain wages by the defendant company. And the plaintiff says that while her said intestate was the hired workman and servant of the defendant, in and about the work aforesaid, it became and was the duty of the said defendant company to use due, reasonable and ordinary care for the said plaintiff's intestate while he was so employed and working in said mine, and also it became and was the duty of the said defendant to use reasonable skill and care for the safety of the said Quinton L. Hutchinson while engaged in operating and working said mine in the employment of the defendant as aforesaid.

Yet the said defendant, not regarding its duty did not use due and ordinary care for the safety of the said Quinton L. Hutchinson while so engaged in working in said mine and did not operate said mine with reasonable safety and ordinary care as it could and might have done so that said Quinton L. Hutchinson could work therein with reasonable safety in the employment of the said defendant company, but wholly neglected so to do and wrongfully and negligently permitted large stones and masses of mineral, slate and earth to hang loosely in and about said mine and in and the sides of certain shafts, slopes, galleries and inclines in and about said mine at the point where the said Quinton L. Hutchinson was at work for the defendant company and at the point where he was assigned to work by the said defendant and then and there wrongfully and negligently failed to provide the said mine and the roofing thereof with sufficient props and

stays to keep stone, minerals and earth that hung loosely in and about said mine and the top and sides and the shafts, slopes, galleries and inclines from falling in and upon said Quinton L. Hutchinson while engaged at such work for and in the service of the defendant company as aforesaid and then and there negligently employed, and kept in its service to manage, control and operate said mine, incompetent and inexperienced agents and by means whereof and while the plaintiff's intestate was engaged in the work and service of the defendant company, a large and ponderous mass of stone, slate, mineral and earth fell from the side of the said mine and in and upon said plaintiff's intestate, without any negligence or fault on the part of said plaintiff's intestate, and by such falling in of said stone, slate, mineral and earth so negligently permitted to hang loosely in and about said mine and the sides thereof, the said Quinton L. Hutchinson, plaintiff's intestate, was injured and crushed about the body, back and hips and so injured that he died shortly thereafter, to-wit; on the day and year aforesaid, from the effects of said injury and plaintiff further says that the said Quinton L. Hutchinson left surviving him a widow, Climenia Hutchinson, and one infant child who, by reason of the negligence and wrongful act of the defendant company aforesaid and the death of the plaintiff's intestate, suffered great loss and damage and have been deprived of the love, affection, support, maintenance and benefits which they would otherwise have received during the life time of said plaintiff's intestate and will continue to suffer great loss to a large amount, to-wit; the sum of \$10,000.00

And for this also, to-wit; that heretofore, to-wit; on the 3rd day of March, 1909, that said defendant company was the owner and proprietor of a certain mine in the County of Prince William, in the State of Virginia, which the said defendant was then and there working and operating and taking mineral there from and heretofore, to wit; on the 3rd day of March, 1909, aforesaid the said Quinton L. Hutchinson at the special instance and request of the said defendant became and was the hired servant and workman of the said defendant company and was employed in operating said mine for which services the plaintiff's intestate, the said Quinton L. Hutchinson, was paid certain wages by the said defendant company and the plaintiff's intestate further states that while he, the said Quinton L. Hutchinson, was the hired workman and servant of the said defendant company in and about the work aforesaid it became and was the duty of the said defendant company to use due, reasonable and ordinary care for the said plaintiff's intestate further states that while he, the said Quinton L. Hutchinson, was the hired workman and servant of the said defendant company in and about the work aforesaid it became and was the duty of the said defendant company to use due, reasonable and ordinary care for the said plaintiff's intestate while he was so employed in working in said mine and also it became and was the duty of the said defendant to use reasonable skill and care for the safety of the said plaintiff's intestate while engaged in operating and working in said mine in the employment of the defendant company as aforesaid.

Yet the said defendant company, not regarding its duty in that behalf did not use the proper care for the safety of said plaintiff's intestate while so engaged in working in said mine and did not operate said mine with such reasonable safety and ordinary care as it might have done or which by law it was required to do so that plaintiff's intestate could work therein with reasonable safety in the employment of said defendant company, but wholly neglected so to do and wrongfully and negligently permitted large masses of stone, slate, mineral and earth to hang loosely in and about said mine and in and about the sides and slopes thereof at the point where the said Quinton L. Hutchinson was at work for the defendant company and where he was assigned to work by said defendant company, although said defendant company well knew or should have known that said masses of stone, slate, mineral and earth were hanging loosely in

said mine and on the sides thereof as aforesaid and were a danger and menace to the said Quinton L. Hutchinson and then and there wrongfully and negligently failed to provide the said mine and the roofing of the said mine with sufficient props and stays to keep stone, minerals and earth that hung loosely in and about said mine and the top and sides and the shafts, slopes, galleries and inclines from falling in and upon said Quinton L. Hutchinson while engaged at such work for and in the service of the defendant company as aforesaid and then and there negligently employed, and kept in its service to manage, control and operate said mine, incompetent and inexperienced agents and by means were of and while the plaintiff's intestate was engaged in the work and service of the defendant company, a large and ponderous mass of stone, slate, mineral and earth fell from the side of said mine and in and upon said plaintiff's intestate, without any negligence or fault on the part of the said plaintiff's intestate, and by such falling in of said stone, slate, mineral and earth so negligently permitted to hang loosely in and about said mine and the sides thereof, the said Quinton L. Hutchinson, plaintiff's intestate was injured and crushed about the body, back and hips and so injured that he died shortly thereafter, to-wit; on the day and year aforesaid, from the effects of said injury and plaintiff further says that the said Quinton L. Hutchinson left surviving him a widow Climenia Hutchinson, and one child who, by reason of the negligence and wrongful act of the defendant company aforesaid and the death of the plaintiff's intestate, suffered great loss and damage and have been deprived of the love, affection, support, maintenance and benefits which they would otherwise have received during the life time of said plaintiff's intestate and will continue to suffer great loss to a large amount, to-wit; the sum of \$10,000.00, by means whereof the plaintiff has sustained damages to the amount of \$10,000.00. Therefore she brings this suite.

Moncure & Tebbs

In the Circuit Court for Prince William County, Virginia
Quinton L. Hutchinson's Administrator
Vs
Cabin Branch Mining Company

Manassas, Virginia

November 9, 1909

Before
Hon. J. B. T. Thornton and a jury

Appearances:

On behalf of the plaintiff, Messrs. Moncure, Tebbs, and A. R. Colvin, Esq.

On behalf of the defendant, J. S. Barbour, Esq., and H. T. Davies, Esq.

The jury having been empanelled, Mr. Moncure made the opening statement on behalf of the plaintiff, and Mr. Barbour on behalf of the defendant. On motion of counsel for the plaintiff all witnesses were excluded from the court room.

Whereupon Dr. F. C. Pratt, a witness called by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination – by Mr. Moncure:

(Q.) Doctor, kindly state to the jury your full name? (A.) Frank C. Pratt.

(Q.) Your residence, Doctor? (A.) Fredericksburg.

(Q.) And your profession? (A.) Physician.

(Q.) How long, doctor, have you been practicing medicine? (A.) Two years and a half.

(Q.) Doctor, on or about the 5th of March last were you called to Dumfries? (A.) Yes, 4th of March.

(Q.) On the 4th day of March, you were called to Dumfries to make a post-mortem examination of the body of Quinton L. Hutchison? (A.) Yes sir.

(Q.) Did you make that examination? (A.) Yes sir.

(Q.) Was there any other physician present with you? (A.) Doctor Cline

(Q.) Of Dumfries? (A.) Yes sir.

(Q.) Doctor, will you tell the jury what you found upon that examination, sir? (A.) Well, we didn't make a complete post mortem, we just endeavored to find the exact cause of death, and we found that death was due to internal hemorrhage produced by some pressure from without, rupturing some blood vessel. What blood vessel was ruptured we could not determine.

(Q.) Now Doctor, indicate to the jury, if you will please, what mark or marks there were on the body to indicate pressure from without, and where? (A.) There were few bruises on the body considering the condition we found inside, but there was one bruise, the whole abdomen was bruised right across the pit of the stomach, right under the ribs, and then there was a slight bruise on the back right over the spinal column. We also found one or two of the segments of the spinal column displaced.

(Q.) The condition you found the spinal column in, would that have been sufficient to have caused death?

(A.) I don't think it would have produced instant death.

(Q.) Instant death. The rupture of the blood vessel that you mentioned would that cause instant death?

(A.) Well, it would cause death in a very few minutes.

(Q.) Would great pressure here (indicating) sufficient to have displaced the segments of the spinal column ordinarily cause a rupture of the internal blood vessel? (A.) Yes I believe so.

(Q.) Then in this case you say that death was due, from your examination, to the rupture of a blood vessel caused by pressure? (A.) Yes sir.

(Q.) Upon that portion of the body? (A.) Yes sir.

(Q.) Did you find any ribs broken, Doctor? (A.) No sir.

(Q.) The pressure, as I understand, was below the ribs? (A.) Below the ribs, what is known as the pit of the stomach.

CROSS EXAMINATION – by Mr. Barbour

(Q.) There were no bones broken? (A.) No fractures of the bones anywhere that we could determine.

(Q.) Was the skin broken at all? (A.) No sir.

(Q.) At whose instance did you go there, Doctor? (A.) What do you say?

(Q.) At whose instance were you called there? (A.) I went there for another physician in Fredericksburg, Doctor Scott. He was called by someone in Dumfries, and he was sick, and asked me to take his place.

Mr. Barbour: That is all. (witness excused)

Whereupon - J. CLARENCE WILLIAMS (colored) a witness called by and on behalf of the plaintiff, having been first duly sworn, was examined and testified, as follows:

DIRECT EXAMINATION – By Mr. Moncure:

(Q.) William, give the jury your full name, please? (A.) James Clarence Williams

(Q.) And where do you live? (A.) Well, Dumfries is as close as I could get at it.

(Q.) You live close to Dumfries? (A.) Yes sir; I always call Dumfries for home.

(Q.) What is your age, William? (A.) Well, sir, I was 36 years old the 24th of last June.

(Q.) And have you lived in or near Dumfries all your life? (A.) Yes sir; all my life. I was born and raised right there.

(Q.) How long have you been working in the mines down there at Dumfries? (A.) I couldn't tell you exactly, but I think I have been there about ten or eleven years, something like that.

(Q.) About ten or eleven years? (A.) Yes sir; I couldn't tell you exactly.

(Q.) Did you know Quinton L. Hutchinson? (A.) Yes sir; just as well as could be.

(Q.) You had known him practically all of his life, had you? (A.) Yes sir, you might say, because he was a little boy when I first knowed him, just could follow around with me.

(Q.) How long have you worked underground in the mine there? (A.) I have been working underground there, I wont say regular, but off and on I have been working underground for the last ten years. I wont say regular, every day right along.

(Q.) Are you still employed at the mine? (A.) Yes sir.

(Q.) Are you still working underground? (A.) Yes sir.

(Q.) You remember the night when Hutchinson was killed? (A.) Yes sir.

(Q.) You worked on the day shift, did you not? (A.) Yes sir; I worked on the day shift.

(Q.) A little prior to his death what were you doing? (A.) I was mucking in there.

(Q.) Who was mucking with you? (A.) Fred Stoll was mucking with me at the time.

(Q.) Fred Stoll was mucking with you? (A.) Yes sir; at that time.

(Q.) And where were you working with reference to what part of the mine, at the bottom or above or where? (A.) I was working at the bottom.

(Q.) You were working at the bottom? (A.) Yes sir; it looked to me like the lowest place, it ought to have been the bottom.

(Q.) What do they call that – the sump? (A.) I think they call it the sump.

(Q.) Who were the machine men working with you on that day, that shift? (A.) George Stewart and Tom Alexander.

(Q.) Who was the pit boss that day? (A.) That day? Mr. Watson was pit boss, I think. Yes; Mr. Watson was pit boss that day.

(Q.) Where was Mr. Amos Stoll that day --- I don't mean that shift, I mean that day? (A.) I don't know, sir. He wasn't there. Mr. Stoll wasn't there. Let me see now. I want to tell everything straight. I don't recollect whether Mr. Watson was there on that day of Mr. Stoll, that's right. I want to be straight about it.

(Q.) How many hours do you work on a shift there? (A.) Supposed to work ten hours.

(Q.) 10 hours? (A.) Yes sir.

(Q.) And that is supposed to be a day? (A.) yes sir.

(Q.) A days work. What do the mockers get for working down in the ground? (A.) We got a dollar and a half a day.

(Q.) And what do the machine men get? (A.) I don't know what they got, but I think they got a dollar and a half.

(Q.) Never mind that. You need not answer if you don't know. (A.) All right, sir.

(Q.) Now will you tell the jury what, if anything, was called to your attention that day where you were working, about the bottom of the mine, as to its safety, and who called it to your attention. Tell exactly what you know? (A.) Just exactly what I know, sir.

(Q.) Go ahead. (A.) Well, whether it was safe, of course, I couldn't.

(Q.) I will ask you this question: Did you notice while you were working down there anything unusual ---

Mr. Barbour: Ask him what he noticed.

(Q.) (continuing) Anything unusual about the slate, and if so, what was it? - Mr. Barbour: We object to that as suggestive. --

Mr. Moncure: If your Honor please, I don't think that can be leading. ---

The Court: I will let him answer that.

(A.) Of course, that day I worked in there all day and I was mucking and I didn't notice anything at all until the evening. My buddy that was working with me, we was cleaning out a place there where we baled water on one side --- we had dug a hole to draw the water to that place, and we took a bucket and lifted it out of there and poured it in a barrel so the pump would draw it. So while I was there cleaning out this hole for to bale the water out, my buddy says to me, he says, "Buddy, there's something loose around here; it keeps a mighty little draping, chipping, around there." I says, "I don't know whether it is or not" and I kept on, and at last there was a piece, it was right down in the side, there was a small piece about the size of a water bucket, dropped off the end of it and dropped beside me, right down beside my leg, and still I never noticed it, never paid any attention to it because I wasn't scared of it, and wasn't thinking of anything loose, and I baled the water out and knocked around there, and at last he says to me again, "Buddy, there's something loose around here; must be." He was on the upper side, the rise side, and I took the pick and stuck it and sounded it, and I says, "Yes sir; its loose; that piece is as loose as can be. "But I says, there's as much on this side as will do and we'll work this out this evening. We won't bother that." And so it went on then and we didn't go on that side any more. We worked on the rise side all along.

(Q.) Who was the man that this conversation occurred with? (A.) That was my buddy.

(Q.) What is his name? (A.) His name is Fred Stoll.

(Q.) He is a brother, is he, of Mr. Amos Stoll? (A.) Yes Sir.

Mr. Barbour: I desire, if Your Honor please, to move to exclude this evidence of a conversation between this witness and his buddy.

The Court: On what grounds, Mr. Barbour.

Mr. Barbour: On the ground that the company is not involved in a conversation between co-employees.

Mr. Moncure: If Your Honor please, that might be true, and would, ordinarily, be true, did we not promise Your Honor at this time to follow it up and show that the men who had this conversation, and who had knowledge of this condition, was the next shift or pit boss in charge of that pit and the men were under him, and he was not a co-employee, and for that reason, and that reason alone, the conversation would be, we respectfully submit, permissible to show knowledge, and it is offered for that purpose.

(The jury then retired from the room and discussion followed)

The Court: I refuse to strike out that evidence now, but if you do not connect it up and show that this man was the boss whose duty it was to inspect, I will strike it out.

EXCEPTION noted by counsel for defendant.

(The jury then returned to the room and the court at 1.00 o'clock p.m., took recess until 2.00 o'clock p.m., same day.)

AFTER RECESS

The court met pursuant to the recess at 2.00 o'clock p.m. J. CLARENCE WILLIAMS (colored) then resumed the stand and his direct examination was continued, as follows:

By Moncure:

(Q.) Now Clarence, assuming this book to be the sump, that book representing the sump in which you were working, and this to be the incline or the shaft going down to it ---- (A.) Yes sir.

(Q.) Here is the entrance way above here coming down to it? (A.) Yes Sir.

(Q.) Where is the hole that holds the water --- this to be the opening here, where you were working, at this place here (Indicating) (A.) This is the bottom?

(Q.) Yes, (A.) The water, you know, was over the whole bottom of it, and we just took our shovel and cut a hole here to bale the water out, and we baled it out.

(Q.) You baled it out with a bucket? (A.) Yes sir.

(Q.) Now this being the bottom, show the jury where this place was that you tapped with your pick that day? (A.) Here is the bottom. Here is where I come down in at. Here is the bottom, and this is another side.

(Q.) Yes? (A.) When we come down this incline here, take this level here, that is the bottom, and here is the other side, and right in here (indicating) is where that piece fell out. Of course, I don't know exactly how far in there, but right in that side, that is where it fell out, this lower side, this way, you see; and right in here is where I dug the hole to bale the water out, and then the piece fell out this side right down in here,

(Q.) Now this being the place where you were working, where did they bore with the boring machine to get the ore? (A.) Right straight ahead here.

(Q.) Right straight ahead? (A.) Yes sir.

(Q.) When you all were working in there that day, you were taking out of this place, what stuff? (A.) What these men had shot out of the face of it back there.

(Q.) Tell the jury whether or not they had finished this place, so far as the opening was concerned, to work in? (A.) Of course, they had shot it and we had to muck up what they had shot until we got to the face of the place, you understand..

(Q.) You do not understand me quite, I believe. There was no ore over here? (A.) No sir, of course. This is one side and here is the other side.

(Q.) Tell the jury whether that side was done as far as you all were concerned? (A.) Yes sir; that side was done up to here.

(Q.) And you only worked the vein at the end going on through? (A.) Yes, of course

(Q.) How long had you all been working --- how many days had you been working in this sump down there? (A.) I couldn't tell you that exactly.

(Q.) About how long? (A.) I had been in there two or three weeks, I know.

(Q.) And that opening there was the same, except where they were boring here? (A.) Yes sir.

(Q.) Now this stuff did not fall from that opening? (A.) Oh! No sir. It fell at the side here.

(Q.) About how far would you say from where they were boring, was it, where you tapped this thing?

Mr. Barbour: I don't remember that the witness has said anything about tapping it.

The Witness: Of course, I had to take the pick to sound.

By Mr. Moncure

(Q.) That was about how many feet? (A.) As well as I can come at it, it was between three and four feet.

(Q.) Between three and four feet? (A.) Yes sir; back. From the face back, you know

(Q.) How far was that from where the vein was running, where they had the augur where the vein was?

(A.) That's what I say. Here is the face back here, and it was three or four feet back here. Here is the face and it was back on this side.

(Q.) They were boring here? (A.) Yes sir; right straight ahead.

(Q.) Do you remember about what time of day it was that Mr. Fred Stoll called your attention to that condition, the condition of that rock on that side? (A.) Not exactly the time; but it was late in the evening because it was near quitting time.

(Q.) About how long before quitting time? (A.) I think it was about 3.00 o'clock. I cannot tell you exactly but it was about 3.00 o'clock.

(Q.) And about what time do you quit? (A.) We left there at 5.00 o'clock.

(Q.) And how long a time is it when you quit before the next shift goes to work? (A.) 7.00

(Q.) Two hours? (A.) Yes sir.

(Q.) How does the Pit Boss go around and examine where the men are working? (A.) He don't have no particular time. Any time most of the day he's around. Almost anytime he goes around.

(Q.) And how often a day does he go? (A.) Not less than twice a day.

(Q.) When you left, at quitting time, did Fred Stoll go out with you? (A.) Yes sir.

(Q.) How many pit bosses do they have? (A.) Only two.

(Q.) One on each shift? (A.) Yes sir.

(Q.) Have you ever worked on night shifts? (A.) Yes sir.

(Q.) How often do the pit bosses go around and examine things? (A.) At night they come around twice or three times --- they don't have no particular time, sometimes you see them twice a night and sometimes three or four times; but never less than twice a night.

(Q.) Who gives the orders to have a place in the mine timbered? (A.) The pit boss does.

(Q.) The pit boss gives the orders? (A.) Yes sir.

(Q.) To whom does he give them? (A.) To the timberman. Of course, there's a gang there that does the timbering.

(Q.) Who is the boss over the pit boss --- who is the next man in authority over them at the mine? (A.) Mr. Emery was at that time.

(Q.) And who is over Mr. Emery --- anybody? (A.) Not that I know of, no more than Mr. Dietrich.

(Q.) Who has Mr. Emery's place now? (A.) Well, there is another gentleman there by the name of Foster, I think.

Mr. Barbour: If Your Honor please, I do not think that is proper.

Mr. Moncure: I will withdraw that if you want me.

The Court: I will sustain that objection.

(Q.) What position does Mr. Dietrich occupy -- what position did he occupy at that time? (A.) I don't know, sir, We always called him superintendent. Of course, I didn't know.

(Q.) Show me, using this stand here or any object you want in the court room, how high up from the bottom of that sum was the place where you noticed this slate, where you tapped the slate and noticed it loose, using any object here you see? (A.) I can tell pretty well by myself. I think it was about like that. (Indicating)

(Q.) About up to your shoulders? (A.) About to my shoulders, I think.

(Q.) What sound did it make -- it was like what? (A.) Well, you might know how when you strike on a barrel or anything like that, you know how that would sound, loose. The same as you would strike on a barrel.

(Q.) Have you ever had occasion before to tap loose slate? (A.) Oh, yes sir; lots of times.

(Q.) And you are familiar, are you, with the sound? (A.) Certainly, yes sir. I can tell you by the sound whether it is loose or not.

(Q.) And how close to you was Mr. Fred Stoll when you tapped that slate? (A.) He was working right beside me; we were right in the same place.

(Q.) I will ask you to state to the jury whether or not he was looking at you when you tapped the slate?

(A.) Yes, certainly, because he says to me, "Buddy, aint there something loose on that side there." Of course I being there with my shovel cleaning out the hole to bale water, I didn't pay very much attention to him. I was there with my shovel cleaning out the hole standing with my face to it, just as if this was the stone, and he says, "Buddy, there's something loose there", and by the time I straightened up, this piece, about the size of a water bucket dropped right off the end of it. It was a long piece and it dropped off the end of it and came down by my leg and I stepped back and reached down and picked up the pick and struck it and sounded it, and I said, "Yes sir; its loose".

(Q.) That was after the piece had fallen that you struck it? (A.) Yes sir; and I said, "Yes sir, its loose, Buddy. But here's as much as we will work this evening on this side, and we won't go down on that side". So we didn't work down on that side any more.

(Q.) You worked away from it after that? (A.) Yes sir; because I had a chance to keep from under it, and I wouldn't bother with it.

CROSS EXAMINATION – By Mr. Barbour:

(Q.) You say your name is Clarence Williams? (A.) Yes sir.

(Q.) And you have been working in the mines for ten or twelve years? (A.) Yes sir.

(Q.) And you consider yourself an experienced and skilled miner? (A.) Well, not expert; but of course, I can tell when anything I has to work under, when it is too dangerous for me to work under.

(Q.) You can tell when it is too dangerous for you to work under? (A.) I can tell whether a place is fit for me to work under or not.

(Q.) How many times on that day did Fred Stoll call your attention to the dripping. (A.) I don't know exactly, it was in the evening. He spoke about it two times.

(Q.) When slate cracks, and drips, falls off, in that way, is that a sign of danger? (A.) Yes sir.

(Q.) Is that what indicates it to you? (A.) Yes sir; when you see small pieces drop off, you can look out, because it might be something bigger. Generally a small piece will fall before a large piece will. When you see them keep on dropping, you look out to see if anything more is loose.

(Q.) And that is a sign of danger then, is it? (A.) Yes sir.

(Q.) And an experienced miner will look out? (A.) Yes sir.

(Q.) And clear out until some timbering is done? (A.) Certainly.

Mr. Moncure: Mr. Barbour, there is one question I overlooked. Do you know whether or not that place had been ordered to be timbered?

The Witness: I do not, not to myself. I have heard them say but I don't know that.

Mr. Moncure: I will ask you to state to the jury whether or not it was timbered?

The Witness: No sir; it was not.

By Mr. Barbour:

(Q.) I believe Fred Stoll was mucking with you? (A.) Yes sir.

(Q.) And who were the men that were running the machine? (A.) Tom Alexander and George Stewart.

(Q.) Were they white or colored? (A.) Colored

(Q.) Both of them? (A.) Yes sir.

(Q.) How far were they from you? (A.) Well they were on one side of the level. I don't know exactly how far it was.

(Q.) How far is it across the level? (A.) I suppose about twenty or twenty-five feet. I hardly know exactly, that is the truth. They was in one side and I was in the other of that place.

(Q.) Going down this incline that you have referred to, were they to the right or the left? (A.) They were to the right.

(Q.) Of that incline? (A.) Yes sir.

(Q.) And you were to the left of it? (A.) Yes sir.

(Q.) And it is about twenty-five or thirty feet. (A.) I suppose so; yes sir.

(Q.) Do you know when the ore was taken away from this piece of slate? (A.) No sir; I don't. They were shooting there all the time. I couldn't tell you exactly how long.

(Q.) How many times a day did they shoot? (A.) Only once.

(Q.) Morning or evening? (A.) Evening.

(Q.) Did they shoot once on each shift or once a day? (A.) Once on each shift.

(Q.) Then they would shoot at five o'clock in the afternoon? (A.) In one shift they would shoot in this place on this side, like tonight they would drill in this side and shoot and in the day they would drill in the other side and shoot. That is the way they worked it.

(Q.) When was the last time there had been any shooting on the side you were on? (A.) The side I was on they had shot in there at night. I was on the day shift and they shot in there at night. I went in on the day shift.

(Q.) You went in on Tuesday morning, was it? (A.) Yes sir.

(Q.) At what time? A/ At three o'clock

(Q.) Tuesday morning at three o'clock? (A.) Yes sir.

(Q.) And they had shot there when? (A.) They shot at night but they came out at five o'clock

(Q.) How did you know? (A.) They didn't shoot that night I don't think at all.

(Q.) They didn't shoot that night at all? (A.) No sir.

(Q.) So there had not been any shooting there on Monday morning – Tuesday morning? No sir; they didn't shoot any there Tuesday morning. (A.) No sir; they did not shoot any there Tuesday morning.

(Q.) And had there been any shooting in there Tuesday morning. (A.) I don't know sir, whether there had been or not.

(Q.) You said the shooting was at five o'clock? (A.) They shoot on one shift on this side and on the other shift on that side. (Indicating)

(Q.) But the shift on the left hand side, that is the place you all were working, and you said there had not been any shooting on that side, that they jumped a shot on that side? (A.) They didn't shoot anywhere that night.

(Q.) And didn't shoot in there that morning when you came on? (A.) No sir.

(Q.) Now this accident occurred on what day--- what day of the week? (A.) I couldn't tell you to save my life.

(Q.) You don't know? (A.) No sir; I don't.

(Q.) You don't know what day of the month it was? (A.) No sir or what the day of the week.

(Q.) How is it that you are able to fix the day of these conversations between you and Fred Stoll? (A.) That was while we were working together right along. I never kept any time of it or any date.

(Q.) Was that the only day that you and Fred Stoll had worked together? (A.) No sir; we had worked together a day or two before that.

(Q.) You were buddies together? Had you worked down in this same place? (A.) We weren't hardly buddies but he had worked with me two or three shifts because his buddy was off and my buddy was off and that is how come we to work together.

(Q.) So far as you know, there had been no shooting in that room or level whatever you call it, within twenty-four hours? (A.) No sir; they hadn't shot in there that night I know.

(Q.) They hadn't shot in there that night or the morning previous before you went in? (A.) No sir; of course.

(Q.) And you got one dollar and a half a day, I believe you said? (A.) Yes sir.

(Q.) Now how long had you been down in this hole that you speak of --- or did you dig the hole that day for that water to run into, at the bottom of the sump. (A.) The hole I was speaking about was what we dug to bale the water out and was only a small place like that (Indicating), bug enough to dip a water bucket in.

(Q.) When did you dig that? (A.) We cleaned that out. Everytime they shoot it is all loose and all we have to do was to take a shovel and clean out.

(Q.) When was it you cleaned that out? (A.) We didn't clean it out every day.

(Q.) When was the last time you cleaned it out? (A.) That evening before the accident, I cleaned it out to bale the water out of the place.

(Q.) Where did you put the water? (A.) In a barrel so the pump could draw it out.

(Q.) So the pump would pump it out? (A.) Yes sir.

(Q.) And I believe you said you didn't remember who was the mine boss or who was the shift boss that day with you? (A.) I don't exactly recollect that.

(Q.) You don't know who it was and about three o'clock was the last time you said anything to Fred Stoll about this? (A.) Yes sir; in the evening about two or three o'clock something like that.

(Q.) State to the jury again just what occurred between you and Fred Stoll on that subject. (A.) We was working along together, you know, shoveling and loading, and I was on the lower side of the place, the dip side, they call it.

(Q.) You were over on the side next to the wall? (A.) Next to the wall; yes sir.

(Q.) On the right hand side facing the face of the ore? (A.) Yes sir; and lots of water had been made in there and I says to him, "I will clean this hole out and we will bale the water out. There is too much water getting up in here". So I went down in there and was cleaning it out, and while I was in there working with my shovel, there was a small piece fell off this lower side down beside me, and Fred says to me, "Buddy, there is something loose down there, aint it" and I said "I don't know whether it is or not." You see water was dropping at the same time and it makes a fuss just the same. So he spoke about it again ---

(Q.) How long afterwards? (A.) A few minutes after that. No time, you might say.

(Q.) Were you still in there? (A.) Yes sir; and so we used a pick for picking and loosening up the ore and slate out of water, you know, because its in water, and it packs all the time, and I reaches down and takes the pick and sounded it, and I says, when I sounded it, it sounded drummy and bad, and I says, "Yes, Buddy, its pretty loose there. We wont work there any more. Here's all we'll load this evening and we'll work on this dry side. So we didn't work on that side any more that evening.

(Q.) Was that slate or ore that was loose? (A.) It was ore.

(Q.) It wasn't slate at all then? (A.) No sir; it was ore.

(Q.) Wasn't it your duty to pick out all loose ore? (A.) I do not; no sir.

(Q.) What were you there for, except to pick out loose ore? (A.) I was a mucker.

(Q.) Wasn't that to gather up the ore? (A.) They always claimed ----

(Q.) I am not talking about what you claim; but what you were employed to do. (A.) I was employed to muck and load up what they shot down.

(Q.) Wasn't it your duty to pull down all loose ore? (A.) No sir; I think not.

(Q.) You never did do it? (A.) I did when I was mining, of course. When I was doing mining myself; but of course, I was employed mucking then. It was the miners place to do that. When I was mining we always took down all the loose stuff, and the mockers didn't have anything to do with that.

(Q.) When the mockers discovered a loose place, what was his duty? (A.) He either tells the miners or the boss, and if the miners don't attend to it, the boss sent timbermen or somebody to look after it.

(Q.) Who did you tell about that evening, what miner or what boss? (A.) Nobody but my buddy.

(Q.) You didn't tell anybody? (A.) No sir.

(Q.) You although you knew it was your duty to tell the miner or boss, you kept your mouth shut about it? (A.) I didn't know it was my duty to tell them.

(Q.) Didn't you just say it was your duty? (A.) I say when I was mucking, but, of course, it wasn't in my way and I didn't just bother with it.

(Q.) So you didn't say anything to anybody at all? (A.) Only my buddy.

(Q.) Only your buddy? (A.) That's all.

(Q.) He was doing just exactly what you were doing though? (A.) Yes sir; he was mucking with me.

(Q.) And nothing more passed between you all from that time until you left the mine? (A.) No sir.

(Q.) Have you ever said anything to him about it since? (A.) No sir.

(Q.) You have never opened your mouth to him from that time to this? (A.) Because he quit and left the mine and hasn't been back since.

(Q.) And you have never seen him since? (A.) Yes sir; I saw him twice since.

(Q.) And you have never said anything to him about that occasion? (A.) No sir.

(Q.) Never opened your mouth to him about it? (A.) No sir.

(Q.) Who did you first tell about this story? (A.) About its being loose?

(Q.) Yes; who is the first person you told now, afterwards? (A.) I don't know who is the first one I told.

(Q.) You don't know? (A.) No sir.

(Q.) You can't remember anybody you told about it? (A.) Of course, I told it the next morning, I knowed the place was loose.

(Q.) Who did you tell it to? (A.) Some of the bossmen.

(Q.) What bossman did you tell? (A.) I don't know which one was on the shift even. I was talked to them I don't know hardly which one I told. I know I told them.

(Q.) You cannot specify as to any bossman you told? (A.) No sir.

(Q.) Did you tell Mr. Dietrick? (A.) No sir; I didn't.

(Q.) Did you tell Mr. Emery? (A.) No sir.

(Q.) Did you tell Mr. Stoll? (A.) I don't know whether he was there or Mr. Watson.

(Q.) You just think you told someone -- (A.) I just don't lay off to tell a story about it, and I don't know who I told, and so I tell you the truth about it.

(Q.) After that morning, who was the first person you told --- after that? (A.) After that morning.

(Q.) You say the next morning you told somebody, and you don't know who it was? (A.) Some of the men there.

(Q.) What men? I don't know who it was. They were all there at the same place.

(Q.) Well, I say after that who was the next person you told about that? (A.) In the morning we all goes down together, and I says, "Boys, I said that was loose".

(Q.) Who was with you when you were going down together? (A.) I don't know.

(Q.) You cannot name anybody that was with you? (A.) I could name some of them, but , of course I would like to name them all.

(Q.) Well, name them. (A.) George Stewart and Tom Alexander, the men I was working with.

(Q.) Who else? (A.) And the other men that didn't work in that place; I don't know who they were.

(Q.) That was the next morning? (A.) Yes sir.

(Q.) No after that, after the next morning, who was it you told about it? (A.) I don't know sir.

(Q.) Did you ever tell anybody about it after that? (A.) I don't know that I did after the next morning.

(Q.) Don't you think you have had a conversation about it since then? (A.) I have had a conversation, but I didn't keep it in my mind because I didn't study about it.

(Q.) And you did not regard it as a matter of any importance? (A.) Not to me; no sir.

(Q.) You said just now that this piece of slate was loose about five (5) feet above the bottom. Now you say it was not slate, but it was ore? (A.) I have never said, I don't think, it was slate.

(Q.) You don't think you have said it was slate? (A.) I don't think I said it was slate. If I did I made a big mistake, because it was ore, and I know it was ore. I don't think I have ever said it was slate.

(Q.) Before you sounded it there, you said a piece as big as a water bucket fell (A.) Yes sir

(Q.) Where did that fall off? (A.) It fell off the end of it.

(Q.) Right off the end? (A.) Yes sir.

(Q.) Didn't you say just now that wall had been completed in that direction. (A.) No sir; they were still going in that direction all the time.

(Q.) They were going to the left? (A.) I say to the left.

(Q.) But straight ahead coming down this incline that Mr. Moncure asked you about, over ahead of you?

(A.) The incline, of course, that had been completed.

(Q.) That was in this level going this way (Indicating) (A.) That is what I am talking about, where the piece fell out.

(Q.) How far was that piece from the face of the ore? (A.) From the face?

(Q.) From the face of the ore. (A.) It was about four or five feet. Of course, the whole face was ore, and this was a piece left back on the side.

(Q.) This was a piece of the face of the ore? (A.) Yes sir; that they had shot through and left on the side laying against the slate wall. (A.) And anybody that would go there would see that it was dangerous, wouldn't they? (A.) Yes sir.

(Q.) And if you ever touched it with a pick you would know it sounded hollow? (A.) Yes sir.

(Q.) And could a man go there and put his drill up against it without knowing it was dangerous? (A.) I don't see how they could, if they paid any attention to it at all.

(Q.) If they paid any attention to it at all they must know that? (A.) It looks like they would find out; that is, if they used a pick any. Of course, if they came there and not set anything up against it and not sound it or nothing they wouldn't know the difference.

RE - DIRECT EXAMINATION – by Mr. Moncure

(Q.) I understood you to say, Clarence, that they were drilling away from this place? (A.) Yes sir; right straight ahead, and this was a piece left on the side.

(Q.) Left back there? (A.) Yes sir; back on the side.

RE-CROSS EXAMINATION – By Mr. Barbour

(Q.) This was a piece of ore --- (A.) That was left back on the side, and they had shot through and left that piece.

(Q.) And three or four feet from the face of the ore. You are certain of that? (A.) Yes sir; and that was back behind there.

Mr. Moncure: And about how long had that piece been left there, would you say, how many days?

The Witness: I don't have no idea how long it had been there.

Mr. Moncure: Some days, wasn't it? The Witness: Yes sir; some two or three days, something like that.

(Witness excused)

Whereupon FRANK G. WILLIAMS a witness called by and on behalf of the plaintiff, having been first duly sworn, was examined and testified, as follows:

DIRECT EXAMINATION – By Mr. Moncure:

(Q.) Mr. Williams, will you give the jury your full name, sir? (A.) Frank G. Williams

(Q.) Mr. Williams, where do you live, sir? (A.) I live at Dumfries, Prince William County

(Q.) How long have you lived in or near Dumfries, Mr. Washington. (A.) I have lived near Dumfries about 12 years. I lived in Dumfries about 3 years.

(Q.) Are you any connection of Mr. Amidon – didn't you marry one of his daughters? (A.) Yes sir; I married one of his daughters.

(Q.) Mr. Williams, what is your age? (A.) My age is 29 years old.

(Q.) How long, Mr. Williams, have you been working or had you been working at the mine of the Cabin Branch Mining Company? (A.) Off and on together, I have been working for the Cabin Branch Mining Company – I suppose I have worked up there 6 years.

(Q.) Are you employed there now? (A.) No sir.

(Q.) How long has it been since you worked there? (A.) Well, I haven't worked there since the 2nd of March.

(Q.) The 2nd of March – you mean the morning of the 3rd of March; do you not? (A.) Yes sir; I went to work on the 2nd, but I didn't come out until the 3rd.

(Q.) How long have you worked underground? (A.) I worked underground off and on, to the best of my knowledge, about 18 months.

(Q.) What kind of work were you doing, day work or piece work? (A.) Well, I did both while I was in there.

(Q.) On the 2nd and 3rd of March, what were you doing then? (A.) Well, I was working by the day.

(Q.) By the day? (A.) Yes Sir.

(Q.) And what were you doing? (A.) Well, I were working down in the place -----

(Q.) You do not understand me. I want to know whether you were mucking or driving the bit? (A.) I was working the machine.

(Q.) And what is the man that works the machine called, "machine-man"; is that correct? (A.) Yes sir; I suppose so.

(Q.) And what wages did they pay for a machine-man underground? (A.) A machine-man in that place was getting \$2.00 per day.

(Q.) Two dollars a day or per shift? (A.) Yes sir.

(Q.) How many hours work was required for a day or shift? (A.) 10 hours.

(Q.) Now when did you go to work--- you say you were working in sump 19? (A.) Yes sir.

(Q.) And when did you to work there—how long had you been working there? (A.) Well I went there the first day of March – at least at night.

(Q.) The night of the first and came off the morning of the second? (A.) Yes sir; and went to work the night of the second and came off the morning of the third.

(Q.) Who worked with you there on the machine? (A.) Quinton L. Hutchinson.

(Q.) Who were your mockers? (A.) Well, Mr. Roger Gray and Ralph Cator (Decatur)

(Q.) Ralph Decatur? (A.) I don't know exactly his name, Ralph Cator, I knew him.

(Q.) Before you and Mr. Hutchinson went to work in 19 sump, where were you working? (A.) We were working on No. 16 level.

(Q.) 16 Level? (A.) On the north side of No. 16 level.

(Q.) How did you happen to go down to 19 sump to work? (A.) Well, we went down on the 1st day of March at night.

(Q.) Why? (A.) To go to work.

(Q.) Why did you go down there to work--- who directed you to do it, if anybody. (A.) Mr. Stoll wanted us to go down into no.19 and work.

(Q.) Which Mr. Stoll? (A.) Mr. Amos Stoll.

(Q.) What did he say to you? (A.) Well, we were to go to work in our usual place where we were working contract work and we went in and set up our machine and got ready for work.

(Q.) Was that on the first of March? (A.) That was on the first of March. We came out to the incline and were setting there waiting for our steel to come down, and Mr. Stoll also came down the upset they call it

(Q.) Amos Stoll? Yes sir; he came down to No. 16 and he says to Quinton, he says "Quint, you and Frank come here" and Quinton immediately got up and walked out, and so Mr. Stoll talked to him and my buddy called me, and I went in and Mr. Stoll says, "We want you to go down the incline and take Thomas Johnson and William's place to work tonight", and so my buddy says, "all right". So I stepped up then and says "I don't know; I don't believe I want to go down there tonight, Mr. Stoll. We can make \$2.00 up in our place just as good". So Mr. Stoll and I says "the air is bad down there", just like that, and I don't want to go down there. Its just as safe down there. Its just as safe down there as it is up in your haven", and then my buddy spoke up and says "We'll go down there and work for Mr. Stoll", so we went down there that night and worked.

(Q.) Quinton Hutchinson was your buddy, as you call it? (A.) Yes sir.

(Q.) Now you worked for how long in that shift? (A.) We worked there --- that was the first time.

(Q.) And who was the pit boss that night? (A.) Mr. Amos Stoll was the pit boss that night.

(Q.) How many times did he come around that night, would you say? (A.) He was down there when we first set up the machine to work, but whether he came afterwards, I don't know.

(Q.) Did he show you where to set it? (A.) Yes sir.

(Q.) Well, now then tell the jury whether anything happened that night? (A.) No sir; We never noticed anything that night at all.

(Q.) Well, now then tell the jury whether anything happened that night? (A.) No sir; we never noticed anything that night at all.

(Q.) The next night, when you went to work down there, tell the jury how you happened to go to work down there the next night? (A.) Well, I didn't know I had to work in there the next night until coming out I met Mr. Stoll and his brother, Fred Stoll on the railroad.

(Q.) Who was with you? (A.) Mr. Quinton Hutchinson was with me all the same time, and we met the two and he stopped us on the railroad and he told us, "We want you to work down there tonight" and I says "all right, sir"; and so he says, "you know the way you drilled last night?" I said, "Yes sir", "Well", he says, "You set up and drill the opposite way from what you did last night". So I went down and did so the best I knew how, and also Mr. Fred Stoll was down in there with us.

(Q.) Wait a minute before you come to that. What, if anything, was said at any time about who was to be your pit boss that night? (A.) Yes sir; he says, told us to go down there to work that Mr. Stoll, Mr. Fred Stoll, would be the boss tonight that he wouldn't be on tonight.

(Q.) That he, Amos, would not be on that night, and that Fred Stoll would be the pit boss? (A.) Yes sir.

(Q.) Was Fred Stoll with him then when he said that? (A.) Yes sir.

(Q.) When you went down that night, the night on which Mr. Hutchinson was killed, tell the jury whether or not Mr. Fred Stoll went down with you? (A.) No sir; he didn't go down with us at first. We went on down and then Mr. Stoll came on down, and we set up, or I set up, and it seems as though Mr. Stoll some way or other, said we were setting up in some place, and so I told him "all right" I says, "you are boss tonight; we will do as you say". "Well, he says this is all right; you all know more about it than I do", So we set up there and went on to work.

(Q.) Now tell the jury whether or not you noticed there on that night or the night before anything unusual about the wall of that sump there? (A.) No sir; not unusual, until about 12 o'clock --

(Q.) Wait; before you come to that. Now this book here represents the sump down there where you all were working, this paper here represents the incline going down to it -- you understand now -- coming down from the top, and here is the sump here, now where do they bore? This is the long way, you understand. How do you understand me? (A.) Yes sir.

(Q.) For instance, coming into the mine and going down, you come down here. Here is the incline that goes down to your sump. Now where did you set your machine? (A.) We set our machine right up here--- on the dip side they call it.

(Q.) When that ore fell, where did it fall from? (A.) I suppose, I couldn't exactly say where it fell, I suppose it rolled or slid from the ----

(Q.) Just show the side here? (A.) This side, I suppose. (Indicating) The top, this hasn't any top to it.

(Q.) I understand that. Of course, it is covered over, and you are in there. Of course, it is covered over. You say it fell from that side? (A.) Yes sir.

(Q.) And the machine was setting here? (Indicating) (A.) Yes sir.

(Q.) And where was Mr. Hutchinson -- what especial part of that machine did he work? (A.) He was working, running the machine that night.

(Q.) What do you mean by "running the machine"? (A.) He was cranking the machine.

(Q.) He was cranking the machine? (A.) Yes sir.

(Q.) And what were you doing? (A.) I was turning what they call the front end of the machine, changing steels and all.

(Q.) Did you draw that? (Referring to pencil sketch) (A.) Yes Sir.

(Q.) I want the gentleman to use that to illustrate to the jury. Does that represent the incline going down.

(A.) Yes sir.

(Q.) What does this represent? (A.) This represents the sump, 19 level.

(Q.) And what is that, right there? (A.) This is a barrel that was sitting by the side of the incline that came down there which was to dip the water out of there and put it in the barrel and the pump forces it out.

(Q.) What does this represent? (A.) This represents the machine setting here were we were at work drilling in the face of the sump.

(Q.) What, if anything, peculiar when you went down there the night before did you notice about this wall? (A.) And the next night?

(Q.) And the next night? (A.) Not a particle thing the next night.

(Q.) You did not notice anything peculiar about it the next night? (A.) No sir.

(Q.) You went on to say something just now "until about 12 o'clock", What did you start to say? (A.) I was going to say, about 12.00 o'clock we all were sitting down there talking and we got up to go to work, I don't know exactly now what time --- we are supposed to go to work at half past 12.00.

(Q.) Do you knock off to eat at 12.00 o'clock? (A.) Yes sir; supposed to have half an hour, and probably it might have been a little bit later, may be, I don't know exactly now. But anyhow we had got up and gone to work and Mr. Ralph Cator (Decatur) was standing there --- as I showed you this barrel was here, and he was standing there dipping up some water, baling up some water and putting it in this barrel; and, of course, you know, there was a piece of rock fell out the top about middle of the incline. As I said, that was about five or six feet away from the piece that fell upon Mr. Hutchinson, and then Cator (Decatur) he examined this a little bit over the top there to see why it was, and then I taken a drill and sounded it kinder myself --- this was in the top, understand me now, nowhere near this here on the side of the sump.

(Q.) I see? (A.) And I sounded that there, and I says, "that seems to be tolerably good; that may stay there all right". So we left that then, and we didn't bother any more.

(Q.) How far was Mr. Hutchinson working from there? (A.) We wasn't at work at the present time; we were looking over the stuff.

(Q.) Now when you went to work, how far did you go to work from that piece that dropped? (A.) When we went to work, we went about 5 or 6 feet.

(Q.) Five or six feet? (A.) I suppose so, as near as I can come at it.

(Q.) And the ore that finally fell was how far from this piece. (A.) Well, I say, it was about five or six feet.

(Q.) Five or six feet? (A.) Yes sir. Ore or slate, I don't know which it was.

(Q.) Was it ore or slate? (A.) I don't know exactly which it was. It was either slate or ore, probably mixed, I don't know.

(Q.) How far were you boring from the piece that fell? How far was your bit from that piece that fell, about how many feet. (A.) Well, this piece fell right on top of it.

(Q.) How long is that machine you bore with? (A.) Well, I suppose the machine is about two feet and a half, I reckon.

(Q.) And you at one end? (A.) I was at one end.

(Q.) And he was at the other? (A.) Yes sir.

(Q.) And he was the end where this piece fell ? (A.) Yes sir; and understand, this here machine was coupled up to a drill in the hole.

(Q.) I understand? (A.) We hadn't coupled when this piece fell on.

(Q.) Now was there anything in the falling of that piece at the top, you say over here, to indicate to you all in any way that this piece over here was loose? (A.) No sir; I didn't know anything in the world about that piece at all; and also this piece that I told you while ago about sounding is hanging up there yet, so some of the people said that was here.

(Q.) You mean, that dropped from the top? (A.) Yes sir.

(Q.) It never fell from there at all? (A.) No sir.

(Q.) Now using this to illustrate, just show the jury where that ore fell from that killed Hutchinson? (A.) It fell from right here, I suppose, I don't know which you would call top of it.

(Q.) From the top and side, was it? (A.) Anyhow, it landed on him when it fell, right on this crank of the machine.

(Q.) It caught him about in the waist, didn't it? (A.) Yes sir.

(Q.) And he had his back to the wall, did he? (A.) Yes sir.

(Q.) Now the piece that fell about twelve o'clock, fell from what part? (A.) It came from along here, somewhere (Indicating)

(Q.) Right close to the barrel? (A.) Yes sir; because a man was standing by the barrel baling water and putting water in it.

(Q.) Now was there anything said by anybody there, or was anything said by Mr. Decatur there, about the place being dangerous from which this ore fell and killed Hutchinson? (A.) No sir.

(Q.) There was not? (A.) Not to my knowledge, there wasn't

(Q.) You were right there with Hutchinson all the time. (A.) I was there working right beside him.

(Q.) Was anything said by Mr. Decatur to Mr. Hutchinson about the place where he was working being dangerous in any way. (A.) To Mr. Hutchinson

(Q.) Yes. (A.) I couldn't say. If there was words between them, I don't know

(Q.) You were right there with them, weren't you? (A.) I was there, of course, but I didn't hear any conversation.

(Q.) Where did Decatur continue to work (A.) On the north side mucking.

(Q.) Mucking? (A.) Yes sir.

(Q.) With reference to this (Indicating) where is the north side? (A.) Over here. Here is the south side over here, we were working in.

(Q.) And the little piece that dropped was right here? (A.) Yes sir.

(Q.) And that piece that killed Mr. Hutchinson was over here? (A.) Yes sir.

(Q.) About how long had you all been working? You say you went to work at half past twelve? (A.) We went to work about half past twelve.

(Q.) How long had you been working when this ore finally fell and killed Mr. Hutchinson—about what time was it in the morning? (A.) I suppose that was maybe two o'clock, I don't know exactly. I didn't have any time. I don't think any of us had any time-piece at all.

(Q.) What first attracted your attention? (A.) To this piece falling?

(Q.) When Mr. Hutchinson was Killed? (A.) There wasn't anything attracted my attention to that piece.

(Q.) I say when did you first notice what had happened? What attracted your attention to what had happened? (A.) He hollered. That is what attracted my attention to that.

(Q.) Just tell the jury now just what you saw and heard when he was killed, as he was killed? (A.) Well, of course, I know he was killed, that's all. A piece came over on him and he hollered, and for a second or two, I didn't know hardly what had happened.

(Q.) Where were you? (A.) I was standing beside the machine.

(Q.) At the bit? (A.) No sir; at the end of the machine that he was on.

(Q.) How close did it come to you? (A.) It came, I suppose, in two or three inches of me, right against my shoulders. I had turned around and I hadn't seen the piece, and I didn't recognize hardly what had happened for a second or two.

(Q.) Show the jury how he was facing there toward the machine. Use your chair there as the machine and show the jury just how he was hurt? (A.) Well, like this was the machine sitting here

(Q.) Where was Hutchinson? (A.) He was the side of the sump, one leg of the tripod was setting over here. Mr. Hutchinson was setting up also this way cranking the machine, like that. Of course, I didn't see the piece, but I suppose it turned or rolled from the side and caught Hutchinson right against the side, I guess it was.

(Q.) How was he pinned? Show it there so the jury can see you, just how he was against the machine?

(A.) He was leaning against the machine just like this.

(Q.) Where was the ore or slate? (A.) Right against his back.

(Q.) And all the way down? (A.) Yes sir; and still wasn't touching the ground at all.

(Q.) Tell the jury if it was in one solid piece or if it was crumbled up? (A.) The piece I saw was one solid piece.

(Q.) In one solid piece? (A.) Yes sir.

(Q.) And in order for it to have caught him that way it had to fall from the back of him, did it not? (A.) Yes sir; it had to fall from the back or turned over.

(Q.) I say, it had to fall from behind him to catch him that way? (A.) Yes sir; from behind

(Q.) How many people did it take to get that ore off Mr. Hutchinson? (A.) I don't know exactly how many it was, but it was five or six came down in there to take the piece off of him.

(Q.) After he hollered that time, when he was caught, did he ever speak? (A.) No sir; he never said any word at all, kinder struggled a little.

(Q.) How long did it take to get that ore off of him – about how long? (A.) I would probably say it was between ten and fifteen minutes.

(Q.) Ten or fifteen minutes? (A.) Yes sir; may be. It might not have been that long or maybe longer.

(Q.) Tell the jury whether or not he was dead? (A.) No sir; he wasn't dead. We picked him up, at least some of the others did. I didn't pick him up, and carried him back, I suppose a few yards on the other side from where he was killed, and laid him down on some muck that was laying in there, and he gave one long gape and he died.

(Q.) Before he was taken out? (A.) Yes sir; before he was taken out to the top.

(Q.) I will get you to tell the jury whether or not Mr. Hutchinson was a healthy man, Mr. Williams? (A.) Well, he was a healthy and strong man so far as I know. I have known him ever since he was small. We were first cousins and I have been with him right smart. He was a strong and healthy man so far as I know. He never had a days' sickness that I know of.

(Q.) What was his age? How many years old was he? (A.) I don't know exactly his age.

(Q.) If you don't know it does not make any difference. I will get you to tell the jury how the top and sides of this sump down there, where you were working, look; that is to say, whether or not it is rough and jagged, or smooth. Described that as near as you can, please sir? (A.) Well, it is pretty rough all right, and kinder dark like.

(Q.) The side and top and all around is rough and jagged you say? (A.) Yes sir.

(Q.) What light do you have? (A.) We just have a small light to go on your head; that's all the light we have.

(Q.) A little lamp like? (A.) Yes sir; what's called a pit cap, and a light hangs in front of it.

(Q.) What candle power has that; you know? (A.) What do you mean --- to burn in it?

(Q.) What do you mean --- to burn in it? (A.) well, you don't know the candle power of it, I suppose.

(Q.) How many feet down in the ground is that sump where you all were working that night? (A.) Well sir, I couldn't tell you. That was out of my place and I don't know.

(Q.) What number of sump is it? (A.) Its called No. 19

(Q.) And how many feet are the inclines that go down there, or supposed to be, each one? (A.) From one to another

(Q.) Yes? (A.) some are 72 feet and some are 60 feet.

(Q.) And the top one, how long is that --- the last one at the top? (A.) I don't know; that's all be robbed out and all in there before I went to work there. I don't know exactly how far it is from the first one to the top.

(Q.) How long does it take a man to go down in that mine walking, or come back walking? (A.) It would take them about 10 minutes, I guess and maybe 15 to walk clear down to the bottom of it.

(Q.) And 15 to come back. You go down, do you, on ladders? (A.) Yes sir; we go down ladders some parts of the way, and some parts of the way you walk down on nothing but the solid earth.

(Q.) How much ore does the car that brings the ore up hold? How much do they carry at one time, about? (A.) I have heard it carried about a ton. I think it carries a ton, or more or less, I don't know.

(Q.) Who brought Hutchinson's body out of the mine? (A.) Mr. Ben Davis and Ralph Cator. (Decatur)

(Q.) Were you at the top of the mine after the body had been brought out when Mr. Emery came there?

(A.) Yes sir; I came to the top when the body was brought out.

(Q.) Were you there when Mr. Emery came there and called for the pit boss. (A.) Yes sir.

(Q.) And who answered that call? (A.) Mr. Fred Stoll.

Mr. Barbour: We object to that as an immaterial matter, and move to exclude it.

The Court: I will overrule the motion.

EXCEPTION by Counsel for defendant.

By Mr. Moncure:

(Q.) Do you know about how long Quinton Hutchinson had been working for Cabin Branch Mining Company? (A.) No sir; I do not

(Q.) While you were there had he ever worked in this lower sump before? (A.) No sir; I don't think he had ever worked in there before.

(Q.) How did it happen that that place had not been timbered down there? (A.) I couldn't tell you that either, because I hadn't been working in there. That was the second night I ever worked in there.

(Q.) Is the place timbered where you were working? (A.) No sir; it wasn't timbered then. It may be now.

(Q.) Who was the timberman for that lower place down there; do you know? (A.) Tom Reynolds was supposed to be timberman, and I don't know hardly who was timberman with him then?

(Q.) How many pit bosses did they have there at the mines at that time? (A.) Why, they had regular shift bosses. They had two I suppose.

(Q.) What were their names? (A.) Mr. Andrew Watson/

(Q.) And who was the other one? (A.) Mr. Amos Stoll.

(Q.) What was the duty of a pit boss there?

Mr. Barbour: If Your Honor please, we object to this evidence unless this witness can state that he knows what the duty is.

The Court: I sustain that objection. Show what he knows about it, and then he can tell.

By Mr. Moncure:

(Q.) Do you know the duties of a pit boss there, or shift boss, whichever they call them? (A.) I suppose their duty is ---

Mr. Barbour: - Hold on -----

(Q.) Do you know the duties of the pit boss there? (A.) I think I do.

(Q.) All right, sir. What are they, Mr. Williams? (A.) Their duty is, they were to look after the men that is working under them, and keep their time.

(Q.) And what else? (A.) And I suppose to see whether the places is carried on in proper manner or not.

(Q.) How often do they go around to examine the places to see that? (A.) I don't know how often they go around. They didn't visit me very often when I was working in there in places. I suppose they ought to go around once every twenty-four hours anyhow.

(Q.) On each shift, you mean? (A.) Yes sir.

Mr. Barbour: He doesn't say he means anything like that.

The Court: He says he supposes; unless he knows ----

Mr. Barbour: I move to exclude Mr. Moncure's suppositions. Mr. Moncure told him that he meant once on each shift and not once in twenty four hours.

Mr. Moncure: I will ask him if he means that each pit boss ---

Mr. Barbour: Don't ask him what you suppose he means.

By Mr. Moncure:

(Q.) I want to ask him if he means by that once in 24 hours? (A.) I mean once in 24 hours. They have two shifts.

(Q.) Yes? (A.) They can only go around to see one shift. I think they only visit them once in twenty four hours.

(Q.) How often would the night man go around? (A.) The night man?

(Q.) The night shift boss? (A.) It's the same thing.

(Q.) And how often would the day man go around? (A.) They are supposed to do the same.

CROSS EXAMINATION – by Mr. Barbour

(Q.) You were a brother-in-law, I believe of the man who was killed – Hutchinson (A.) Yes

(Q.) A first cousin and his buddy, also? (A.) Yes sir.

(Q.) He was an experienced miner, was he not? (A.) I don't know, sir, whether he was or not.

(Q.) You don't know? (A.) No sir.

(Q.) Do you know how long he had been working as a miner? (A.) No sir; I don't know exactly how long he had been working. He hadn't been there long enough for an experienced miner.

(Q.) Don't you know he had been there about three years? (A.) No sir; I don't know that.

(Q.) How long do you think it takes a man to be an experienced miner? (A.) I couldn't say. It would take a right good while in there.

(Q.) You were not an experienced miner then? (A.) No sir; I wasn't

(Q.) How long had you been working there? (A.) I have been working there off and on 18 months, I reckon.

(Q.) And you were not an experienced miner? (A.) No sir.

(Q.) How long would it take you to get the necessary experience to be a miner? (A.) I don't know, sir. If I worked in there and had some good man with me to show me and learn me, I might learn in 18 months, something like that, probably sooner.

(Q.) And Hutchinson, you say, was your buddy. Had he been working with you for the 18 months? (A.) No sir.

(Q.) How long had he been working with you. (A.) Between three and four months, something like that.

(Q.) Anyhow, you hadn't gotten to be experienced? (A.) No sir.

(Q.) Then you are not capable of judging when a place is safe or not safe? (A.) No sir. But I could use my opinion on that though.

(Q.) But your opinion, is it any good; is what I want to know? (A.) I don't know whether it would be any good or not.

(Q.) You don't know. You had been working in this particular place since the night of March 1st (A.) Yes sir.

(Q.) That was the first time you had ever been down there? (A.) Yes sir.

(Q.) How do you get down in these mines, do you climb down, or do you have a car? (A.) You can walk down or go down in the skip that hoisted you down.

(Q.) How is that operated? (A.) It is operated by steam.

(Q.) You could go either way? (A.) Yes sir.

(Q.) And you went on duty, when? (A.) 7.00 o'clock at night. Supposed to go at 7.00

(Q.) At 7.00 o'clock (A.) Yes sir.

(Q.) And you came off at what time in the morning.? (A.) Supposed to come off at 5.00 o'clock in the morning.

(Q.) This accident occurred between two and three o'clock, I believe? (A.) Yes sir.

(Q.) What time was it, and where was it that Mr. Amos Stoll told you that he wanted you to go to work?
(A.) What time was it?
(Q.) Yes; that night? The night of the accident? (A.) I suppose it was between six and seven o'clock, and maybe it might have been seven or a little after. We had been down there and had set up in our usual place ready to go to work.
(Q.) Where was "Our Place"? (A.) No. 16 level.
(Q.) There you were doing contract work, weren't you? (A.) Yes sir.
(Q.) On your own hook? (A.) Yes sir.
(Q.) You both regarded yourselves as competent to do that? (A.) Yes sir; we were working in there, I guess we were.
(Q.) And there you looked out for your own safety? (A.) Yes sir; in there we did.
(Q.) And who then told you that he wanted you to go down in No. 19. You say that was between six and seven o'clock, or after seven. Now can you tell us which it was? (A.) I say between six and seven or seven maybe. I don't know which.
(Q.) Was it after seven or before seven? (A.) Between six and seven.
(Q.) Then it was before seven? (A.) Or seven, I said. I didn't say before seven or after seven.
(Q.) I understood you to say at first it was between half past six and seven? (A.) I said between six and seven.
(Q.) Where did that conversation occur? (A.) It occurred on the railroad coming from Dumfries to the Cabin Branch Mine.
(Q.) Right on the railroad coming from Dumfries to the Cabin Branch Mine? (A.) Yes sir.
(Q.) That was above ground then, was it? (A.) Above ground?
(Q.) Yes. (A.) Sure it was on the ground.
(Q.) It wasn't in the mine at all? (A.) No sir.
(Q.) It was outside of the mine? (A.) That was the second night he told us.
(Q.) I say the second night; that is what I am talking about, the night of this accident. Where did that occur? I just want to get that straight? (A.) On the railroad.
(Q.) That was on the railroad? (A.) Coming from Dumfries to Cabin Branch mine.
(Q.) Didn't you say you had already been in the place you were at work and set up your machine when he told you that? (A.) Not when he told me that; that was the second night.
(Q.) Then you hadn't been in the mine at all that night when he told you this. The night of the accident you had not been in the mine at all, when he told you the second time he wanted you to go in the mine?
(A.) He told me the second night he wanted me to go down there again.
(Q.) And you hadn't been in the mine before that night at all? (A.) Before the second night?
(Q.) No; that night. You hadn't been in the mine before, that night? (A.) I had been in there the first night.
(Q.) I am taking about on this particular night. You hadn't been on the mine on that particular night before; had you? (A.) I told you we had worked in there the first night.
(Q.) I am talking about the second night, Mr. Williams? (A.) This was the second night.
(Q.) Had you on the second night been in the mine before? (A.) Before the second night? Yes sir.
(Q.) Where had you been? (A.) I had been working in No. 19 level on the first night.
(Q.) I am not talking about the first night, but the second night, Mr. Williams. Had you been in No. 19 on the second night or the day of this talk on the railroad. (A.) Yes sir; I had been there.
(Q.) On the second night? (A.) No sir; not on the second night.
(Q.) Why didn't you say that at first? (A.) I couldn't understand you at first, that's the reason.
(Q.) So, when you had this talk, you hadn't gone to work at all that night? (A.) No sir.
(Q.) You were on your way to work? (A.) We were on our way to work.
(Q.) And who was present when that conversation occurred? (A.) His brother, Mr. Fred Stoll.
(Q.) Mr. Fred Stoll and Mr. Amos Stoll and yourself? (A.) And Quinton Hutchinson.
(Q.) Anybody else? (A.) No sir.

(Q.) And what transpired there? What took place then? Just tell the jury what occurred there? (A.) Well of course, we went on to work.

(Q.) What did Mr. Stoll say to you, and what did you say to Mr. Stoll? (A.) Mr. Stoll met us out there on the railroad, and told us "I want you to go to work tonight in the same place". I says, "All right". So he says, "My brother" --- he says "Fred, will be down to boss tonight. I won't be back tonight". I said "all right". So we went on in that night.

(Q.) Was that all that occurred? Have you stated every word that transpired on that occasion? (A.) So far as I know, outside ; yes sir.

(Q.) That was all that occurred. He said, "I want you to go down in the same place"? (A.) Yes sir.

(Q.) And you said "all right"? (A.) Yes sir.

(Q.) Now are you certain of that? (A.) Yes sir.

(Q.) Now go ahead? (A.) So we went down in the place and went to work that night, and we worked up - -- now let me see, I'll get it straight: Mr. Stoll came down the first part of the night, Mr. Fred Stoll, Mr. Amos Stoll's brother, and was supposed to be shift boss that night, and we were setting the machine up and so he come around and says, "Is this the way you all are going to set up?" I said, "Yes sir". So he says "I understand to set up some different way. "I don't now exactly how it was not. So I says, "All right, Mr. Stoll, any way at all". And he says, No; go ahead and set up just like you want to. You know more about it than I do. I don't know anything about it". So we went on and set up and went to work.

(Q.) So you did set it up the way you wanted to set up? (A.) Yes sir; the best we knew how. He told us to set up and we went to work, and worked on until 12 o'clock, (A.)m stopped and ate dinner, sat down and were talking, and at half past twelve, we got up and went to work and sometime between half past twelve and two o'clock, I don't know exactly how it was, but Mr. Cator (Decatur) was baling some water out of the bottom of the level, putting it into the barrel which the pump forced it out to another level, and while he was baling some water, some little stuff dropped out from the top. So Mr.Cator (Decatur) stopped then and sounded some of it along. Then I taken a piece of steel myself and sounded a little bit of it up there, and it sounded tolerably well, and I told them, "I believe that's all right; I don't know. We won't work under it anymore or around it". So we left then and went on to work and between two and three o'clock this piece came from the side over there about five or six foot away from there, and pressed Hutchinson against the machine.

(Q.) And so when you went into that room Fred Stoll didn't come in with you when you went in there to work? (A.) No; at first he didn't come in.

(Q.) You all went in there at first? (A.) Yes sir.

(Q.) Did you do anything to ascertain whether or not you were putting your drill at a safe place? (A.) Of course, I thought it was safe all right.

(Q.) I say, did you do any sounding to ascertain whether it was or not? (A.) No Sir

(Q.) You did not sound a thing? (A.) No; not then I didn't.

(Q.) And the way you set the drill, Quinton had his back against this very piece of rock or ore that fell?

(Q.) Yes? (A.) He was setting with his back towards the piece that fell.

(Q.) Didn't he have his back up against the piece of that wall pressed against it, and the drill? (A.) No sir.

(Q.) How far was the drill that he was cranking from that piece of ore that fell, from that wall? (A.) I couldn't say how far it was from it.

(Q.) Was it two feet? (A.) I suppose it was two or three feet, something like that from it.

(Q.) How far did that piece of ore have to slip in order to squeeze him so he couldn't get out? How far did it have to move? (A.) I don't know how far it had to move. I caught him all right though.

(Q.) Did it have a foot to move? (A.) I don't know whether it moved two or three or four, or what.

(Q.) And he didn't know whether he had one, two, three, or four feet spare room between the wall and his drill? (A.) No he probably had two or three feet.

(Q.) And both of you went in that mine and didn't sound any of the walls at all? (A.) Not any of the walls; no sir.

(Q.) None of the side walls? (A.) No sir.

(Q.) And you knew the pit boss hadn't been in there ahead of you? (A.) The pit boss had been in there all day before that.

(Q.) Yes; I know. But you knew your pit boss that night hadn't been ahead of you? (A.) No sir; he came down though while we were setting up.

(Q.) He came there whilst you were setting up? (A.) Yes sir.

(Q.) And he objected to the way you were setting your drill, but finally told you to go ahead and suit yourself? (A.) Yes sir.

(Q.) And you did that? (A.) Yes sir.

(Q.) Did you notice around to see whether everything was safe or not when you went in there? (A.) Of course, we noticed around. At least, my buddy did.

(Q.) But you didn't do anything. Your buddy was Quinton, and he noticed around but you didn't. (A.) No sir.

(Q.) You did not exercise any precautions at all? (A.) No sir, because I thought the place was perfectly safe.

(Q.) It looked all right, didn't it? (A.) Looked all right to me.

(Q.) Any man going in there, so far as anything his eyes would develop, would notice no danger? There was no danger there apparent to the eye? (A.) I didn't know there was any there.

(Q.) Did anybody else? Did Quinton see any? (A.) I don't know whether he did or not. Probably an experienced miner going in there---

(Q.) Did Quinton see anything like that? (A.) I don't know whether he did or not; no sir.

(Q.) I believe you say that Mr. Stoll, Mr. Fred Stoll not Mr. Amos Stoll, came in before you got your drill set that night? (A.) He came in as we were setting it.

(Q.) Did he come back any more that night? (A.) Yes sir; he came back again.

(Q.) He came back there a second time? (A.) Yes sir.

(Q.) What did he do then? (A.) He didn't do anything. He came in and looked around and went out.

(Q.) What time was that? (A.) I don't know what time that was. I didn't have a time piece.

(Q.) Was that before --- (A.) That was before 12 o'clock; yes sir.

(Q.) So he was in there twice before 12 o'clock? (A.) Yes sir.

(Q.) Was he in there after 12 o'clock? (A.) I think, if I aint mistaken, he was in there directly after we had gone to work in the afternoon.

(Q.) After you had got your dinner? (A.) Yes sir.

(Q.) And that was after this piece had fallen? (A.) No sir.

(Q.) Did you say that occurred about 12 o'clock when you were eating your dinner? (A.) No sir; I said between half past 12 and 1 o'clock, something like that, because we had gone to work. We are due to go to work at half past 12.

(Q.) So you had gone back to work? (A.) Yes sir.

(Q.) Didn't you say to the jury just now "When this first piece fell, we wasn't at work then? (A.) No sir; I did not.

(Q.) You did not say that? (A.) No sir.

(Q.) So you recall now Mr. Fred Stoll being in your place three times that night: once when you were setting your machine, once before 12 o'clock, and once after 12 o'clock? (A.) Yes sir.

(Q.) Do you remember when he was in there, just a short time before this big piece fell? Don't you know he was in there just a short time before that? (A.) I don't know, sir.

(Q.) You won't say he was not there? (A.) No sir; I don't remember.

(Q.) But you do remember his being in there three times that night? (A.) Yes sir; he was in there three times.

(Q.) That was more than usual; wasn't it? (A.) I don't know.

(Q.) Didn't you say that once in 24 hours was usual? (A.) Yes; but he was pit boss that night.

(Q.) Now you say that this small piece that fell was five or six feet from the big piece that fell? In which direction as the little piece from the big piece? Was it towards the face of the ore or away from the face of the ore. (A.) This piece was near about the center of the level.

(Q.) How long was the level? (A.) I don't know exactly how long it was. It was a right smart ways.

(Q.) Was it 30 feet ?. Well, I suppose the whole thing was.

(Q.) The whole level was 30 feet long? (A.) I suppose so.

(Q.) And if this was about the middle of it, it was about 15 feet? (A.) Something about 15 feet.

(Q.) About 15 feet from the face of the ore? (A.) From the face of the ore to the middle of the level.

(Q.) Now that was with reference to the length of it. How wide was the level? You say it was 30 feet long? (A.) Well I suppose it was 10 or 12 feet wide, probably more.

(Q.) Was it about the middle of it's with too? (A.) Yes sir; it was somewhere about the middle of the width.

(Q.) So it was just about the middle from both the sides and both the ends. (A.) Yes sir.

(Q.) So that piece was about 15 feet from the face of the ore in both directions, and about 6 or 7 feet from each side of the side walls? (A.) Yes sir.

(Q.) Was that a piece of ore or slate that fell? (A.) It was ore or slate I don't know which.

(Q.) How big was it? (A.) I didn't see it any more after it fell. I couldn't judge them how big it was. They told me there was about 3 tons of it.

(Q.) About three tons; that was the piece that fell first? (A.) No sir; not the piece that fell first.

(Q.) The piece that fell last was about three tons? (A.) Yes sir.

(Q.) I am asking you about the piece that fell from the middle? (A.) That was a very small piece.

(Q.) How big? (A.) I don't know hardly how large it was.

(Q.) Was it as big as your fist, or head, or a water bucket? (A.) About the size of a water bucket, something like that.

(Q.) What shape was it? (A.) I don't know what shape it was.

(Q.) Then how do you know what size it was? (A.) Couldn't you tell the size of anything without knowing the shape of it?

(Q.) Did you see it after it fell? (A.) I seen it when it fell. I never noticed it any more after it fell.

(Q.) You just saw it as it was falling through space, and never took the trouble to look at it to see what it was that had fallen? (A.) No sir.

(Q.) But you all went to picking around there with pieces of steel, went back this 15 feet from your machine, and your machine was up against the face of the ore, wasn't it; and you went back 15 feet picking around where that piece came from, and found it was all right? (A.) We went back 15 feet.

(Q.) You said it was about the middle of the room, 15 feet from the face of the ore? (A.) Yes; where this piece fell out.

(Q.) And you all went back from the face of the ore, back to that place and commenced picking in the roof? (A.) No; we didn't go back there

(Q.) Where was it that you picked in the roof? (A.) Where this piece fell out.

(Q.) Where which piece? (A.) This first piece.

(Q.) That fell out fifteen feet from the face of the, ore; didn't it? (A.) Yes sir.

(Q.) And that is where you went back and picked, wasn't it? (A.) We didn't have to go back anywhere at all. We were right there when it fell out.

(Q.) Was it right over you? (A.) It was right over this fellow baling the water, Ralph Cator. (Decauctor)

(Q.) How far was it from you? (A.) I was just back of him, I suppose about four or five feet.

(Q.) Toward the face of the ore? (A.) Yes; towards the face of the ore.

(Q.) Did you pick it any to find out whether it was safe or not? (A.) After they did, I took some steel, and of course it was right high up, and I just touched it up there and it sounded tolerably good.

(Q.) It sounded all right? (A.) That piece did; and they tell me its hanging there yet.

(Q.) And Fred Stoll wasn't there at that time? (A.) No sir; not at that time.

(Q.) Did he come in before that or after that? (A.) He came after that.

(Q.) He came in after that. Did you say anything to him about that? (A.) No sir; not about that.

(Q.) You never said anything to him about it at all. Didn't you say just now that he came in before that, and was not in there after that piece fell? Wasn't that what you told the jury just now? (A.) He was down there three times during the night.

(Q.) Did this piece that fell, did it fall in the water that Decatur was dipping out? (A.) I couldn't say whether it fell in the water or not. It might have fell in some water maybe.

(Q.) Did it fall in this pit that he was dipping the water out of? (A.) No sir.

(Q.) How far did it fall from that? (A.) I don't know.

(Q.) You don't know whether it was five feet or ten feet from that? (A.) I don't know how far it was from that place.

(Q.) Can you tell whether it was five feet or fifteen feet from that place? (A.) No sir.

(Q.) Well then, give this jury the benefit of any recollection on that point you have at all? (A.) No sir; I don't know exactly how far it was from it.

(Q.) I didn't ask you to say exactly, but cannot you tell approximately how far it was? You don't know how far it was? (A.) No sir; to tell you the truth, I don't know how far it was.

(Q.) And you cannot say whether it was three feet or ten feet ---

Mr. Moncure: He has told you three or four times, Mr. Barbour.

Mr. Barbour: He hasn't told me anything yet.

By Mr. Barbour:

(Q.) Are you able to state whether it was three feet or ten feet from this hole that he was dipping water out of that this small piece of ore fell? (A.) Suppose I tell you something less than ten feet then.

(Q.) Is that a guess? (A.) I don't know, guess or no guess.

(Q.) Are you able to state as a fact whether it was or not? (A.) I am not able to state how far it was. I just don't know how far it was.

(Q.) You can't tell whether it was nearer three feet or ten feet? (A.) No sir.

(Q.) How far was this piece that fell and killed Quinton, how far was that from the face of the ore. (A.) From the face of the ore?

(Q.) Yes. (A.) Well I suppose; I don't know hardly, three or four feet I guess.

(Q.) It was three or four feet from the face of the ore. And your machine was how many feet from the face of the ore? (A.) Well, the machine and all, setting up, I guess, from the front end of the machine, I suppose it would be about that.

(Q.) About the same distance. So that your machine was the same distance approximately from the face of the ore that this piece of rock was?

Mr. Moncure: Mr. Barbour, he doesn't say that. He said from the front of the machine

By Mr. Barbour

(Q.) It was three or four feet, as I understood you, from the face of the ore to the machine; is that the nearest point of the machine? (A.) I said machine and all.

(Q.) And the machine was how long? (A.) I suppose about two feet, maybe, or little over; I don't know exactly.

(Q.) That would bring the sides of the machine, that was nearest the face of the ore within a foot and a half of the face of the ore, wouldn't it? (A.) The side of the machine.

(Q.) The end of the machine or side of it, whichever you call it, I don't care particularly about that, but the nearest portion of the machine; that portion of the machine that was nearest to the face of the ore, according to your calculation was about a foot and a half; is that correct? I just want the facts about this matter. I don't want to confuse you.

Mr. Moncure: If you will ask him how far the front of the machine ---

By Mr. Barbour:

(Q.) How far was the face of the ore from the front of the machine? (A.) From the front end of the machine where we put the drill in to go work would be about a foot and a half, and from the whole machine and all back would be three feet or two and a half feet or two and a half.

(Q.) That would make your machine about two feet long? (A.) I don't know how long it would make it; but I have told you as near as I can tell you.

(Q.) So then the rear end, that is that side of the machine that was furthest from the face of the ore, was about the same distance from the face of the ore that this rock was, or this lump of ore that fell?

Mr. Moncure: Do you understand that?

The Witness: I don't know how I could understand it.

Mr. Moncure: Can you understand Mr. Barbour's question?

The Witness: No sir; I don't

(The stenographer read the pending question)

By Mr. Barbour:

(Q.) Do you understand that now? (A.) I don't understand what you said about the front of the machine? I never said anything about the side of the machine at all.

(Q.) Tell me this, which was the nearest to the face of the ore, this rock that fell or your machine? (A.) If I was to tell you that, I would have to tell you where the rock was where it fell on.

(Q.) Well, it did fall? (A.) It hadn't fell out then, and I never paid any attention to it, and didn't know anything about it.

(Q.) It hadn't fallen out then and you didn't know anything about it? (A.) No sir.

(Q.) And there was nothing that attracted your attention to it. You didn't know there was a piece of ore there and couldn't tell by looking at it? (A.) No sir, I couldn't tell whether it was ore or slate.

(Q.) And you don't know when it fell from --- (A.) I know it came from the top or side.

(Q.) And you don't know whether it was nearest to the face than your machine was or further. (A.) No sir; the onliest time I seen that piece of ore it was on him.

(Q.) After it had struck him. If you don't know where it came from, how can you tell whether you ever tested it or struck it, or knocked it, to find out whether it was loose or not? (A.) I did not; that piece has never been tested by none of us.

(Q.) By none of you? (A.) No sir; none of us.

(Q.) And there was nothing in its appearance to suggest to you the propriety of testing it, was there? (A.) I don't know what you mean. I have told you as far as I know, and best I know.

(Q.) Was there anything about the looks of that piece of ore to suggest to your mind that it would be a safe thing for you to do, to test it to find out whether it was safe or not? (A.) No sir; I told you I didn't know anything about that piece of ore.

(Q.) I believe you undertook to state to the jury what the duties of a mine boss were. You said you thought you understood it. How did you get your understanding? You are not an experienced miner, you say? (A.) I never got any yet.

(Q.) You have no understanding on the subject then? (A.) No sir.

(Q.) Then do you know what the duties of a mine boss are. (A.) I far as mining is, I don't.

(Q.) You don't know what the duties of a mine boss are; do you? (A.) I have an opinion.

(Q.) Not your opinion. I am talking about what you know? (A.) Yes sir; I know what they are for.

(Q.) What are they? (A.) I told you.

(Q.) Well, tell me again? (A.) Do I have to tell you again. I told you what they was. I suppose they was in there to see after those that worked in there and to show them and tell them, and see after the place; that's as far as I know.

(Q.) How many gangs of men are there at work in that mine at one time? (A.) I don't know.

(Q.) Have you any idea? (A.) No sir.

(Q.) Do you know about how many men they employ there at one time? (A.) No sir I don't.

(Q.) Wasn't it the duty of the mine boss to keep all those men at work? (A.) Wasn't it what?

(Q.) Wasn't it the duty of the mine boss to keep all those men at work? (A.) I guess it was his duty.

(Q.) To see that they worked at the places that they wanted worked; is that right? Do you know whether or not that was his duty? (A.) I don't know. I guess so.

(Q.) I am not asking you for your guess? (A.) When you asked me, did I know, I told you I thought so.

(Q.) I want to know whether you do know or not? (A.) I tell you that is all I know; is that is not right ----

Mr. Barbour: If your Honor please, I ask to have his evidence upon that point excluded.

The Court: Do you know what the duties of a mine boss are, Mr. Williams, or are you merely guessing or surmising here? Do you know of your own knowledge what their duties are?

The Witness: Of course, I couldn't say to my own knowledge, I know.

The Court: Strike it out then.

Mr. Moncure: Your Honor sees what is being stricken out. He has named at least four things that must be the duties and he got that there by experience.

The Court: I heard him say before what he supposed. Mr. Williams, it is not what you suppose; any of us here might suppose, but if you know what those duties are, you can tell them.

The Witness: No sir; I don't

The Court: If you don't know, just say you don't know; but if you know it is your duty to tell?

The Witness: Of course, I don't really know it. I couldn't say I really know the duties of it, but I can say some ----

The Court: Are you simply guessing at it, or telling what you believe ought to be?

The Witness: I believe that they are their duties.

The Court: Upon what is that belief based?

The Witness: I believe they should instruct the hands.

Mr. Moncure: When you say they are there to look after the men. During your experience as a miner were they doing that and examining the places and seeing whether or not they needed timbering? In other words, I want to find out whether he speaks from experience?

The Court: What I want to know is whether he is simply guessing at what ought to be the duties of a mine boss. Of course, the jury can guess at that as well as he can. But if he knows --- if he has been told by the official ----

Mr. Moncure: Mr. Barbour questioned him and he tells the things they came there and did.

The Court: Mr. Williams, if you know what his duties are, you can tell them?

The Witness: Well, I believe I know their duties.

The Court: You believe you know them?

The Witness: Yes Sir.

The Court: Then you can tell them.

By Mr. Barbour

(Q.) How did you acquire this knowledge that you say you think you have? (A.) Well, what is a shift boss for then?

(Q.) I asked you how you acquired your knowledge, Mr. Williams --- who told you these were the duties of the mine boss? (A.) Well I have heard lots of people that worked in there say so.

The Court: Now tell what they are.

Mr. Barbour: He says he has heard lots of people say so.

The Court: If that was common report there ----

By Mr. Barbour

(Q.) Who did you hear say that, Mr. Williams? (A.) I have heard several

(Q.) What several --- just name one of several ---- can you name one? (A.) Yes; I have heard them. I heard Clarence Williams say so.

(Q.) Clarence Williams you heard say what the duties of a mine boss are? (A.) Yes Sir.

(Q.) Was Clarence Williams ever a mine boss? (A.) No sir I don't guess he was. I don't know.

(Q.) Who else did you ever hear? (A.) I don't know exactly. I couldn't recollect them now.

The Court: If he knew from general report the duties of a mine boss, I think he could state that. That is about the way they all get it, I suppose. Do you want him to go over it and tell what those duties were, as he understood it there?

Mr. Barbour: I don't want what he suppose, if Your Honor please. I want what he knows about the matter.

By Mr. Barbour:

(Q.) Did you ever hear Mr. Amos Stoll say what the duties of a mine boss are? (A.) I don't know. Probably, I have heard him. I don't know.

(Q.) What did he say? (A.) I don't know what he said.

(Q.) Did you ever hear Mr. Dietrick say what the duties of a mine boss are? (A.) No sir.

(Q.) Did you ever hear Mr. Emery say what the duties of a mine boss were? (A.) No sir.

(Q.) When did you ever discuss the duties of a mine boss with anybody? (A.) I couldn't tell you. There are lots of things that people hear and that passes on by them and they never think of any more hardly.

Mr. Barbour: If your Honor please, we submit that that is not competent evidence.

The Court: The jury has heard and seen the evidence of the witness and I will let it go in.

EXCEPTION by counsel for defendant.

By Mr. Barbour:

(Q.) I believe you said their duties were to look after the men, keep time, to see that the mines are kept in proper care, and they were to go around once in every 24 hours? Is there anything else for them to do?

(A.) No sir.

(Q.) That is all then? (A.) That's all I know.

(Q.) They are all duties of a mine boss according to your understanding, and that is all? (A.) According to my information it is.

(Q.) And that is all? (A.) Yes Sir.

(Q.) Did you make a written statement of what you knew about this matter? (A.) Well, I gave Mr. Dietrick a statement of it. I don't know whether it was altogether about this matter or not.

(Q.) You signed the written statement, didn't you? (A.) Yes, sir.

(Q.) Did you tell Mr. Dietrick when you made him this statement anything about not having sounded this particular rock?

Mr. Moncure: I think it is but fair if he made a statement to let him see it.

Mr. Barbour: I am not asking about his signed statement, I am asking him if he made any statement to Mr. Dietrick that he did not sound this particular rock.

The Court: I will let him answer that.

By Mr. Barbour:

(Q.) You did talk with Mr. Dietrick about this matter, didn't you? (A.) Yes sir.

(Q.) Do you know what day it was you talked with him about it? (A.) I couldn't say exactly what day it was now. I think it was the next day, if I aint mistaken.

(Q.) Wasn't it on the 4th day of March? This accident occurred on the morning of the 3rd.? (A.) Well, I said the next day.

(Q.) Not the day immediately following, but the second day? (A.) I don't know exactly what day now, but I think so.

(Q.) Everything was then fresh in your mind, wasn't it? (A.) Well, I couldn't say that either.

(Q.) You don't know whether it was or not, the morning afterwards? (A.) It was a right smart shock on me, of course.

(Q.) It was fresher then than it is now, wasn't it? (A.) Sir?

(Q.) Wasn't it fresher at that time than it is now, your recollection of these occurrences? (A.) Well, I don't know as it was.

(Q.) Your memory has gotten better as time has progressed. Didn't you state then to Mr. Dietrick that you had sounded this place in which you were at work, and you found everything safe? (A.) This particular rock?

Mr. Moncure: Is that in the written statement?

The Court: He can ask that question. If he undertakes to use the written statement, he can use it to refresh his memory.

Mr. Moncure: If he has got a written statement, this man didn't write it himself, but somebody else wrote it and he signed it. Of course, I do not know the object of this question; but isn't it fair to the witness to state, "Did you state that to Mr. Dietrick and he took it down at the time?" In other words, give him a fair show.

Mr. Barbour: I will give him a fair show after I get through with him.

By Mr. Barbour:

(Q.) My question was: Did you not state to Mr. Dietrick that you had sounded the place in which you were at work and had found it safe? (A.) No sir; I made a statement to him that we sounded this stuff that fell out the top, where Cator (Decatur) was baling water out of the sump. This piece of rock that fell out, I didn't know anything about it.

(Q.) Is that your signature? (Handing paper to witness) (A.) That's my signature

(Q.) This statement, is this the statement you signed for Mr. Dietrick? (A.) I don't know; I reckon it is. I would rather have someone read it to me, because I can't make it all out.

(Q.) Is this the statement which you made? (A.) That is what I signed my name to.

(Q.) Was it a truthful statement when you signed your name to it?

Mr. Moncure: What do you mean, is the statement here?

Mr. Barbour: Is the statement he signed his name to be truthful statement. (A.) I suppose I signed my name to a truthful statement.

(Q.) Is that the statement you signed? (A.) Yes Sir.

(Q.) It was read to you before you signed it? (A.) Yes Sir; but I think there are some few things in there that I didn't quite understand.

(Q.) What are they? (A.) About I having worked in the mines off and on 14 months, when I said 18 months.

(Q.) Is that the only error that is in there? (A.) No; there is another in there.

(Q.) What is it? (A.) In there it says I sounded the place in there.

(Q.) And you say you didn't sound it; and you didn't say then that you sounded it? (A.) I didn't say I sounded it.

Mr. Barbour: If your honor please, we offer this statement of Frank Williams.

The Court: Very well.

Mr. Moncure: Of course, we object to that statement.

The Court: I hadn't heard that you objected. Then Mr. Barbour you can ask about statement on there that he made.

By Mr. Barbour:

(Q.) Did you not on the 3rd day of March 1909, sign a statement to the following effect: Statement of Frank Williams concerning the death of Quinton Hutchinson ----

Mr. Moncure: I object to your reading that statement.

The Court: I think in the form he is putting it, it will be all right.

Mr. Moncure: The witness says that the statement there that Mr. Barbour has read to him is not what he said.

The Court: He is going to ask him if he did say that.

Mr. Barbour: This witness has admitted, if your honor, please, that he signed this statement and it was read to him.

The Court: Now you can ask him and let him correct anything in there that he denies.

Exception by counsel for the Plaintiff

By Mr. Barbour:

(Q.) Did you not on the 4th day of March, 1909, at Dumfries, Virginia, in the present of and at Mr. Dietrich's house, in his parlor, on the 4th day of March, 1909, make and sign a statement to the following

effect: Dumfries, Virginia, 3/4/09. Statement of Frank Williams concerning the death of Quinton Hutchinson. I was working Tuesday night in No. 19 level with Quinton Hutchinson, Roger Gray and Ralph Cator. I was working the drill with Quinton, Roger and Ralph were mucking. About half past 12, I sounded the place in which we were working.

The Court: You correct as you go along anything you want, Mr. Williams. Did you say that?

The Witness: No sir; not that I sounded it.

By Mr. Barbour:

(Q.) (Continuing) After sounding I felt everything was safe when Quinton and I went to work. Did you say that? (A.) No sir.

(Q.) Didn't say that either. But about half past two or quarter of three a piece of slate or ore mixed slipped from its place, slid down the front wall, or ore, I don't know which. This piece of ore and slate weighed about two tons. It caught Quinton and pressed him against the machine. We were ten or fifteen minutes getting the piece of ore away from him. He died two or three minutes after. I have been working in the mine off and on for about fourteen months. (signed) Frank G. Williams. Did you make and sign a statement to that effect? (A.) I didn't make any statement at all. I signed what he asked me that day.

(Q.) He read the statement over to you, did he not, before you signed it? (A.) Before I signed it?

(Q.) Yes sir. (A.) I don't know whether he did or not. There are two things in there I don't think I am responsible for.

(Q.) What are those two statements?

Mr. Moncure: I object to the question. I believe our rights come somewhere along here. You have said, what is there in this statement that you didn't say, and that puts the statement before the jury.

The Court: I didn't care about the statement going before the jury but what was in there.

Mr. Barbour: The statement I refer to is the statement I have read to the witness, and I ask him to point out in what particulars the statement as embodied in my question is not a truthful statement of his statement.

The Court: Ask him did he not make a statement to that effect, and I will let him answer that.

By Mr. Barbour:

(Q.) If you did not make that statement in its entirety please state in what particulars the statement as embodied in my question is not correct? (A.) Well, I don't think I made that statement at all. It didn't say anything in there at all about Cator sounding any stuff in there. This gave me, that I sounded in the place in there and said it was all right.

(Q.) So you did not make that statement to Mr. Dietrick? (A.) No sir; I didn't make the statement.

(Q.) And you didn't sign any such statement? (A.) I signed the statement there.

(Q.) This is your signature, to the statement which I showed you? You did sign the statement which I read to you, but the statements contained in it were not true? (A.) Some things in it. Other things in there are true, what he asked me. He asked me those questions.

Re-Direct Examination by Mr. Moncure

(Q.) Mr. Dietrick sent for you, did he not? (A.) Yes sir.

(Q.) And this was the day after the death of Hutchinson, and before he was buried? He was then a corpse in the house there at home? (A.) Yes sir.

(Q.) And Mr. Dietrick sent for you and you went to his house? (A.) Yes Sir.

(Q.) And he asked you some questions, did he? (A.) Yes sir.

(Q.) After Mr. Dietrick asked you some questions, what did he do? (A.) He wrote it down. He asked me the questions and I answered.

(Q.) Now I will ask you to tell the jury whether or not he wrote it down, as you answered them, or not after talking to you, he wrote it down and asked you to sign the paper? (A.) He wrote the whole thing down.

(Q.) At one time? (A.) I don't suppose he could write it at one time. After talking to me he wrote it down and asked me to sign it.

(Q.) After he finished writing it down, did he read it to you? (A.) I couldn't positively say whether he read it to me or not, probably he might have read it to me.

(Q.) Did you tell him you had been working for the company 14 months? (A.) No sir; I didn't

(Q.) Do you remember telling him you had been working for the company any time at all? (A.) I remember telling him 18 months off and on underground.

(Q.) 18 months? (A.) Yes sir.

(Q.) Did you say, about half past twelve, I sounded the place in which we were working? (A.) No sir; not "T" sounded it.

(Q.) What did you say? (A.) Well, he got it there that way. I hardly know what he had said to me. He asked me about sounding the place and all in there and I told him about Cator sounding the place.

(Q.) What do you mean by sounding the place. Tell the jury what you mean by sounding the place. (A.) Of course, this was only ----

Mr. Barbour: If Your Honor please, we object. He is asking him now to explain what he meant by sounding the place. The statement is unequivocal. It does not need any explanation.

The Court: I will let him answer it.

Exception by counsel for defendant

By Mr. Moncure:

(Q.) What did you mean when you told Mr. Dietrick about sounding the place. Tell the jury what you mean by that? (A.) Well, of course, I never sounded the place.

(Q.) What did you mean? (A.) Didn't I state here awhile ago that Ralph Cator (Decator) was baling out water in there and this stuff fell out and he sounded some of it around with a pick, and then I taken a piece of the steel afterwards myself and touched it up there, and thought that was all right.

(Q.) But that wasn't the place where this ore fell from that killed Hutchinson? (A.) No sir; that wasn't the place.

Mr. Moncure: That is all.

(Witness Excused)

Whereupon –

ROGER GRAY a witness called by and on behalf of the plaintiff, having been first duly sworn, was examined and testified, as follows:

Direct Examination by Mr. Moncure:

(Q.) Mr. Gray, what is your full name? (A.) Roger Gray.

(Q.) Where do you live, Mr. Gray? (A.) Well, my home is in Dumfries. I am living in Washington now. I am working there now.

(Q.) Are you a native of Dumfries --- born and raised there? (A.) Yes sir.

(Q.) And what is your age, Mr. Gray? (A.) 19

(Q.) Have you ever been employed by the Cabin Branch Mining Company? (A.) Yes Sir.

(Q.) Is the mine there at Dumfries? (A.) Yes sir.

(Q.) How long did you work for them, Mr. Gray, about? You needn't be exact unless you know? (A.) I had been working for them ever since I was about 13 years old, I guess.

(Q.) And when did you stop working for them. (A.) Well, I stopped working for them the 10th of last June.

(Q.) The 10th of last June? (A.) Something like that.

(Q.) And you worked for them some months after Mr. Hutchinson was killed? (A.) Yes sir.

(Q.) I believe you were on the night shift as a mucker? (A.) Yes sir.

(Q.) With Mr. Decatur? (A.) Yes sir,

(Q.) And who were the machine men? (A.) Quinton Hutchinson & Frank Williams

(Q.) How long have you known Quinton Hutchinson? (A.) Well, I have been knowing him ever since he has been at Dumfries there, working at the mines. I have been knowing him three years, I suppose.

(Q.) So far as you know and could see, would you say he was a healthy man? (A.) Yes sir.

(Q.) How long had you been working with Quinton Hutchinson and Frank Williams? Were they your regular shift to work with. (A.) No sir; they wasn't the regular ones. They had been working in there a couple shifts, I think.

(Q.) That was the second one then, was it? (A.) Yes sir.

(Q.) Now then coming right down to that night, I will ask you what time that night, do you remember, you all went to work? (A.) What time that night?

(Q.) Yes; the night he was killed? (A.) 7.00 o'clock

(Q.) What time does the day shift come off? (A.) Supposed to come off at half past five.

(Q.) They are supposed to stop work at five and come out at half past five? (A.) Yes sir.

(Q.) Did you go to work that night at the usual time, at 7.00 o'clock? (A.) Yes sir.

(Q.) Now Mr. Gray, taking this as the incline, to represent the incline, and this to represent the sump in which you all were working, going down this way, you understand – this is the sump. Where were you all mucking that night? (A.) Well, we was on this side. Say this is the sump, we were on this side.

(Q.) And where was the machine? (A.) They was on this side.

(Q.) Over here, towards that corner? (A.) Yes Sir.

(Q.) What time was it that the ore or slate fell out there that night and killed Mr. Hutchinson? (A.) It was between two and three o'clock.

(Q.) Now what was it that fell out? (A.) It was a piece of stuff, half ore and half slate.

(Q.) About how much would you say it would weigh? (A.) Well, from a ton and a half to two tons, something like that, maybe three, something like that.

(Q.) How many men did it take to get it off of Mr. Hutchinson? (A.) Well, there was about seven down there, something like that.

(Q.) Now then taking this as representing the sump, show the jury by using this book here about where it fell from --- about where Mr. Hutchinson was standing and where it fell? Show them about where Mr. Hutchinson was standing when he was killed? (A.) Well, say this was the edge of the sump, the machine was setting over here, and Quinton Hutchinson was in between the machine and the side of the wall; and this piece, it wasn't exactly in the roof, it was up on the side like, and it rolled down or slid and caught Quinton Hutchinson and pressed him against the machine.

(Q.) Was his back toward the piece and his face towards the machine or not? (A.) Yes sir; his face was toward the machine.

(Q.) And his back toward this thing? (A.) yes sir.

(Q.) And how close to the wall was he? (A.) The machine was setting up pretty close to the wall.

(Q.) About how far would you say his body was from the wall? (A.) Well, it might be three feet, something like that, maybe more or less. I don't know exactly.

(Q.) Now Mr. Gray, there has been something said here about a piece falling down out of the top of that place that night, about 12 or half past. Tell the jury what you know about that, please sir? What time did that happen, I will ask you first? (A.) I couldn't say exactly what time it happened.

(Q.) About what time did it happen? (A.) Well, the first start of the thing in there, about half past 12.00, we were all sitting there eating our dinner, and there was some slate fell out there then.

(Q.) Was that out of the roof? (A.) That fell in there out of the roof, I suppose. Then after that they went back to work and they were working there and this piece fell out of the top, right after they started to work, I suppose about half past 12.00 soon after they started, something like that.

(Q.) About how far would you say that piece was, how many feet, from the side over here where this other fell out? (A.) Well it might have been ----

(Q.) Be just as accurate as you can. If you can't tell exactly, as near as you can? (A.) It might have been three or four feet, something like that.

(Q.) And that was out of the top, and this other piece came out from the side? (A.) This piece from the side was close to the side--- it was out of the side.

(Q.) Now I will ask you, did you all when this piece fell out of the top, did you all test the top to see whether or not it was all right? (A.) I never tested the top. They sounded it, Frank and Quinton. I wasn't working on that side; and it wasn't my place to work there.

(Q.) Did Decatur sound it? (A.) Yes sir; he was over there with them.

(Q.) And he sounded it too? (A.) Yes sir; and Cator (Decatur) told Frank 'I will go up the hill and get a pinch bar and pull that piece down', and Frank told Cator (Decatur) not to bother "let that stay there; it will make the rest of it worse".

(Q.) How long did you work there after that, in that lower place? You worked there after that? (A.) After he got killed?

(Q.) Yes; you worked there on shifts after that; did you not? (A.) No sir; I never worked anymore after that.

(Q.) Have you ever been in that lower place since then? (A.) No sir; I don't think I have.

(Q.) Who was it that helped to get him out? (A.) There was myself and Frank Williams, Decatur, Ben Davis, George Chinn and his brother, I don't know what his name is.

(Q.) After this piece had fallen from the side, I will ask you if that top piece wasn't still there, that you all were talking about getting the pinch bar and pulling out? (A.) Yes sir; it was there the last time I was in there.

(Q.) That piece that was supposed to be loose and where the other piece fell from? (A.) yes sir.

(Q.) When Mr. Fred Stoll came down, tell the jury whether or not there was any conversation between him about anything being loose in there? (A.) I never heard Mr. Fred Stoll say a thing. He came there and helped us get the stuff of Quinton Hutchinson and I never heard him say a thing about that.

(Q.) Had he been down there that night before that? (A.) Yes sir.

(Q.) Was he the pit boss that night? (A.) Yes sir.

(Q.) What had he said before that when he came down there about the stuff being loose? (A.) I didn't hear him say anything at all.

(Q.) Before Quinton was killed, he came down once or twice? (A.) Yes sir.

(Q.) What if anything, did he say then? (A.) I didn't hear him say anything.

(Q.) I will get you to tell the jury whether or not he was working in the shift before you all worked, on the day shift --- Fred Stoll. (A.) Well I heard some of them say he was working there. I don't know whether he was or not. I wasn't working there. I was working night shift. I wasn't working in the day time.

CROSS EXAMINATION

By Mr. Barbour

(Q.) Mr. Gray, how long had you been a minor prior to that night? (A.) How long had I been working in the mine?

(Q.) Yes. (A.) Well I had been working in there, I suppose, about I don't know, not quite a year, something like that.

(Q.) Do you know how long Quinton Hutchinson had been working in there? (A.) No sir; not exactly.

(Q.) What? (A.) No sir; I don't know exactly. I suppose he had been working there about three years, something like that.

(Q.) How many times did you hear a rock fall that night, or ore, before the big piece fell out? (A.) How many times?

(Q.) Yes.. (A.) There was some falling out at half past 12, when we were eating our dinner. I don't know how many pieces fell.

(Q.) Whilst you were sitting there eating your dinner some fell out? (A.) Yes

(Q.) And then another piece fell out after you had gone back to work? (A.) Yes sir.

(Q.) And then what time was it the big piece fell out? (A.) It was between two and three o'clock, I guess.

(Q.) What part of the mine did these two pieces fall from --- the part that fell out at half past 12 when you were eating your dinner, and the part that fell after you went to work? Did they both fall from the same place? (A.) The two pieces seemed to fall from the top.

(Q.) Both of them seem to fall from the top. Can you give us an idea as to the dimensions of this other piece that fell, that slipped out and caused the death of Hutchinson? (A.) Well this here piece that fell at about half past twelve --- I didn't know anything about this piece that fell out and killed Quinton Hutchinson. I don't know whether it was loose or not.

(Q.) You did not know it was loose? (A.) No sir.

(Q.) About what size was that piece? (A.) What size was the piece that fell out?

(Q.) Yes? (A.) I suppose it weighed two or three tons, something like that.

(Q.) How many feet long, was it? (A.) About two feet and a half or three feet, something like that. I never taken particular notice of it.

(Q.) How thick was it? (A.) I couldn't tell you that. I never noticed the piece. I never stopped there to look at it.

(Q.) Where was the bottom resting before it came out? (A.) Where was the bottom of it resting?

(Q.) Yes? (A.) It was resting inside the foot wall

(Q.) Inside the foot wall? (A.) Side the foot wall.

(Q.) Was there any discernible crack or crevice there that came under your observation? (A.) Not from that piece.

(Q.) Was there anything there to indicate that there was any danger to anybody, so far as you could see or judge, so far as that piece was concerned? (A.) Not from that piece that I know of. Of course, I wasn't working on that side, and I never paid no attention.

(Q.) How far were those people working from you? (A.) I suppose they were working about six or seven feet, something like that, or eight feet.

(Q.) Six or eight feet from you? (A.) Something like that; yes sir.

(Q.) Who was it, when this piece fell out of the roof, who was it that sounded the roof? (A.) Who was it sounded it.

(Q.) Yes (A.) Frank and Quinton were over there sounding and Cator (Decator) too.

(Q.) All three of them sounded it? (A.) Yes sir; they sounded over the roof. Not this other piece that fell out.

(Q.) How far was that away from the other one? (A.) How far?

(Q.) Yes. (A.) I don't know

(Q.) Can't you give us some idea about how close it was from the piece of the roof to the other piece that slipped out? (A.) You mean that fell out the roof.

(Q.) Yes (A.) I told you I guessed it was three or four feet something like that.

(Q.) Didn't you say that the piece that fell out of the top was pretty close to the side? (A.) I told you it was pretty close to the side. I told you about three or four feet from the piece that fell out.

(Q.) Did both of those pieces --- I believe you said that pieces fell on two different occasions -- was each of those pieces three or four feet from the piece that fell out. (A.) Well, I told you the pieces that fell out was three or four feet from that place.

(Q.) Both of them were the same distance from the big piece (A.) Yes sir.

(Q.) Those two pieces, were they in line with each other (A.) Yes sir pretty close together.

(Q.) Did they overlap each other, originally in the wall? (A.) I don't know. I never taken no particular notice of it. I wasn't working on that side, and it wasn't my business to look after it.

(Q.) And I believe you said that Decatur said something about going out and getting a pinch bar and pulling it down and Frank Williams said "no; it would make things worse"? (A.) Yes sir; this piece over at the top. It wasn't the piece that fell out.

(Q.) And you have never been down there since. (A.) No sir

(Q.) You have never been down in that mine since? (A.) I have been down in the mine, but not at that particular place.

(Q.) Yes; you worked there you said until June? (A.) I worked out on top.

(Q.) You didn't work in the mine any more at all? (A.) No sir.

(Q.) How many times did you see Fred Stoll in that level that night? (A.) Well, he was there that night when we first went to work and down there. I suppose, a couple times more.

(Q.) When was the last time you saw Fred Stoll there --- how long before the accident? (A.) Well, I think he was in there about half past 12.00 when they started to work, about half past 12, something like that.

(Q.) Was he there after this piece had fallen from the ceiling. (A.) I don't know whether he was in there after or before that.

(Q.) You all didn't say anything to him about that piece having fallen from the ceiling? (A.) I did not

(Q.) You did not say anything to him? (A.) No sir.

(Q.) Were you present at Mr. Dietrick's house on the 4th of March when Frank Williams signed a written statement there? Yes sir.

(Q.) That statement was read over to Frank Williams wasn't it? (A.) Yes sir.

(Q.) He signed it in your presence? (A.) Yes sir.

(Q.) And you read and signed the same statement, didn't you? (A.) yes sir.

(Q.) And you read and signed the statement, didn't you? (A.) Yes sir.

(Q.) And that was the fact, wasn't it, a true statement? (A.) Yes sir; I told them as near what was right as I could get it.

(Q.) It is customary for a man running a drill to get in between the side wall and the leg of his drill?

Mr. Moncure: I Your Honor please, I do not think that is a proper question.

The Court: I think he can state what the habit was in that particular mine. I understood him to ask what was the usual position in running that drill. If he knows that I think he can tell. I think it is proper to ask him what was the usual mode of running that drill.

EXCEPTION by Counsel for Plaintiff

The Court: Do you know what was the usual mode of running that drill --- the position?

The Witness: No Sir; they generally get on either side they want to. It's up to him.

Mr. Barbour: Up to whom?

The Witness: Up to the man running the drill. They always do that, since I have been working there.

The Court: Do you insist upon your objection.

Mr. Moncure: No sir, not now. He makes him his own witness, I assume, on that, because it is a matter we have not gone into.

By Mr. Barbour:

(Q.) If Hutchinson had been on the other side of the drill, he would not have been caught there, would he?

Mr. Moncure: Does your Honor think that is a proper question to ask the witness.

The Court: I think you are right about that. I will sustain that objection. He can tell the location of the drill and where it fell, and then it is for the jury to say.

By Mr. Barbour:

(Q.) Would it have been possible for Quinton Hutchinson to have been hurt by this rock sliding out if he had been on the opposite side of the drill from where he was?

Mr. Moncure: I object

Mr. Barbour: I just want to get the question in proper shape.

The Court: I sustain the objection, but he can tell exactly the position of the man, the drill and the rock.

By Mr. Barbour:

(Q.) Did you not tell Mr. Jenks Davies, who is now dead, that if Quinton had been in the proper place he never would have been hurt?

Mr. Moncure: One minute ----

The Court: I think you can ask him if he made that statement.

(A.) I didn't say about the proper place. I told Mr. Jenks Davies that if he had been on the other side of the machine cranking, I don't think that piece of rock would have touched him.

Mr. Moncure: I ask your honor to strike that out, because that would not have been a proper question for Mr. Barbour to ask now, and even if he told Mr. Davies that, it wouldn't be proper evidence now.

Mr. Barbour: If your honor please, they have put this witness on here and the idea that the jury is to infer is that this man, with the observation of everything that was down there, was putting the blame on the mining company. Now I want to show that when this thing occurred, that he, in common with everybody else there, said Hutchinson was to blame for this accident.

The Court: I sustain that objection. That was his opinion. Now the jury may have a different opinion.

Mr. Barbour: Of course, the jury are not governed by his opinion about the matter.

The Court: I think you can show the location of everything. But his opinion, of course, would not control this jury.

EXCEPTION by Counsel for Defendant.

By Mr. Barbour:

(Q.) Could he not have cranked that drill from the other side as easily as he could from the side he did crank it from. (A.) Yes; it's just as easy to crank from one side as it is from the other.

(Witness excused)

Whereupon the Court at 5.00 o'clock p. m., adjourned to meet the following morning at 10.00 o'clock (A.)m.

Manassas, Virginia, November 10, 1909 the Court met pursuant to adjournment at 10.00 (A.)m.

J. CLARENCE WILLIAMS (Colored) A witness who had previously testified was recalled by counsel for plaintiff, and testified, as follows:

DIRECT EXAMINATION

(Q.) Clarence, were you sent for after the death of Quinton Hutchinson to come to Mr. Dietrick's house?

(A.) Yes Sir

(Q.) How long after his death? (A.) I don't know whether it was the next day or a day or two after that; I don't know exactly.

(Q.) Did you go? (A.) No sir; I didn't get the message in time. I didn't get the message until night, and I didn't go.

(Q.) Did you afterwards go there? (A.) Yes Sir.

(Q.) Did you make, in response to questions of Mr. Dietrick, did you make a statement of what you knew about this matter? Did you make a statement to him? (A.) Yes Sir; I told what I knowed about it.

Mr. Barbour: If your honor please, I object to that question.

The Court: I will overrule the objection.

EXCEPTION by counsel for defendant

The Court: Mr. Barbour, do you want to ask him anything?

Mr. Barbour: Not on that point. There are one or two questions I want to ask him about another matter.

CROSS EXAMINATION by Mr. Barbour

(Q.) How long after this accident was this talk that you say you did have with Mr. Dietrick at his house?

(A.) I don't know exactly know. It might have been in the next week. I couldn't tell you exactly.

(Q.) Wasn't it a month or more afterwards? (A.) I don't know sir. I don't know how long it was.

(Q.) I believe you said yesterday. Clarence, that you were an experienced miner? (A.) No sir; I didn't say I was an experienced miner.

(Q.) You didn't say you were an experienced miner? (A.) No sir.

(Q.) How long an experience have you had? (A.) I have been working there eight or ten years, or maybe more.

(Q.) You know which side of a drilling machine a miner ought to get on? (A.) Oh, yes sir.

(Q.) Would an experienced miner, looking out for his own safety, in drilling a machine, put himself in between the wall and the drilling machine?

Mr. Moncure: I have no idea what his answer will be; but I submit, if your honor please, that he is not qualified to answer that question because he says he is not an experienced miner.

Mr. Barbour: He is a miner of ten years experience.

The Court: He has been there how many years?

The Witness: Eight or ten years.

The Court: I think then it would be for the jury to say. No man might ever admit he was experienced.

EXCEPTION by Counsel for Plaintiff

Mr. Moncure: Of course, he is a witness for the defendants on that matter.

The Court: You can answer the question.

(A.) I always look out for myself and it depends on where I have got the machine setting at where I stand at. If the machine was setting where I could stand anywhere else, I wouldn't get between the legs; but if it was setting where I didn't have room nowhere else, I would have to be where I could get at it?

(Q.) It would have to be where you could get nowhere else for you to stand between the legs? (A.) Yes sir; certainly

Mr. Moncure: If a man had no reason to suspect danger by getting on the side, would there be any reason why he should not get on the side.

Mr. Barbour: I object to that. That is entirely a hypothetical question.

The Court: He may answer that.

The Witness: Certainly; I would stand anywhere where it would come easy for me to work. Of course, if it was on the side, I would stand on the side. If there was no danger, I wouldn't be particular where I would stand at. I never generally stand on the side of it though; if I did, I hardly ever stand behind the machine, I generally stand on the side.

Mr. Moncure: On either side you want to?

The Witness: Either side I want to; yes sir.

By Mr. Barbour:

(Q.) And you get away from the wall whenever you can? (A.) Of course, if it was dangerous. And sometimes I stand against the wall.

(Q.) Isn't it always dangerous beside the wall? (A.) No sir; not always.

(Q.) Isn't it always liable for a slip next to the wall? (A.) No sir; not always.

(Q.) Didn't you state last night that if you had been there, you never would have been hurt in this condition? (A.) If I had been in that place?

(Q.) Yes? (A.) If I had known that place was loose, as I did know, I would have kept out of the way. I did know it was loose and if I had been running the machine I wouldn't stand on the side of it.

(Q.) Was that the only danger you apprehended there standing next to that piece of rock? (A.) That's the only danger I would have been bothered about in that place.

(WITNESS EXCUSED)

Whereupon-----

ROBERT GALLAHAN, a witness called by and on behalf of the plaintiff, having been first duly sworn, was examined and testified, as follows:

DIRECT EXAMINATION by Mr. Moncure:

(Q.) Mr. Gallahan, what is your full name, sir? A Robert Gallahan

(Q.) And where do you live, Mr. Gallahan? (A.) I live at Dumfries, you might as well call it.

(Q.) Are you a native there, Mr. Callahan? (A.) Yes sir.

(Q.) How long have you lived there? (A.) I guess about 9 years, as near as I can come at it.

(Q.) You came from the county of Stafford? (A.) Yes Sir.

(Q.) You have been in Dumfries you say about 9 years? (A.) Yes sir.

(Q.) How long have you been working for the Cabin Branch Mining Company; or in those mines there, for them or their predecessors? (A.) I have been working off and on ever since I have been there at Dumfries. We moved there in the spring of the year, and as soon as we got our crops in, I went to work for the company and been working there off and on ever since.

(Q.) You are working for the mining company now? (A.) Yes sir

(Q.) You are now an employee of the mines. Do you remember the night on which Quinton Hutchison was killed, Mr. Gallahan? (A.) I do; yes sir.

(Q.) Where were you that night, sir? (A.) well, that night I was helping to get up some ice for Mr. Dietrick.

(Q.) The gentleman over there? (A.) Yes sir; and I happened to be right in the little shanty down there. We had got the ice in and it was tolerable wet and we went in by the gire, laying down by the fire, when we heard these people come in and they said Mr. Hutchison ---

(Q.) When it was reported that Mr. Hutchinson had been killed? (A.) Said he was hurt. We didn't know he was dead or killed.

(Q.) Then what did you do/ (A.) Well there was several of us in there, and we got up and went on the other side where he was at.

(Q.) And you saw the body? (A.) I did.

(Q.) Tell the jury whether or not he was then dead? (A.) Yes Sir; he was dead when I saw him.

(Q.) Now were you there when Mr. Emery came up? (A.) No sir; I wasn't right in there when he came in.

(Q.) You were not there when he came in? (A.) No sir.

(Q.) Were you there when Mr. Emery made any remark calling for anybody; and if so, tell the jury what he said?

Mr. Barbour: If your Honor please, we object to this evidence.

The Court: Who is Mr. Emery?

Mr. Moncure: He is the Superintendent.

The Court: Has there been any proof of that?

Mr. Barbour: We have no objection to admitting that Mr. Emery was the superintendent.

The Court: very well; I will admit it.

EXCEPTION by counsel for defendant.

By Mr. Moncure

(Q.) What did Mr. Emery say?

Mr. Barbour: It is understood I object to this evidence.

The Court: I overrule the objection.

(A.)I was around at the ---- some call it the hole and some the shaft, it was at the edge of the shaft where the skip came up, and Mr. Emery says, "Where is the boss; where is the pit boss at"?

(Q.) Then what happened? (A.) Mr. Williams and Mr. Fred Stoll came up at the same time. About the time he mentioned the word, the skip came up and Stoll jumped out.

(Q.) Fred Stoll? (A.) Fred Stoll

(Q.) What did he say? (A.) "Here I am. I am the pit boss."

(Q.) What did Mr. Emery say? (A.) He says, what do you know about bossing down there and ---

Mr. Barbour: If your Honor please, I object.

The Court: I sustain that objection, as to any statement made by Mr. Stoll.

Mr. Moncure: In reply to the Superintendent?

The Court: As to any admission and so on.

Mr. Moncure: If your Honor please, the body was brought up and they came up there together and right there at the scene, Mr. Emery, the superintendent, asked about this place at the time there. As part of the regestae we want to show what was said and what happened.

(The jury retired from the court room pending the discussion)

Mr. Moncure: It your Honor please, the situation is this? As this man brought up there, Mr. Emery comes up and he calls for the pit boss. In response to his call up steps Fred Stoll, and he says, "What do you know about pit bossing." He replies, in substance, "I don't know", and he says, "Is that place safe down there", and he says, "I don't know". Now that is as the body comes up, right there when the thing is hot.

The Court: How long was that after his death. Do you know when his death occurred?

The Witness: Not at present; but just at that time, I don't suppose it was half an hour, as near as I can come at it. It hadn't been half an hour.

The Court: What did you say?

The Witness: You asked me how long before I was over there where this body came up.

The Court: No; I asked you how long this was after the death of the man before this conversation took place?

The Witness: Well, that was about half an hour, as near as I can come at it.

Judge Tebbs: The body had just been brought up. How long after the body was brought up?

The Witness: That is what I am speaking of now, half an hour after it was brought up.

The Court: I sustain the objection.

EXCEPTION by counsel for plaintiff.

(The jury then returned to the court room)

Mr. Moncure: The words, "What do you know about bossing", as I understand are stricken out; but the words "Where is the pit boss" stays in.

NO CROSS EXAMINATION – witness excused – whereupon ----

BENJAMIN DAVIS, a witness called by and on behalf of the plaintiff, having been first duly sworn, was examined and testified, as follows:

DIRECT EXAMINATION – By Mr. Moncure

(Q.) Mr. Davis, where do you live, sir? (A.) I live at Dumfries District.

(Q.) How long have you lived there, Mr. Davis? (A.) Well I was born and raised down there.

(Q.) What is your age, sir? (A.) 23

(Q.) Did you know Quinton Hutchinson, Mr. Davis? (A.) Personally; yes sir.

(Q.) About how many years have you known him – practically all your life? (A.) No sir; about two years more or less.

(Q.) Were you working in the mines on the night that Mr. Quinton Hutchison was killed? (A.) Yes Sir.

(Q.) I will ask you if you went down to the sump in which his body was, and assisted to remove the ore?

(A.) Yes sir.

(Q.) Do you remember about what time of night that was? (A.) I don't know, not exactly, it was after 12 o'clock though, I think.

(Q.) Now Mr. Davis, I will ask you where you worked that night? (A.) No. 17

(Q.) Who was the pit boss that night? (A.) Fred Stoll

(Q.) Mr. Davis, just notice this will you, this representing the sump 19 where Hutchinson was working, and this representing the incline going down. Where was his body when you went down there? What portion of that? (A.) About here (Indicating) South Side.

(Q.) South Side, over here? (A.) Yes sir.

(Q.) Then if these books were turned this way, it would be there? (Indicating) (A.) Yes sir.

(Q.) I will ask you how the ore was on him, or against him, can you show us? (A.) It was sitting like this, against him.

(Q.) Now, for instance, taking this as the machine here, now place yourself against this like he was, as near as you can? Stand up here and do that, please sir? (A.) He was standing against the machine like this. The machine was here some place, and the ore popped up against here.

(Q.) From behind (A.) Yes sir.

(Q.) And from against the wall? (A.) Yes sir; laying just that shape.

(Q.) The wall behind him? (A.) Yes sir.

(Q.) Was that ore or slate, or do you know? (A.) To the best of my knowledge, it was ore.

(Q.) About how much was there on him? (A.) I don't know I thought there was thirty hundred more or less.

(Q.) Do you know about how many men it took to get it off? (A.) No; not exactly. I can call over the name and count them.

(Q.) About how many were there? (A.) There were Roger Gray is one, and Ralph Decatur, Frank Williams, Fred Stoll, George Chinn, Bob Chinn and myself. That made seven I think. I don't know whether there were any more or not.

(Q.) Now when you got down there, tell the jury whether or not Mr. Hutchinson was dead? (A.) Well, to the best of my knowledge he was not, when I got there.

(Q.) How did you get this off of his body? (A.) Well, I loosened the pin in the left side of the tripod, the hind leg and let it slip, and the ore slipped with him, and then we blocked the ore up and I loosened the front pin, and then someone loosened the chuck of the machine, we call it, and knocked it off and pulled him and the machine out together.

(Q.) Tell the jury whether or not he was in a standing position when you got there? (A.) Yes; he was in a standing position when we got there.

(Q.) How long would you say after you got the ore off of him was it before he actually died? (A.) Well, I don't know. I don't hardly think it was over two minutes.

(Q.) Not over two minutes? (A.) Something like that.

(Q.) About what would you say was the size, or the length of that sump? (A.) I haven't any ide(A.)

(Q.) Do you remember about what is the height of it? (A.) No sir.

CROSS EXAMINATION by Mr. Barbour

(Q.) Was that the first time you had ever been down there, Mr. Davis? (A.) No sir; I don't think it was. I think I was in there once or twice before and helped to put the skip on the track.

(Q.) Helped to do what? (A.) Helped to put the skip on the track when it came off.

RE-DIRECT EXAMINATION – By Mr. Moncure

(Q.) How long before that was it, Mr. Davis? About how long before Mr. Hutchison's death was it that you were down there to help put the skip on the track? (A.) Well, I just don't know.

(Q.) Do you know about how long it was, I mean? (A.) No sir.

(Q.) A week or ten days, something like that? (A.) Inside of ten days, something like that.

(Q.) Who was down there with you? (A.) Noble Willis and Tom Johnson.

(Q.) In order that the record may show it, what do you mean by a skip, Mr. Davis? (A.) Well, that's what they haul the ore to the top in.

(Q.) The car? (A.) No; well it's the same as a car; yes sir.

(Q.) And it is worked by a wire cable, is it? (A.) Yes sir.

(Q.) And pulled by a steam engine from above? (A.) Steam or air; yes sir. It is either run by steam or air.

(Q.) It runs by air and not by steam? (A.) Yes sir.

(Q.) Now I understand correctly, do I, that the skip from the bottom goes part of the way up? (A.) It went to No. 14

(Q.) From No. 19 to 14? (A.) Yes Sir.

(Q.) And that is run by air? (A.) Yes sir.

(Q.) And then it is transferred on to a track (A.) And then it runs on up there and dumped into another skip and taken to the top.

(Q.) And that one going to the top is run by steam is it. (A.) Yes sir.

(Q.) How much ore do these skips carry, about? (A.) Well, they are supposed to carry a ton, I think.

(Q.) They are supposed to carry a ton of either ore or slate? (A.) Yes sir.

Mr. Moncure: - That is all. – Witness Excused – Whereupon

GEORGE CHINN (Colored) a witness called by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION by Mr. Moncure

(Q.) What is your full name? (A.) George Chinn, sir.

(Q.) And where do you live? (A.) Agnewville, Prince William County, Virginia

(Q.) How far is that from Dumfries? (A.) That I wouldn't like to say because I never measured it.

(Q.) About how far? (A.) About seven miles, according to my idea of the distance.

(Q.) What is your age.? (A.) I was born in 1862.

(Q.) How long have you been working at the mine near Dumfries? (A.) Ever since it was opened, I wouldn't dare say how long, ever since the shaft was first opened.

(Q.) Quite a number of years? (A.) Yes sir.

(Q.) You are employed by them now? (A.) Yes, indeed, sir.

(Q.) Did you know Quinton Hutchinson? (A.) well acquainted with the young man –knew his father.

(Q.) You knew his father before him? (A.) Yes sir.

(Q.) He was a native there? (A.) Sir.

(Q.) He was born and raised there, was he not? (A.) Yes sir; right in that neck down there.

(Q.) Do you remember the night on which he was killed? (A.) I do sir.

(Q.) Tell the jury what portion of the mine you were working that night? (A.) 17 heading to the left side, sir.

(Q.) What were you doing? What was your occupation that night? (A.) Cutting a heading by the foot, sir, for what I could get out of it.

(Q.) What I meant to say was, were you a machine man or mucking? (A.) Machine man, sir.

(Q.) Do you remember about what time it was that night that you all got the report about Mr. Hutchinson?

(A.) I do not, sir.

(Q.) Do you remember about what time it was that night that you all got the report about Mr. Hutchinson?

(A.) I do not, sir.

(Q.) How did you get the report? (A.) My buddy had gone away from me, gone off fooling around some place, and they cut the air off, and they kept cutting it off and putting it on, and I was trying to get the last hole I had, I was working on my last round to get done when this air was cut off, and they kept putting it back on, and I knowed something was wrong, and after awhile I heard them holler and I stopped and went down the heading a little piece and asked them what they were doing and they said ----

(Q.) Don't tell what they said. On account of that report you went down to sump 19; that is correct, isn't it? You cannot tell what other people told you? (A.) I went down far enough to hear what they said, and they said there was a rock on this man and I went down and when I got down there, it was on Mr. Hutchinson.

(Q.) All right. Now I will ask you this question: How was Mr. Hutchinson --- was he down or standing?

(A.) Sitting on the tri-pod legs.

(Q.) Now where was the rock? Show the jury where the tripod had him and how the rock had him? (A.) Just so, Sir. This machine was in the wall just like you see that pipe, and the rock had him there and the machine here. That's where they had him at.

(Q.) Was he dead or alive? (A.) He wasn't dead, sir.

(Q.) How about how long did it take you all to get this ore off of him, would you say? (A.) I have no idea at all. I couldn't tell you. I wouldn't like to tell no story about nothing like that. We got it off of him as quick as we could.

(Q.) Of course, you did everything you could to get it off of him? (A.) Oh, yes sir.

(Q.) Now about how much ore would you say there was in that piece? (A.) I couldn't tell you that, sir

(Q.) About how long after you got it off of him, was it before he died. (A.) How long after got it off of him before he died?

(Q.) About how long? (A.) I wouldn't like to tell you that, because I don't know.

(Q.) Was it a few minutes, or just a short time ---- (A.) If I had to say anything I expect he was dead when we got it off, but he wasn't cold.

A Juror: Did I understand you to say he was bleeding like a hog?

The Witness: No sir.

Mr. Moncure: He said he was dead when they got if off of him.

The witness: No sir; you didn't hear me say nothing about no blood, sir.

By Mr. Moncure

(Q.) Just watch this for a second very carefully: this representing the sump, I just want the jury to understand it, and I don't want any misunderstanding. This representing the sump, No. 19, and this representing the incline, show the jury with reference to that where his body was? (A.) The man was over here Indicating)

(Q.) Over here (A.) Yes Sir.

NO CROSS EXAMINATION – Witness excused

Note: It is admitted by counsel for the defendant company that the death in question was caused by the piece of ore or slate, or whatever it was, pressing against the body of the deceased to the tripod or boring machine.

Whereupon----

WILLIAM R. GARDNER a witness called by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows;

DIRECT EXAMINATION – By Mr. Moncure:

(Q.) Mr. Gardner, will you give the jury your full name, please sir? (A.) William R. Gardiner

(Q.) And what is your age, please sir? (A.) Sixty-Two years

(Q.) And where do you live? (A.) Well, sir, I can't tell you.

(Q.) Tell it as near as you can with reference to Dumfries? (A.) Its midway between Independent Hill and Dumfries

(Q.) Did you know Quinton Hutchinson, Mr. Gardiner (A.) Yes Sir.

(Q.) How long had you known him before his death? (A.) About seven years.

(Q.) Are you employed by the Cabin Branch Mining Company? (A.) I am sir.

(Q.) At this time? (A.) Yes sir.

(Q.) How long have you been working for the mine near Dumfries? (A.) If my memory serves me it's about 14 years.

(Q.) Prior to that time you ever work in a mine? (A.) I started to work in the mines when I was 7 years old, and I have been in them ever since. I will qualify that assertion. You will have to deduct from that time 15 years army service.

(Q.) So that with the exception of fifteen years between 7 and 62 you have been working in mines? (A.) Yes sir.

(Q.) At the Cabin Branch Mine near Dumfries, how many pit bosses, or shift bosses, have they, Mr. Gardiner? (A.) There are two men employed for that purpose, one on each shift.

(Q.) Do you know the duties of a pit boss at the mine? (A.) Yes sir.

(Q.) Will you please tell the jury what those duties are?

Mr. Barbour: Just a minute. I want to know if he knows the duties of a pit boss at this mine?

The Court: Do you know, Mr. Gardiner, the duties of a pit boss down at this mine?

The Witness: Yes sir; I have served in that capacity.

(A.) The duties of a pit boss are to take his orders from his superior officer, the superintendent for the mine, or the mine manager, or both, and to take charge of all company property under his care, or of the mine under his care, and to secure the mine with the greatest security, looking also to the security of the men, and produce the greatest amount of output that he can, with the least possible costs. He must understand the science of drainage, haulage, and ventilation, if necessary, to secure their safety; and that's all that he needs to know.

By Mr. Moncure

(Q.) What would you say with reference --- or what connection would you say the pit boss or shift boss has with regard to timbering. I believe that was included in your answer, but I would like for you to explain to the jury a little more in detail, in reference to that aspect of the case. (A.) The timbering of a mine is usually entrusted to timbermen, two timbermen acting under the orders of the pit boss. When a place becomes insecure or unsafe, the pit boss at once orders it secured. The timberman, if it is possible for him to drop other work which may be just as important, goes at once and secures it.

(Q.) How often should the pit boss visit the place where the men are at work? (A.) I was educated to the belief that the pit boss should be in every working place at least once in 12 hours. I always made it a practice to do that.

(Q.) Mr. Gardiner, if the pit boss should, of his own personal knowledge, know that a sump had loose rock in it, or ore, what should he then do. (A.) By the term "Sump" I presume you mean a hole that they make to hold water, which is a local term?

(Q.) Yes Sir. (A.) And they break into the hanging wall to get a little room towards the foot wall or lower part of a level, and then sink it down perpendicular. In doing this, the roof may open a little bit, and the pit boss will then have it secured at once before he does any more work in there, because the men could not work in it, if he didn't do that.

(Q.) If the pit boss should know that there was loose ore, or slate in the compartment you have mentioned, should he allow the miners to go to work in that place before timbering?

Mr. Barbour: If your Honor please, we object to this line of testimony.

The Court: I sustain the objection in the present form of the question. I believe you can ask your question in another form which will not be objectionable

By Mr. Moncure:

(Q.) I will put the question this way: If the pit boss should find loose stone, slate or ore in the compartment you have mentioned, what is the first thing he should do? (A.) The first thing I would do would be to secure it.

(Q.) What is the first thing a pit boss should do? (A.) That is the first thing he should do.

(Q.) I ask you as an expert miner, would it be safe to allow miners to go to work in that compartment until the walls or the loose ore had been properly secured?

Mr. Barbour: I object to that.

The Court: I will let him answer that.

EXCEPTION by counsel for defendant.

A, The miner is supposed to examine his own place when he first goes into it. If he finds anything dangerous it is his duty to take it down, or notify the pit boss at once. I mean this: On his first entering his place in the morning, then if the place becomes dangerous during the day, it would necessarily follow that the miner would secure it for his own protection, if he sees that it is unsafe.

(Q.) But suppose he does not know it, and the pit boss does, what is the pit boss's duty?

Mr. Barbour: If your Honor please, it seems to me that is infringing upon the province of the jury. He is prescribing rules of law.

Mr. Moncure: I don't think we do that. These are mining rules and regulations given by an expert miner. What would you do or what should the pit boss do, if the miner did not know of this situation and the pit boss did.

The Court: Wouldn't the jury know what they ought to do.

Mr. Moncure: He has had some fifty years experience. I expect they do, but I think it is proper for me to ask that question.

The Court: If there is a rule laid down as to that particular thing, I think he could tell it.

Mr. Moncure: But under the miners rules and regulations, what should a pit boss do.

The Court: You can ask him that.

Mr. Barbour: Ask him if this mine had published any rules or regulations.

Mr. Moncure: I am going to agree with you that they had not published any, but they ought to publish some.

Mr. Barbour: That is another question.

The Court: It depends on what you mean by "Publish". Of course, you do not mean printed, but proclaimed.

Mr. Moncure: Have they ever had any printed rules there.

The Court: I do not mean any printed rules. You can publish a thing without printing it. Were there any rules that were promulgated --- did the pit boss have any rules to govern and control in matters of that sort.

The Witness: I have never seen any at this place excepting the instructions that I received from Mr. Louis Dietrick, Senior, when he sent me down there.

The Court: What were the instructions to the pit boss on that point at this particular mine, if you know?

The Witness: To be as careful as I could in preserving the property and taking care of the lives of the men, and get out as much ore as I could.

The Court: Mr. Moncure, I think that is as far as you can go. I sustain the objection of Mr. Barbour to the other, because that should be for the jury.

Mr. Moncure: I was not going to ask that question, what were the rules there. I want to know how many rules they had there.

By Mr. Moncure:

(Q.) Now I will ask you this question, Mr. Gardiner: What position did Mr. Emery occupy at that mine?

(A.) He was assumed to be the superintendent.

(Q.) And acted as such? (A.) And acted as such.

CROSS EXAMINATION – By Mr. Barbour

(Q.) I believe you have stated, Mr. Gardiner, that it was the duty of a miner when he went in to work in the morning at the beginning of his shift to ascertain whether or not his place where he was assigned to work was safe? (A.) I have always so understood it.

(Q.) And if it is not safe, then it is his duty to notify the pit boss? (A.) If he cannot secure it.

(Q.) It is his duty to secure it himself if he can? (A.) It is his duty, like the Irishman when he is warding off a blow of a shillallee.

(Q.) If he cannot secure it, it is his duty then to notify the pit boss? (A.) Yes sir.

(Q.) Or the timbermen either one? (A.) Yes sir.

(Q.) And if the dangerous situation ensues during his operations, it is the same duty to secure it if he can, and if he cannot, to notify the pit boss? (A.) Certainly it's his duty, if he values his safety.

(Q.) You spoke, in response to a question by Mr. Moncure of a sump. I understood you to describe just what you mean by a sump. Will you please restate that to the jury. (A.) Yes Sir; a sump here is a hole in the ground, clear of the traveling way and clear of the side, on three sides one of the sides of the slope or wall must be used to dig in and simply to hold water.

(Q.) And when you refer to the sump, you do not mean the level itself, but a hole dug in the level to hold water in? (A.) The hole dug in the level is called the sump.

(Q.) Have you ever been in level No. 19? (A.) no sir.

(Q.) You do not know then the situation of the sump in that level? (A.) No sir; I have never been below No. 15.

RE-DIRECT EXAMINATION - By Mr. Moncure

(Q.) After they did the level there must be some place to catch the water, as I understand that is what technically is called a sump; is it not? (A.) Well, a sump in mining parlance is an apartment or compartment specially set apart to catch the water that is pumped into it or flows down the hill into it.

WITNESS EXCUSED

(At the suggestion of counsel for plaintiff the jury retired from the court room)

Mr. Moncure: If Your Honor please, we are met by a rather remarkable and peculiar situation here. Among other people that we requested to be subpoenaed is a man named Thomas Johnson, colored. We got a written statement from him covering these facts. He reports to us a minute ago that as Mr. Amidon didn't think enough of him to summon him or subpoena him, he won't talk to us about the case, and that is the situation we find ourselves in. He works for the mines now and declines to discuss the matter with us, and we ask your Honor to call him before the court and allow us to examine him. We want the record to show the condition here, if there is any question about it, because it places us in a peculiar position, and we are entitled to have that witness's testimony and he declines to discuss the case with us, and while we are entitled to his testimony we should not be bound by his statements, and should have the right to examine him and cross examine him. I believe Mr. Barbour will believe that to be fair. He talked to me freely when I went down there to Dumfries. He made a written statement before I went down there in the presence of two witnesses and signed it, and talked to me in the presence of two more and here this morning he declines to discuss the matter with us at all.

Mr. Barbour: The rule of law is that when a party introduces a witness, he vouches for his character.

Mr. Moncure: We don't propose to introduce him. We propose to ask his Honor to call him.

Mr. Barbour: And I do not see how they can ask the court to put before the jury a witness whose character for truthfulness they are afraid to vouch for. That is at the bases of all such cases. I have seen that rule depart from to some extent in criminal cases, where the court in the interest of the accused person has required an eye-witness to the tragedy to be called with the right on either side to attack him. I have never heard and I do not believe a case can be produced where any such course as indicated by these gentlemen has been followed; or that there is any reason for it. It is directly in violation of every rule on the subject.

The Court: Mr. Moncure, I think the proper way would be for you to put him on the stand and if he surprises you by his testimony you have a right to show that he had made other statements different.

Mr. Barbour: I want to notify these gentlemen that we have a written statement made by him eight days after this accident occurred.

Mr. Moncure: Will you promise to call him?

Mr. Barbour: No. I just notify you that you cannot afford to rely upon him as a witness for you.

Mr. Moncure: Mr. Barbour, you know the situation here, that man is employed by you and I can show that his expenses are paid by your people. He said he was not summoned, and the sheriff says he was.

Mr. Barbour: He was summoned by us and I talked with him before, and I have a written statement from him now. So far as his being an employee, every witness they have introduced and who have testified were employees of this company. We want them to understand now that we shall object to any impeaching of this witness on the ground of surprise because we warn them now.

Mr. Moncure: I want to say now that the only statement he can make is the statement given me. If he makes another one different from that, he takes me by surprise. If you will let me see your statement, I will tell you now.

Mr. Barbour: I will tell you this, that he will testify that where Quinton Hutchinson was, that the place was safe and his death was the result of his own negligence.

Mr. Moncure: Show me the statement then.

Mr. Barbour; No; I won't show you the statement.

Mr. Moncure: Otherwise, I don't know anything about it.

(The Jury then returned to the Court Room)

Whereupon --- Tom Johnson (colored) a witness called by and on behalf of the plaintiff, having been first duly sworn, was examined and testified, as follows:

DIRECT EXAMINATION

The Witness: Am I summoned by Mr. Amidon?

The Clerk: The Sheriff says so.

Mr. Moncure: I trust Your Honor will instruct the witness in reference to that summons of his.

The Court: It does not matter who you are summoned for; all you have got to do is to go on that stand and tell the truth. The sheriff says he summoned you for Mr. Amidon; but you are here to tell the truth regardless of which side summoned you.

By Mr. Moncure:

(Q.) What is your full name? (A.) Tom Johnson, Jr.

(Q.) And your age is what? (A.) 24, I will be 25 the 6th of next February.

(Q.) Where do you live, Tom? (A.) Dumfries, about a mile above Dumfries.

(Q.) Have you lived there all your life? (A.) No sir.

(Q.) You are a native of this county, are you? (A.) Oh, yes sir.

(Q.) Are you employed by the Cabin Branch Mining Company at the mines near Dumfries. (A.) Yes

(Q.) How long have you been working there? (A.) I have been working there eight or nine years.

(Q.) You live down on the railroad between the mines and Dumfries? (A.) Yes Sir.

(Q.) On the right hand side of the track going towards the mines? (A.) Yes Sir.

(Q.) Have you ever worked underground in those mines? (A.) I have.

(Q.) How long have you been working under ground? (A.) I guess I have been working underground about six or seven years, something like that I have worked underground.

(Q.) In what capacity have you worked underground in those mines? (A.) What which?

(Q.) In what capacity were you working underground in those mines on or about the first or second day of March; that is, as machine man, mucker, or what? (A.) I don't know what you mean.

(Q.) Were you working as a mucker? (A.) No sir.

(Q.) Were you working on the machine? (A.) I was working on the machine.

(Q.) Then you worked as a machine man. Were you working by the day? (A.) Yes Sir.

(Q.) Or were you working by the piece? (A.) I was working by the day.

(Q.) Prior to the death of Mr. Hutchinson had you worked in No. 19, which is the bottom of the mine? (A.) Yes Sir; that is where I was working.

(Q.) Who were you working there with? (A.) For a regular buddy you are talking about?

(Q.) Yes? (A.) A gentleman by the name of Noble Willis was my regular buddy, but he wasn't there the last shift.

(Q.) Who did you work with on the last shift (A.) The last shift that I was there?

(Q.) Yes? (A.) On Saturday, was Mr. William Murray.

(Q.) Is Mr. William Murray assistant timberman there also? (A.) Assistant timberman?

(Q.) Does he ever help to timber there? (A.) Yes Sir; sometimes when either one of the other timbermen is out of place he helps to timber, if he hasn't anything else to do of importance.

(Q.) Was No. 19 when you left it timbered? (A.) No; they hadn't never put in any timber, but there were a couple of timbermen working that day. They were working there that morning getting ready to put in timbers.

(Q.) On the 27th day of February, is that right, Saturday? (A.) I don't even know what day of the month it was.

(Q.) Saturday before Hutchinson was killed? (A.) Saturday before he was killed.

(Q.) The timbermen came down there to timber? (A.) Yes Sir.

(Q.) Did you know Quinton Hutchinson? (A.) Did I know him?

(Q.) Yes? (A.) I personally knowed him as I seen him, that's all.

(Q.) On your last shift there, was that night or day? (A.) The last shift I work was in the day. I went on at 7 o'clock and came out at three or half past two, somewhere between two and three o'clock.

(Q.) On Saturday? (A.) Yes sir; I was due off at 3.00 o'clock

(Q.) Who were the mockers on your shift that day? (A.) I know who was due to muck, but whether they were there that day I don't know; but those who was due to muck was Roger Gray and Ralph Decatur. They were the two due to muck. Whether they were there that day, I don't know. It has slipped my memory. I never paid no attention to it.

(Q.) Now on Saturday when you worked there, I will get you to tell the jury whether or not you noticed any ore or slate about that sump or level that was loose? (A.) That day? That Saturday?

(Q.) Yes; Saturday, the 27th? (A.) Saturday, the 27th, I worked there, that is the day, if it was the 27th of February ---

(Q.) The last day before Hutchinson was killed? (A.) There was a small piece, I don't know whether it was very loose or not, we had pulled down, I guess eight or ten loads of stuff that morning. They skip holds a ton, and there were about seven or eight skip loads, and we was trimming it down, as we do every morning ---

(Q.) And you noticed what? (A.) It was a small piece of slate there, I guess it wasn't very large, I don't know what size it was, I am afraid to say, because I might say something that wasn't right. It was at the first starting in this place, where we first started at, and there was a place not quite as big as my finger ---

(Q.) You mean a crack? (A.) Yes. It wasn't a crack. It was a water seam, but looked like a crack. Me and Tom Reynolds, the timberman, me or him one, I don't know which one it was, it has been a long while ago, taken and struck a pinch bar and sprung down on it and the piece of stuff didn't move at all, and the shift boss, Mr. Stoll, was standing over a little ways from me, and he says, to whichever one it was, I don't know which, "If that piece of stuff will stay there; right away". Or "We will catch it up". And I goes

on up with Mr. Murray and goes ahead setting up our tripod, and got it set up and put the machine on it and got the hose and went to work.

(Q.) That was Mr. Amos Stoll wasn't it? (A.) Yes sir.

(Q.) That was, you say, at the back of this place? (A.) Right back of where we first started in.

(Q.) I will get you to show me now – this is the level or sump, that book, and this is the incline coming down here? (A.) Yes sir.

(Q.) Now show where that place is? (A.) Here is the incline coming down here, this way, this is the south ridge, this here would be the south ridge, and this is the north ridge. We were working on the south side right here, We started in here. There was a small piece of slate where we started in --- I don't know whether it was loose or not, but there was a kind of water seam in it, and we went on back here. We trimmed from here up to the face. The face, I reckon, was about eight or nine feet from this place. We trimmed on up there, and then we came back again finishing up; and here was a small crack, and we struck a bar in that crack, and I pulled down on the bar and Mr. Stoll says "If that piece of stuff will stay there, let it stay there. We are getting ready to timber, and we will catch it up". "all right" I says, and goes on up to my place, and throws back the stuff out of the way; and Mr. Reynolds, Tom Reynolds, and Mr. Fred Stolls they went on fixing to set the timbers, and they were working at the timbers that evening at 3.00 o'clock when I left, between two and three o'clock. I can't say exactly what time I left because I don't know.

(Q.) Was that place timbered before you left it on Saturday? (A.) No; it was not timbered when I left it. I don't know what time it was timbered.

(Q.) And you didn't see it any more until after Hutchinson was killed? (A.) No sir; that was on Saturday and the following Monday, I didn't go back. I was due back the following Monday, but I don't think I went back. I won't be sure.

(Q.) Who was your pit boss? (A.) Mr. Stoll.

(Q.) Amos Stoll. (A.) Yes sir.

(Q.) What wages did you get as machine man? (A.) Two dollars a day in that place.

(Q.) Did you make a statement to Mr. Dietrick? (A.) I did.

(Q.) In regards to this matter (A.) I did.

(Q.) A written statement? (A.) Yes sir.

(Q.) Did you sign it? (A.) I did.

(Q.) Did you tell him in that statement about this matter that you have just told the jury? (A.) If I ain't mighty mistaken I did.

CROSS EXAMINATION – By Mr. Barbour

(Q.) Is this the statement you referred to (handing paper to witness) (A.) I can't read it.

Mr. Moncure: You can't read, so you don't know.

The Witness: No Sir; I don't know.

Mr. Moncure: Is that your writing?

The Witness: Yes.

Mr. Moncure: Are you sure of it?

The Witness: Yes sir, but one man can write like another one, you know.

Mr. Moncure: Are you sure that is your signature?

The Witness: No, I won't be sure.

Mr. Barbour: I will read this statement to you:

The Witness: Yes; read it to me.

Mr. Moncure: Just one minute before you read it. I would like to read the statement. You don't want to read it to the jury if it won't be proper evidence. (After reading paper referred to) You can read that, Mr. Barbour. We don't object to it.

Mr. Barbour: (Reading)

“Dumfries, Virginia, March 12, 1909. Statement of Tom Johnson Jr. given this 12th day of March, 1909, who was working in the place where Quinton Hutchinson was killed. The last time he was there previous to the accident to Quinton Hutchinson was Saturday February 27, 1909, day shift William

Murray being his buddy on the machine. Mr. Amidon and Frank Williams came out to see me last night and asked me if that piece of slate that fell down and killed Quinton Hutchinson, if they hadn't tried to get it out before and I told him No, not that I know of. That piece of slate that we tried to get out Saturday, the 27th when we was there is there now or was this evening. That is all I knows about it. Tom Reynolds and I were trying to get down a piece of slate but couldn't get it down. Mr. Stoll said that if it would stay there until we got the timber set, to let it stay. I didn't hear Mr. Stoll tell Tom Reynolds not to take any slate down, as he always told us that if it took a half a day to get a piece of slate down, to take it down, as he wanted everything safe where we were working. I consider the place where Quinton Hutchinson was killed safe. I have been working in the incline and starting headings from number seventeen down. Mr. Stoll has always told us to keep the slate safe for our own protection.

(signed – Thomas Johnson)

Mr. Moncure: Your Honor will instruct the jury that that goes in as a question to him but it does not go as evidence.

The Court: Yes Sir.

Mr. Barbour: This is the statement you made?

The Witness: Yes sir; which I made to Mr. Dietrick.

Mr. Moncure: We object to the opinion part, and move to strike it out.

Mr. Barbour: They have cross examined about this very statement.

Mr. Moncure: "I consider the place where Quinton Hutchinson was killed safe". The statement shows that the 27th was the last time he saw it before the death of Quinton Hutchinson.

Mr. Barbour: No; it was the last time he was in there before his death.

Mr. Moncure: I say so. "I consider the place where Quinton Hutchinson was killed was safe." That is not proper and we move to exclude it.

The Court: He has asked him if that is the statement. It is not evidence. I will not consider it evidence until he asks him under oath.

Mr. Moncure: I am willing to admit that he made that statement. I want Your Honor to explain to the jury that that is not evidence.

The Court: It is not evidence until he corroborates every portion that he is allowed to corroborate under oath.

Mr. Barbour: You heard me read this statement, and you say that is the statement you made to Mr. Dietrick.

The Witness: Yes Sir.

Mr. Barbour: I want to know if these statements are true?

The Witness; They are.

Mr. Barbour: We now offer the statement.

Mr. Moncure: I object to that question and that is where I want to take an exception.

The Court: Now Mr. Barbour can you not take those questions up and go over it and ask him each question so these gentlemen can have an opportunity to object to such portions as they think not proper.

Mr. Moncure: "I consider the place where Quinton Hutchinson was killed safe." I object to that.

The Court: How long had you been working in that mine?

The Witness: I had been working there eight or nine years.

The Court: I think all of your witnesses undertook to testify that they didn't consider that portion exactly safe.

Mr. Moncure: If Your Honor Please, this was some days before the accident.

The Court: But that is as far as he can go. He has been working there eight or nine years but I don't see how the jury can tell except by somebody who examined it. I confine that statement to that date alone. The testimony only goes up to the 27th. The jury will understand that. The Jury will understand that he doesn't testify as to the condition on the 2nd day of March or 3rd day of March when this took place.

Mr. Moncure: Mr. Amidon and Frank Williams came out to see me and asked me. And what his reply is to that, has that anything to do with this matter?

Mr. Barbour: If your Honor Please, Mr. Amidon is the man who is working up this case for his daughter which is a very proper thing for him to do; and it is only to corroborate his statement that he told him exactly the same thing.

The Court: I will admit that Mr. Amidon came to see him, but what he told Mr. Amidon and what Mr. Amidon told him, I don't think is proper evidence.

Mr. Moncure: The balance of it, we could not object to.

The Court: That is all you object to. My idea of it is this; he has a right to testify as to the condition of that mine up to the time he left there and no further, and secondly, he can state that the father – in – law of this gentleman, Mr. Amidon came to see him to find out what he knew about that. Of course, all the balance goes in, anyhow and that goes in with that modification.

Mr. Barbour: This statement is made on March 12th and he says that that piece of slate we tried to get out Saturday the 27th when we were there is there now or was, this evening; that is the very day he makes this statement.

Mr. Moncure: I am not objecting to that.

By Mr. Barbour

(Q.) And this piece of slate that Mr. Moncure was talking with you about never did fall?

The Witness: That piece we was trying to get down?

Mr. Barbour: Yes.

The Witness: No sir; it hadn't fell last Saturday evening. I haven't been there since last Saturday

Mr. Moncure: Last Saturday.

The Witness: Yes; last gone Saturday.

Mr. Moncure: Is that the day you referred to in that statement.

The Witness: Oh no. He asked me had it fell and I told him it hadn't fell last Saturday when I was there. I don't see no chance of its falling now.

(WITNESS EXCUSED)

(At the suggestion of Counsel for the defendant the jury retired from the court room)

Mr. Barbour: I want to inquire from the gentlemen on the other side when you expect to close your case.

Mr. Moncure: We don't expect Your Honor to wait until the witness who is not here now comes. That witness is a rebuttal witness.

Mr. Barbour: Of course, I want it understood that that witness is to be held strictly in rebuttal. I don't care about commencing my case until they have closed their case in chief. You can very well understand that.

Mr. Moncure: Yes.

Mr. Barbour: When Roger Gray was on the stand yesterday evening, I had in my possession in addition to the statement made by him to Mr. Dietrick another to Mr. John Davies and which I was not conscious of at that time. Although I had it in my physical possession, I didn't know of its contents, and couldn't examine in reference to this statement.

The Court: Is he here.

Mr. Barbour: No sir; we discharged him on yesterday afternoon. He is in Washington, I understand, in the employ of the Capitol Traction Company. We are going to try to get him here this evening but it is possible we may not get him here until to-morrow morning, and I want to ask the indulgence of the court in that respect.

Mr. Moncure: We would like to know as soon as you find out when you can get him.

(The Jury then returned to the Court Room) WHEREUPON,

William R. Gardiner, a witness who had previously testified, having been recalled by counsel for plaintiff, was examined and testified as follows:

DIRECT EXAMINATION by Mr. Moncure:

(Q.) Mr. Gardiner what, if you know, is the custom at the mines with reference to the pit boss when he has to be absent or is away, delegating somebody else to take his place? (A.) Do you mean this special mine?

(Q.) Yes sir. (A.) The custom has been to assign some man from the working force to attend to the boys during the night, who is or ought to be, clothed with the full authority of the pit boss.

(Q.) Who delegates the man? (A.) The pit boss himself

(Q.) That has been the custom, has it? (A.) Yes Sir.

(Q.) When the man is delegated by the pit boss, does he act with the same authority as the pit boss? (A.) I should presume so.

(Q.) As a matter of fact, does he do it? (A.) I have always done it.

CROSS EXAMINATION by Mr. Barbour

(Q.) I want to ascertain how you have discovered this fact. (A.) I have been pit boss there.

(Q.) Yes; (A.) And on one occasion I put a man in my place for a night. I selected a man that I knew was as expert as I was and I put him in there and told him to take charge of the place for that night.

(Q.) And that is all you know about it on that point? (A.) That is all I know about it, sir.

Mr. Barbour: If Your Honor Please, we submit that that should be excluded.

The Court: If that is as far as he can go, I will exclude it.

Mr. Moncure: Without referring especially to the time you delegated the boss, I ask what has been the custom of the either pit bosses there.

The Witness: I have already told you sir that it has been their custom to delegate a man from the working force of the mine to take their places.

By Mr. Barbour:

(Q.) But you don't know, except in your own instance, as to what authority they had the right to exercise?

(A.) Yes Sir.

(Q.) You do? Well how then? (A.) All pit bosses in mines ----

(Q.) I am not talking about "In mines" – I am talking about this particular mine. (A.) In this particular mine, it is hardly a mine

Mr. Barbour: Then we cannot adopt any rule as to what the rule of this mine is for that.

The Court: I understand the witness to say that the pit bosses put in substitutes when they were going away, and that has been the custom.

The Witness: That is what I said sir.

The Court: I overrule the objection.

EXCEPTION by counsel for the defendant.

By Mr. Barbour:

(Q.) How many times have you known that to occur/ (A.) That the pit bosses have been idle?

(Q.) Yes Sir. (A.) It has occurred quite frequently.

(Q.) It occurred once in your experience? (A.) In my experience at this time.

(Q.) At this mine, it occurred once in your experience? (A.) Yes sir.

(Q.) Now in who else's experience to your knowledge has it occurred at that mine? (A.) I worked a week at a time once in place of Andrew Watson, one of the pit bosses. I have known other men to serve there.

(Q.) What other men? (A.) Will Murray for instance, in the place of Amos Stoll and Della Crawford in the place of Amos Stoll, young men who were down there, and these men were all young men who worked under me when I was pit boss and who started in the mine quite recently.

Mr. Barbour: If Your Honor please, we save the point in reference to that evidence.

WITNESS EXCUSED

Whereupon----- NELSON ABLE

A witness called by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION by Mr. Moncure:

(Q.) Mr. Able, what is your full name? (A.) Nelson Able

(Q.) Where do you live? (A.) Forrestburg

(Q.) That is in this county? (A.) Yes sir.

(Q.) How long have you lived there? (A.) I was born and raised there.

(Q.) Have you ever been employed in the mine at Dumfries in this county? (A.) Yes sir.

(Q.) How long have you worked there? (A.) Well, a good while, off and on.

(Q.) Are you employed there now? (A.) No sir.

(Q.) Were you employed at night on the shift beginning March 2nd and ending on March 3rd, on the night Mr. Hutchinson was killed? (A.) Yes sir.

(Q.) Who was pit boss that night? (A.) Mr. Fred Stoll was there.

(Q.) Did you know Quinton Hutchinson? Yes Sir; knowed him for about five years.

(Q.) How long? (A.) About five years.

(Q.) As to his health, tell the jury what his general health was? (A.) Well, it was all right as far as I knowed. I don't know anything again his health at all.

(Q.) What family did he have when he was killed? (A.) Sir?

(Q.) What family had he when he was killed? (A.) A wife and child.

(Q.) An infant child? (A.) Yes sir.

CROSS EXAMINATION By Mr. Barbour

(Q.) How old are you Mr. Able? (A.) Thirty

(Q.) Thirty Years? (A.) Yes sir.

(Q.) Mr. Hutchinson was a skilled miner, wasn't he, an experienced miner? (A.) Well, I don't know about whether he was an experienced miner or not. He worked there. I don't know anything about his experience or anything about that.

(Q.) He was a man of intelligence, wasn't he? (A.) I couldn't say. I don't know anything about it.

(Q.) You don't know whether he was a man of intelligence or not? (A.) He worked in the mine there but I didn't know anything about his mining.

(Q.) You can testify as to his health but not his intelligence. You don't know whether he was intelligent or not? (A.) No sir; we just worked there in the mine.

WITNESS EXCUSED

Whereupon – D. I. AMIDON

A witness called by and on behalf of the plaintiff, having been first duly sworn, was examined and testified, as follows:

My Mr. Moncure

(Q.) Mr. Amidon, give the jury your full name, please sir. (A.) Daniel I. Amidon

(Q.) Mr. Amidon, you are the father of Mrs. Hutchinson, the widow of Quinton Hutchinson, are you not? (A.) Yes sir.

(Q.) You live where, Mr. Amidon? (A.) Dumfries.

(Q.) How long have you lived there, Mr. Amidon? (A.) In Dumfries, about thirteen or fourteen years, something like that, fourteen years I guess.

(Q.) How long have you known Mr. Hutchinson? (A.) I have known him ever since he was a school boy in Dumfries. I don't know how old he was, eight or ten years old something like that.

(Q.) What was his age the date of his death? (A.) Twenty-six years and some months.

(Q.) Mr. Amidon, have you ever worked for the Cabin Branch Mining Company/ (A.) Not inside, not underground, I have not; no sir.

(Q.) Have you ever worked for them outside? (A.) I Have. I worked by day work in the shed there.

(Q.) You never worked under ground there? (A.) No sir.

(Q.) What was Mr. Hutchinson's general health? (A.) Good, sir, as far as I know. He was a man that never had any sickness.

(Q.) Do you remember the night on which he was killed? (A.) Yes sir.

(Q.) Did you go there to the mine where his body was? (A.) No sir; they brought his body to the house.

(Q.) I couldn't say exactly, but somewhere I should judge between four and five o'clock. I couldn't say exactly. It was before light in the morning.

(Q.) That was the morning of March 3rd 1909 (A.) Before light. I couldn't say exactly what time it was brought there.

(Q.) It was at your instance, was it, that the post mortem examination was held? (A.) Yes sir.

(Q.) What wages was Mr. Hutchinson getting? (A.) I think he had been working by contract.

(Q.) I mean when he was killed? (A.) Two dollars

(Q.) When was the post mortem examination held? (A.) It was held on the 4th of the month.

(Q.) The day afterward? (A.) Yes sir; the day after he was brought home.

(Q.) He was buried when? (A.) On the 5th; I think. I am certain of it. He was buried the day following. Yes sir.

(Q.) What family did he leave? (A.) A wife and one child.

(Q.) An infant child? (A.) An infant child; yes sir.

CROSS EXAMINATION – by Mr. Barbour:

(Q.) March 4th was the day of the blizzard, wasn't it? (A.) Yes sir; a stormy day.

(Q.) And you sent to Fredericksburg for a physician to come up there and hold the post mortem examination? (A.) Yes sir.

WITNESS EXCUSED

Mr. Moncure: We rest, Sir.

(At 12:30 o'clock p. m. the court took a recess until two o'clock p.m. the same day.)

AFTER RECESS

The court met pursuant to the recess at Ten O'clock (A.)M.

Mr. Moncure: If Your Honor Please, we didn't introduce the record proving administration in this case. Mr. Barbour, you gentlemen, of course, will admit that without bringing the record up here.

Mr. Barbour: Anything you state the record shows I am willing that it may be considered as offered without the introduction of it.

Mr. Moncure: The record shows the administration and qualification.

Mr. Barbour: We save the point as to its introduction just the same as if it had been brought here.

The Clerk: The record shows she qualified as administrator.

Mr. Barbour: We object to the introduction of that. I suppose Your Honor overrules the objection and we save the point.

The Court: Yes Sir.

TESTIMONY ON BEHALF OF THE DEFENDANT

Whereupon ----

AMOS STOLL a witness called by and on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION – By Mr. Barbour:

(Q.) Mr. Stoll have you been sworn? (A.) Yes Sir.

(Q.) What is your name Mr. Stoll (A.) Amos Stoll

(Q.) What is your age? (A.) Thirty-Seven

(Q.) What is your employment at present? (A.) Shift boss in Cabin Branch Mine.

(Q.) What was your employment in the month of March 1909? (A.) Shift boss of the Cabin Branch Mine.

(Q.) Were you on duty the night that Mr. Hutchinson met his death in the mine there? (A.) No Sir.

(Q.) When was the last time previous to that night that you were on duty? (A.) On the day shift previous to that.

(Q.) On the day shift previous to that? (A.) Yes sir.

(Q.) When did that shift go on? (A.) Seven O'clock in the morning.

(Q.) Seven o'clock in the morning. Tuesday that was? (A.) Tuesday, March 2nd

(Q.) And you came on when? (A.) At 5 o'clock

(Q.) Are you familiar with the interior of level 19 where he met his death? (A.) Yes sir.

(Q.) Before the accident, did you ever see this piece of ore ---- (A.)

Mr. Moncure: I will ask you not to lead him, Mr. Barbour.

By Mr. Barbour:

(Q.) Are you familiar with the location of the piece of ore that subsequently fell and was the cause of his death? (A.) Yes Sir; I know where it came from.

(Q.) Had you seen that piece of ore prior to the accident? (A.) Yes sir.

(Q.) Please state to the jury when it was that you saw it. (A.) Well, on Tuesday morning, as near as I can get at it, between eight and nine o'clock, after the men had gone down to go to work. I went down to see how they were getting along and condition of the place, and when I got down there, of course, the same two men that shifted before that had worked in there.

(Q.) What two men had worked in there on the shift before that? (A.) Hutchinson & Williams.

(Q.) The same men? (A.) On the day shift before that, Monday --- the night shift before that, I meant to say, the Monday before. And when I went back there, of course, this piece of ore on this side of the level had shown to be a great deal larger than it was the shift before that, and I determined myself whether this ore was really getting larger, the natural vein getting bigger or not, and I went up there and was picking on it, between the ore and the slate on top, in there, to see whether the ore was getting bigger and by doing so I would have detected whether this piece of ore was loose or not at that time, and I found that nothing was loose there with that piece.

(Q.) That was on what time of day? (A.) On March 2nd

(Q.) Between eight and nine o'clock. I believe you said? (A.) Yes sir.

(Q.) To what extent if any had that piece of ore been uncovered by the shift of the night before? (A.) I suppose it had only been uncovered about two thirds.

Mr. Moncure: You say suppose. Do you know?

The Witness: Yes Sir.

Mr. Moncure: This is such an important matter, I do not want any supposition

The Witness: They were drilling the holes, drilling the line of holes with two line of holes, and there had been three put on the line, one line back of the other, drilling two lines of holes. It would take six foot of ground, you understand, and that rock would have uncovered that much of that ground on the side, because they were drilling directly on that side, the shift before that, and that would have uncovered that part of this rock.

(Q.) So that this rock had, to some extent at least, been uncovered before? (A.) Yes sir.

(Q.) As a result of the shooting of these holes that these very men put in it? (A.) Yes sir.

(Q.) Who did the uncovering? (A.) Frank Williams and Quinton Hutchinson, as I say, uncovered about two-thirds of this rock.

(Q.) And at eight o'clock in the morning you sounded it and it was then --- (A.) Between 8 and 9 o'clock, of course, I couldn't say definite because I didn't take time enough to see what time it was that I arrived at these different places.

(Q.) That was 9 o'clock Tuesday morning then when you were on that level again --- the last time you were in that level? (A.) About 4 o'clock in the evening, as near as I can get at it.

(Q.) Who was in there then? (A.) At that time?

(Q.) Yes. (A.) Fred Stoll and Clarence Williams was mucking in that side that day and the other set on the other side.

(Q.) Did either of them say anything to you about any unsafe ---

Mr. Moncure: Do you want to know if any report was made. I don't want to be technical ---

By Mr. Barbour:

(Q.) What, if anything, did either of them say to you in reference to any unsafe condition in that level?

(A.) Never said a word --- never called my attention to anything at that time.

(Q.) Mr. Stoll, please state to the jury what your duties as mine boss were there? (A.) Well, my duties there to look after the interest of the mine and the men, keep the mine in condition and the men as safe as possible, as I could see fit to do; that is, I always tried to use every precaution I possibly could to save men, protect the men from any harm or danger in any way at all.

(Q.) What was the duty of the men themselves, the miners, in reference to caring for their own safety?

Mr. Moncure: Let us see if he knows that first.

Mr. Barbour: I withdraw that question.

By Mr. Barbour:

(Q.) What instructions, if any, were given to the men in caring for their own safety?

Mr. Moncure: This question is excepted to unless it is shown that Mr. Hutchinson was familiar with these rules.

The Court: I overrule the objection.

EXCEPTION by counsel for the plaintiff

(A.) Well, If we was to hire a man that had not been accustomed to work in this mine or hadn't worked in any mine at all we would question him to some extent and if he had never worked in a mine we would not put him in any kind of place, we would work him with some man that knew something about mining. We wouldn't take a green hand and let him go work by himself. He would have to work with some other qualified miner.

(Q.) Now what instructions if any were given to the men themselves with reference to caring for their own safety? (A.) When we hire a man, as I just now spoke, we always gave them that understanding. If a man goes to work in a place, if he is working there, has made one shift, or never has made one shift in there, it would be my place to go in there first and see if it was in condition for him to work there. After he had worked in that shift, it is his part. He is to sound the place before he goes to work back there again.

(Q.) That was the rule, was it? (A.) That was the rule.

(Q.) Then if he went in there and discovered a place that was unsafe, what was his duty?

Mr. Moncure: We object to that question.

The Court: I think he can answer that.

EXCEPTION by counsel for plaintiff.

(A.) His duty was then to come and report to the man in charge of the shift ahead of him, that was his duty, to report to us.

(Q.) Did he have any right or was it customary for him also, if he could not find the mine boss, to report to anyone else?

Mr. Moncure: Same objection for the reasons stated above.

(A.) If it was on the day shift when the timbermen were in there doing work, --- of course we don't work the timbermen night and day, but if it was on the day shift, it was his duty, if he hadn't found out, and if he thought he was in danger of working there, it was his place to notify the timbering boss as well as the mine boss.

(Q.) Then what was the duty of the mine boss in that regard? (A.) It was his duty to see that the place was made safe or send him out; provided he was working day work.

(Q.) Had the Cabin Branch Mining Company furnished timber there? (A.) Yes Sir; they furnished the timber.

(Q.) Did they furnish timberman? (A.) They furnished timbermen for the day work timbering; that is, when the work is not done by contract work.

(Q.) Who was the head of the timbermen? (A.) At that time we had Tom Reynolds, who was the head of the timber gang.

(Q.) Did you go down into this mine the morning after the accident? (A.) Yes sir.

(Q.) Did you see the ore that was laying there at the machine? (A.) Yes sir.

(Q.) How was it resting? (A.) They had it propped up on a piece of steel the morning I went down there.

(Q.) Did you see any pick mark or anything on that piece of ore? (A.) A pick mark, Ralph Decator showed me ---

Mr. Moncure: I object to that.

The Court: I will sustain that. You can tell what you saw.

By Mr. Barbour:

(Q.) You saw a pick mark on the ore? (A.) Yes Sir.

Mr. Barbour: We are going to follow that up by the statement of Mr. Decator that it was the pick mark that he made on it trying to full it down.

By Mr. Barbour:

(Q.) Did you have any conversation with Mr. Frank Williams and Mr. Quinton Hutchinson on Monday night before this accident? (A.) Yes sir.

(Q.) The first time they went down into level No. 19 (A.) When I came there Monday night at work, after I got in the mine, I found out that the men that had been working in this place were absent on account of the death, and as I was going down into the place I met Quinton Hutchinson at No. 16 level, the level they were working at, and I asked Hutchinson how he would like to make \$2 tonight and he kind of laughed and said I would like it very well and I says "Quinton" I have got a place down here in the bottom, No. 19, where nobody is working, and I would like you to go down and work there if you would; and he said "All right, whatever my buddy says about it."

Mr. Moncure: We object to that.

The Court: I think that is proper.

Answer (continuing) And he says "Whatever Frank says about it, all right." I says "All right call your buddy" as we call them, or pal--- and he called Frank on back there to the incline and I told Frank what I wanted with him and he says "Well, all right." I says to him in just joking qay "I won't charge you anything for your powder there." They were working on contract work and when they were working that way they bought their own powder. And they went on down to 19 level and I went on down behind them into the level, into No. 17, where I had two more men working, and I went in to see how they were getting along, and from there on down to nineteen. When I got there Hutchinson and Williams was in the act of setting up the tripod.

Mr. Moncure: That was the day before?

The Witness: Yes sir; that was the day before. And they had kind of got the tripod turned upside down, at least, they got the legs upside down, so they couldn't turn the saddle in the tripod. So I take it down and reversed and helped to set it up for them.

By Mr. Barbour:

(Q.) They were working on contract work, I believe you said, upstairs? (A.) Yes sir.

(Q.) And when they were working by contract, what about the timbering there? (A.) When men are working by contract they do their own timbering.

(Q.) Does the company furnish them the timber? (A.) The company furnishes them the timber at their request; Yes sir.

(Q.) And how much were you paying them down there? (A.) Contracting?

(Q.) No; by the day in level 19 (A.) Two dollars a day.

(Q.) Do you know how much they were making by contract? (A.) I don't think they were quite averaging \$2. That was my motive, because Hutchinson had worked prior to that in the incline for the company and I thought he was a very suitable man to put back there again and that's the reason I asked them.

(Q.) And they had to pay for their powder out of that two dollars? (A.) Yes sir.

(Q.) When they were working by the day the company furnished the powder? (A.) The company furnished the powder for day work.

(Q.) Mr. Williams has stated that he made some objection to going down there? (A.) No sir; there wasn't no objection.

Mr. Moncure: Don't put it that way, please sir.

By Mr. Barbour:

(Q.) Please state what, if anything, occurred between you and Mr. Frank Williams or Mr. Quinton Hutchinson on that night about their objection to going down there in that pit? (A.) Well, there wasn't anything said in reference to going down at all. When I asked them to go down there, Quinton Hutchinson turned around and said to Frank Williams "We are not losing anything", and that was all that was said to me in reference to going down there. He said "We are not losing anything." I suppose he meant by that he wasn't losing anything out of his pay, that he was making more down there than what he was working at. (Q.) Please state what representation, if any, you made to either of those gentlemen about their being as safe down there as they were in heaven. (A.) I never made any such statement whatever.

Mr. Moncure: He didn't state heaven; it was heading.

By Mr. Barbour:

(Q.) Well, I want to know what, if any, representation you made to him about being as safe in there as in the heading. (A.) He was working in one heading, and I should think one heading was about as safe as the other..

(Q.) Now Mr. Stoll, Frank Williams has testified as to a conversation that occurred between you and himself on the railroad on Tuesday afternoon in the presence of Mr. Fred Stoll in reference to his working Tuesday night. Do you recall such a conversation? (A.) As I was coming home from work on Tuesday evening, I met Quinton Hutchinson & Frank Williams about three-quarters of a mile from the mine, or at Cabin Branch, to determine right where it was at, and I told them ----

(Q.) Which way were you coming (A.) I was coming home

(Q.) Which way were they going? (A.) Towards the mine to work that night; and I asked Frank Williams and Quinton Hutchinson how would they like to go back and make another shift in the same place they worked the night before, and he used the same expression --- in the first place, he asked me "how much muck did we break last night," and I told them at that time exactly how many car loads they had hoisted out of there that day, but I couldn't recall today how many it was, and Quinton turned around to Frank and says "I told you we could break it," and laughed and went on, and that was all the conversation in reply to my request for them to go down. They told me all right.

(Q.) What if anything was said as to who would be the shift boss that night? (A.) I never said anything to him at that time in reference to that, as to who would be pit boss, because I didn't know myself but what I would come back there that night, because if I had felt able to work that night I would be there myself.

(Q.) Now I believe you said that before the accident you were last in that heading --- is that what you call it? (A.) Yes sir.

(Q.) About four o'clock --- (A.) Four o'clock as near as I can say. Of course I couldn't give it right to the minute, but just about four o'clock, because our shooting time is five o'clock, and I just practically got away from there before they was shooting.

(Q.) Had there been any shooting on that side after you left there and before the accident? (A.) No sir.

(Q.) When you left there, please state what was the safety of that level as far as you could ascertain it, at 4 o'clock on that evening? (A.) When I left there at 4 o'clock, to the best of my knowledge, it was just as safe there as any other level in the mine. I would have been just as willing to work there --- I wouldn't put no man where I wouldn't work myself.

(Q.) How long have you been working in the mines? (A.) I have been working in that mine, I expect, about close on to 17 years.

(Q.) Seventeen Years? (A.) Yes sir.

(Q.) How long have you been filling the position of pit boss there, or shift boss? (A.) about 7 years.

(Q.) I believe that your brother, Fred Stoll, did act as pit boss that night? (A.) Yes sir.

(Q.) What had been his experience as a miner? (A.) Well, he worked in the mine a good many years before that with me.

(Q.) How long had he been working off and on? (A.) Off and on he had been working there, I think, about the first work he done with me was about nine years ago. He worked there during one entire winter with me in the mine and several different times since that with me in the same mine we are working now, and then he had worked two or three different times since I have been shift boss there, under me.

(Q.) What were his regular duties at the place? (A.) Timber man.

(Q.) Timber man? (A.) Yes Sir.

(Q.) What is the character of service required of a timber man. (A.) A man timbering --- of course, a man doing timber work has the riskiest part of the work to do. Provided a man is working in a place and they were to shoot out a set of timber, it is natural that that ground would be worse after that set of timber --- it would be worse after it was shot the second time, and the timberman would have to go back there and put them up. That would be part of his duty, and so forth, and prop up the loose ground where it requires the company's attention to prop it.

(Q.) From your knowledge of your brother and his experience, did you regard him as a competent man as pit boss?

Mr. Moncure: We object to the question.

The Court: I overrule the objection.

EXCEPTION by counsel for plaintiff.

Answer – Yes sir; I do so.

CROSS EXAMINATION by Mr. Moncure:

(Q.) You say you have been pit boss about seven years? (A.) Yes sir.

(Q.) Give the jury the names of the different people who have acted as pit boss for you in your absence?

(A.) Well Murry, Fred Stoll, Will Peel, and W. R. Gardner, I think, to the best of my recollection.

(Q.) How often had Fred Stoll acted as pit boss before? (A.) He hadn't acted as pit boss any before that night.

(Q.) That was the first time? (A.) Yes sir.

(Q.) You say you never told Mr. Hutchinson and Mr. Williams at that time, when you met them --- never told them at that time that Fred Stoll would be pit boss. What time was it when you told them that? (A.) I didn't tell them at any time that Fred Stoll would be pit boss. I told them that I didn't know who I would send back there, that probably I would be back myself.

(Q.) Then you did talk to them about the pit boss? (A.) Yes sir. I said I probably would be back there myself.

(Q.) Or you would send someone? (A.) Send someone in my place.

(Q.) So you did talk to them about someone taking your place as pit boss, but you think you did not specify the name of Fred Stoll/ (A.) No sir; I didn't specify the name because I wasn't certain but what I would be back there myself.

(Q.) Then you did select Fred and did send him down there? (A.) Yes sir; because he was boarding at my house and I didn't feel like going off to look for some other man to send.

(Q.) You did have some talk as to where to bore or set up? (A.) No sir; I told them in this way, to set up on the opposite side to where they were setting up the night the accident happened, to follow their line of holes up in the same direction they were shooting the night before, follow the same line of holes back to the back line of the wall.

(Q.) So you had a talk with them about that too. Now you say when you went down in the mine the morning of March 2nd that that piece of rock looked like it was projecting out? (A.) No sir.

(Q.) Or ore, and you took your pick and tested it? (A.) That was March 2nd.

(Q.) I say so? (A.) It looked like the ore was getting larger, that the vein was getting bigger, but not that the ore was projecting out any more, and I taken the pick and digging on it to determine in my own mine whether it was getting larger or not.

(Q.) That was only for the ore? (A.) Yes Sir.

(Q.) You only tested the ore? (A.) I would have found out by this test whether it was solid or not.

(Q.) You only tested where they were making those holes? (A.) No sir; on this rib where this piece of ore came from.

(Q.) Then you tested that piece of rib? (A.) I tested on that rib.

(Q.) And you picked on that piece of rib the morning of March 2nd, and it was good? (A.) That piece of ore was solid there on March 2nd.

(Q.) The piece that fell and killed this man? (A.) Yes sir.

(Q.) According to your understanding of it? (A.) Yes sir; by picking on it. As I told you, by picking on it I would have discovered if it had been loose.

(Q.) And that was about 4 o'clock in the morning? (A.) No sir.

(Q.) About between 8 or 9 o'clock in the morning? (A.) Yes sir; between 8 and 9 o'clock.

(Q.) Was the day shift then on? (A.) Yes sir.

(Q.) Was there then any boring going on? (A.) Drilling; Not at that present time, but during that day they drilled about forty odd feet.

(Q.) Where did they drill? (A.) On the north side of the incline.

(Q.) On the opposite side from that? (A.) Yes sir.

(Q.) They didn't drill there then, at all? (A.) No sir; not on that side.

(Q.) That was slate there and they didn't blast there at all? (A.) No sir.

(Q.) Now the last time you say you were down there was what time that evening? (A.) About 4 o'clock, as near as I can come at it.

(Q.) Did you see Fred Stoll down there? (A.) Yes sir, I seen Fred Stoll.

(Q.) Did you see Clarence Williams there? (A.) Yes Sir.

(Q.) (Indicating) Now this representing the sump or level, understand, and this the incline as you go down into it, where was Fred Stoll and Clarence Williams, where were they mucking. Just show on this book.

(A.) It would be hard matter for me to determine where they would be at in the course of an hour or two. The muck was on this south side of the level.

(Q.) On this side of the level? (A.) From here around back of the incline.

(Q.) They weren't mucking over there? (A.) They might have been mucking right there at that time in an hour's time they might have been mucking around there, because this ore would be scattered from the shooting.

(Q.) But there wasn't any shot that day? (A.) No sir; but there was the night before.

(Q.) When you went down there at 4 o'clock, where were they mucking? (A.) I couldn't tell --- as I told you, I couldn't tell where they were standing in an hour's time. The ore for instance, in a place like that is scattered and the men can muck all around on the other side of this muck pile.

(Q.) Do you remember where they were mucking? (A.) No sir; I couldn't say exactly where they were mucking. That pile of muck was laying on that side.

(Q.) Was the muck over on this side where this piece of slate or ore fell and killed Hutchinson, When you went down there at 4 o'clock had that been removed (A.) Not all, no. It was all about, as near as I could judge, maybe two or three skip loads of muck laying there.

(Q.) At that place, would that be the place where it fell, on that side? (A.) A man would work there until he got it all out.

(Q.) But was there any muck on this side? (A.) There was no shooting there on this side at anytime.

(Q.) So that was the only place where there was muck? (A.) As I told you, as far as a shot would scatter it. When you shoot, the muck is about the length of this room, they throw it that far; that is, if the place was solid.

(Q.) Now getting away from that for a minute. If a pit boss has to be absent for any reason, does he delegate a man to take his place. (A.) Yes sir.

(Q.) And he has authority to do that, has he not? (A.) Yes; we always exercise that authority?

(Q.) And that was the custom there, is it not? (A.) Yes sir.

(Q.) Were you down in the mine when Tom Johnson used the pit bar and tried that crack? (A.) He never tried no crack when I was there. I could state to you what he did with reference to that.

(Q.) You say he never did it while he was there? (A.) Not this piece of ore.

(Q.) Any piece of ore? (A.) No piece of ore.

(Q.) Any piece of slate? (A.) The piece of slate at the side.

(Q.) When was that? (A.) That was on the 27th of February.

(Q.) Did you then give orders to timber that? (A.) No sir; I didn't give orders. I suggested it.

(Q.) Did you give instructions to timber that mine? (A.) I told Tom Reynolds to make it look better to set a prop back here, that was right at the face of the level where it was first turned off, about ten or twelve feet from the inner end where the base is at the present time.

(Q.) Now Mr. Stoll, as a matter of fact, didn't you give orders to timber that place and Reynolds, Tom Reynolds, got the timbers ready and was taken sick and that is why that place wasn't timbered; isn't that true? (A.) I didn't give him orders to timber that place. I told him to set a prop there, a prop, which would have been one pine pole.

(Q.) Why did he prepare more than one pine pole for that place? (A.) He didn't prepare it at that time.

(Q.) Before Mr. Hutchinson's death? (A.) No sir.

(Q.) You know that is true, do you? (A.) No sir; he did not.

(Q.) Why did you say it would make it look better? (A.) Well, if we had it there for an emergency, provided it would get loose --- we don't always wait for a rock to get ready to fall, if we did we couldn't timber it. We would have to timber in case of emergency. Of course if we saw that that place was getting dangerous, then we would take steps to timber up, if it required timbering.

(Q.) Now Mr. Stoll, as a matter of fact, you never timber there for looks, do you. (A.) Yes indeed, I have timbered to make it proper to suit a man's own wishes when I knowed there was no danger.

(Q.) Had anybody asked you to timber that place? (A.) No sir.

(Q.) So you were not timbering it because anybody had asked you? (A.) No sir.

(Q.) But you were timbering it for the looks of the thing? (A.) Because we had pulled some slate off there.

(Q.) And there was a crack in it? (A.) No sir; not in that slate.

(Q.) Then why did you get the pinch bar? (A.) We didn't get any pinch bar. We don't get a bar. You take a pick and pick in the crevice and pick out a place for the bar.

(Q.) Then you found a crevice? (A.) That might have been a crevice. I would like to explain how it was.

(Q.) I have no objection in the world. Certainly you can explain it. (A.) I will turn this around a little different (indicating). For instance, this was the incline coming down here and here we turn this level off, and this roof would be extending over here, and we drive this level off here, and this piece of slate was right at the point where this was turned off.

(Q.) And that is where you found the crevice? (A.) It was no crevice. They picked the place there and it was trimmed down, that piece of slate was trimmed down after that, on the first and second of March, and this was on the 27th.

(Q.) Was there anything at all to make you believe or think that place there, that didn't have any crevice, need timbering? (A.) Not any more than just to be sure it would never be looser, that the prop would be there stationery, forever.

(Q.) And there was no crevice there? (A.) No more than what we picked. It wasn't a crevice in a piece of hanging slate, unless it is ready to fall.

(Q.) And there was no crevice there? (A.) If a piece of rock would get so loose, it would be ready to fall.

(Q.) Was there anything to make you think that it needed timbering. (A.) Not particular.

(Q.) Then why did you issue orders to timber? (A.) I never issued no orders to timber until the following week.

(Q.) After Hutchinson's death? (A.) Yes sir.

(Q.) But you issued the orders beforehand? (A.) No sir.

(Q.) Didn't you tell Tom Murray to get the prop ready to timber that place? (A.) I told Tom Reynolds to put the prop up.

(Q.) Then you did issue orders beforehand? (A.) To set up this one prop.

(Q.) Now you say you have had some considerable experience as a miner? (A.) Yes sir.

(Q.) If a piece of ore should drop off of the side of this place, about the size of a water bucket, and you should go there with your pick and strike it, and it would sound like striking a dead log or flour barrel, what would that indicate to your mind? (A.) If a man was to sound anything and it would sound like a flour barrel --- a rock wouldn't sound like a flour barrel.

(Q.) A dead log then. What would that mean to your mind. (A.) We all know working outside that a log wouldn't sound like a tree --- that there is a difference between a rock getting loose and one that is not loose.

(Q.) When a piece of rock is loose in the side of a mine and you hit it with your pick, tell the jury what sound it makes. (A.) A drumming sound.

(Q.) Then if you had a drumming sound, what would that indicate? (A.) We would know it was loose.

(Q.) Then what would you do? (A.) Take it down. If it was ore, we would take it down.

(Q.) If you didn't take it down, what would you do? (A.) I would shoot it down.

(Q.) If you didn't shoot it down, what would you do? (A.) I wouldn't leave it there.

(Q.) Would you let your men go to work with it in that condition? (A.) Not if I knowed it.

(Q.) Now it was not reported to you, was it? (A.) No sir.

(Q.) By Fred Stoll? (A.) No sir; by no one.

(Q.) (Continuing) That there was a piece that made that sound over on that side and a piece of ore had fallen off of it. (A.) No sir.

(Q.) And you were there at four o'clock (A.) Yes sir.

(Q.) What time did Fred Stoll go on as pit boss that night? (A.) Seven o'clock

(Q.) And there had been no blast or anything there that night? (A.) No sir.

(Q.) How long did Fred Stoll stay with your company after the death of Mr. Hutchinson? (A.) Well, he stayed there until my father kept after him to come home. I don't know exactly how long.

(Q.) How long after Mr. Hutchinson was killed before Fred Stoll left the mine. Was it the next day or next week?

Mr. Barbour: We object to that.

The Court: I overrule the objection.

EXCEPTION by counsel for the defendant

Answer – I couldn't recollect exactly how long, but I think it must have been about two months or one month.

(Q.) Did he work in there after that as pit boss? (A.) no sir; there wasn't any of us off to require it.

(Q.) Did he work in that level any more in any capacity? (A.) He helped to timber up.

(Q.) Helped to timber up that place? (A.) Yes sir; and helped to muck there afterwards.

(Q.) When did Ralph Decator leave the mine. How long after Mr. Hutchinson's death? (A.) I don't know exactly. He worked there a day or two, I couldn't say which, until he got a telegram, got another position, anyhow.

(Q.) Until he got a telegram for another position? (A.) Yes sir.

(Q.) Now Mr. Stoll, what time did you get back. You say you went away, or did you go home? (A.) No sir; I had worked Monday, Monday night and Tuesday.

(Q.) You had worked Monday, Monday night and Tuesday, that was three shifts that you had worked? (A.) Yes sir.

(Q.) Where was your other pit boss? (A.) He was sick at the time and I stayed there those two days and expected probably he would be back there that night, that he would report when I got home that he would be there to go to work.

(Q.) So you were the only pit boss there, and had worked three shifts and put this other man on in your place? (A.) Yes sir.

(Q.) And when you went down this place this time on that day, that was your third shift, wasn't it? (A.) Yes sir; my third shift.

(Q.) Of ten hours each? (A.) Yes sir.

(Q.) You went down that mine in the morning after Mr. Hutchinson's death --- what time did you get to the mine? (A.) At the top or the bottom?

(Q.) At the top. (A.) I judge it was about half-past six, somewhere, or quarter after six.

(Q.) And then you went down in it at what time? (A.) Left the top about 7 o'clock.

(Q.) That morning, I say especially, after Mr. Hutchinson was killed, what time did you go down to number 19? (A.) I don't think I went down any earlier. I rode down in the skip, and the engineer don't start to work until 7 o'clock or about ten minutes of 7.

(Q.) And you went down that morning. Now this piece of ore that came out from this side over here (indicating)? (A.) Yes sir.

(Q.) How much of that was ore and how much was slate? (A.) All ore except the coloring on it which was slate.

(Q.) Where it adjoined the slate? (A.) Where it butted up against the wall.

(Q.) It was what they call a slip - out? (A.) You might call it a slip-out, because it slipped out.

(Q.) About how many pounds would you say that weighed, or how many hundred pounds? (A.) I suppose it weighed somewhere about 1900, I reckon.

(Q.) Nineteen hundred? (A.) It wasn't quite a ton.

(Q.) And how many feet up from the bottom did that slip out? (A.) About four feet.

(Q.) How many skip loads did it take to get that out? (A.) It wouldn't have made no more than a skip load. It wouldn't have made a full skip load.

(Q.) It was one solid piece, was it not? (A.) Yes sir.

REDIRECT EXAMINATION by Mr. Barbour

(Q.) Something has been said to you, Mr. Stoll, about the time when Fred Stoll and Decator left the employ of the company. Please state whether or not either of them was discharged by the company. (A.) No sir; neither of them discharged, left of their own accord.

WITNESS EXCUSED

Whereupon Fred Stoll a witness called by and on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION by Mr. Barbour:

(Q.) Mr. Stoll, what is your full name? (A.) Fred Stoll

(Q.) What is your age? (A.) Thirty-two

(Q.) Where do you live, Mr. Stoll? (A.) Prince William County, State of Virginia

(Q.) What part of Prince William? (A.) The southern part of Prince William County.

(Q.) Near what place? (A.) Copp post office

(Q.) Where were you employed in early part of March last. (A.) Cabin Branch Mine

(Q.) At the Cabin Branch Mining Company's Mine (A.) Yes sir.

(Q.) What was your particular employment at that time? (A.) Timbering.

(Q.) Were you at work in that mine on the day shift of March 2nd? (A.) Yes sir.

(Q.) How were you working then there? (A.) As a mucker.

(Q.) How was it that you were working as a mucker and not as a timber man on that particular day? (A.) Because the other timber man wasn't there and one of the mockers was absent and they put me in the other mocker's place.

(Q.) What was your pay as a timber man? (A.) A dollar and fifty cents per day.

(Q.) The mockers, I believe, got \$1.50 a day? (A.) A dollar and a half; yes sir.

(Q.) Who were you working with on that day, on that shift? (A.) Clarence Williams.

(Q.) Which end of level number 19 were you working in? (A.) The south side.

(Q.) That would be which side of the incline? (A.) To the left of the incline.

(Q.) To the left of the incline as you went down? (A.) Yes sir.

(Q.) Please state to the jury if you observed any slate or any ore there falling from the wall of that part of that mine that day? (A.) I noticed a small piece of rock falling from the right-hand wall of number 19 level.

(Q.) Right-hand wall of number 19 level? (A.) That is, standing with your face towards the face.

(Q.) You mean facing the face of the ore? (A.) The face of the ore; yes sir.

(Q.) You say a piece of slate or ---- (A.) I didn't pay any attention, rock, I said. I didn't pay any attention to whether it was slate or ore.

(A.) Do you know whether it was slate or ore? (A.) I do not. I didn't examine it to see.

(Q.) What portion of the wall did that fall from? (A.) Back near the incline.

(Q.) Back near the incline? (A.) Yes sir; right near the bottom of the incline.

(Q.) Was it clear of the opening of the incline or not?

Mr. Moncure: Ask him to describe the place, please sir.

By Mr. Barbour:

(Q.) How far from the opening of the incline was it that that piece fell? (A.) What I noticed fall fell about two feet, about. I never measured it, but just guessing at it.

(Q.) It fell about two feet from the opening of the incline? (A.) Yes sir.

(Q.) How far was that from the face of the ore? (A.) From the face.

(Q.) Yes. (A.) I suppose it was about 12 or 14 feet. I never measured it, but just guessing at it.

(Q.) I believe Clarence Williams was your buddy? (A.) Yes sir.

(Q.) Was anything said by Clarence Williams to you or by you to Clarence Williams about that, and if so what? (A.) Clarence Williams had been working there, shoveling some scattered stuff on the north side ---

(Q.) On the north side of the incline? (A.) Yes sir; he had been over there and he came over where I was at and said, "Look here what fell out," and I said, "Yes; I see that," and he picked it up and threw it in the skip, and went on to shoveling and shoveled along up on the right-hand side of the level up near the wall the balance of that evening until we quit shoveling.

(Q.) Who threw that into the skip. Did he? (A.) Yes.

(Q.) Was that all that passed between you all in reference to any falling ore or stone or slate? (A.) Yes sir.

(Q.) Please state whether or not on that occasion you told Clarence Williams to make any test of any of the sides of those walls. (A.) I don't understand you.

Mr. Moncure: Ask him what he told Clarence Williams. That is just as leading as you can make it.

The Court: This is in rebuttal, though.

Mr. Barbour: I have no objection to acceding to the suggestion of Mr. Moncure.

By Mr. Barbour:

(Q.) Please state what passed between you and Clarence Williams on that occasion, if anything passed, in reference to testing those walls. (A.) No sir.

(Q.) Did you see Clarence Williams test those walls? (A.) No sir; I did not.

(Q.) Did you test them yourself? (A.) No sir I did not.

(Q.) What time did you leave the mine that evening. Did you leave when the regular shift went off? (A.) On the 2nd of March.

(Q.) Yes Sir. (A.) I left at their usual hour for quitting, half-past five.

(Q.) When did you go back? (A.) I went back to the mine at night time to go down in the mine and was down in the mine a little before 7 o'clock, a few minutes.

(Q.) In what capacity were you there then? (A.) As shift boss.

(Q.) At whose suggestion? (A.) My brother, Amos Stoll.

(Q.) Were you in number 19 level that night? (A.) Yes sir; twice.

(Q.) Twice? (A.) Yes sir.

(Q.) At what time were you there? (A.) You mean the hour?

(Q.) Yes. (A.) Well I never paid any attention to the hour in particular, but before 11 o'clock and after 12 o'clock again.

(Q.) Was there anything, so far as you could see, or ascertain down there, Mr. Stoll, and if so please state to the jury what it was, that indicated to you in any way that there was anything unsafe there. (A.) No sir; there wasn't nothing any more than what Frank Williams said, that there was something chipping back there, and I understood by what he said that it was a piece of slate overhead back right near the incline.

(Q.) Frank Williams told you that? (A.) Yes sir.

(Q.) In whose presence was that? (A.) Quinton Hutchinson.

(Q.) And when was it that that occurred? (A.) That was the second time I was down there that night.

(Q.) The second time you were there? (A.) Yes sir.

(Q.) And what was it Frank Williams said to you? (A.) He was standing there with the wrench in his hand and he said there was something slipping back there and I thought by "back there" he meant next to the incline, overhead, not on the wall but overhead.

Mr. Moncure: Not on the wall where this fell?

The Witness: No sir: at least I didn't understand him to mean there, if he did.

By Mr. Barbour:

(Q.) How long was that before the accident?

Mr. Moncure: He was not there when the accident happened.

By Mr. Barbour:

(Q.) Where were you when the accident did happen? (A.) On the 14th level.

(Q.) How did you ascertain that an accident had happened? (A.) Somebody called up the hill that a man was hurt in the bottom.

(Q.) How long was that after you left number 19? (A.) I suppose about 15 minutes. I went from the bottom on up there, didn't tarry only to stop to talk to George Chinn about a U bolt --- I stopped and talked to him about a U bolt.

(Q.) You have stated, I believe, that Frank called your attention to some chipping. (A.) Yes sir.

(Q.) Now who was present when he called your attention to that? (A.) Quinton Hutchinson was right there by the machine and Frank Williams was standing right alongside the machine.

(Q.) And he pointed in which direction when he said that? (A.) About towards the incline.

(Q.) Who else was in that incline at that time? (A.) Well, on the opposite side of the incline was Roger Gray and Ralph Decator.

(Q.) When you heard of the death of this young man, or heard of this accident, what did you do? (A.) I ran down the ladder, ran part of the way and walked part of the way, went just as quick as I could, and found Quinton Hutchinson pinned between the rock and the machine, caught between the rock and the machine.

(Q.) Pinned between the rock and the machine? (A.) Yes. Sir; caught between the rock and the machine.

(Q.) Was he standing or sitting? (A.) No sir; he was kind of leaning over the machine and the rock was on his back.

(Q.) What did you do as to removing the rock? (A.) Robert Chinn propped the rock with the drills and I think it was Frank Williams that loosened the chuck and loosened the bolt that holds the saddle on the tripod so as to allow the machine to turn back and release him.

(Q.) You all didn't lift the rock off of him at all? (A.) No sir, we propped the rock up to keep it from falling.

(Q.) And you lowered the machine after propping the rock? (A.) Yes sir.

(Q.) Did you notice the position of the tripod, or the leg of the tripod, with reference to the seam of this piece of rock that fell out? (A.) No sir; I didn't notice particular about that, how it was about the seam, but this ore was released from the slate.

(Q.) Please state whether or not, Mr. Stoll, you knew there was anything unsafe in that mine that night.

(A.) I don't understand the question.

(Q.) I say, please state whether or not you knew that this piece of wall was loose? (A.) No sir; I didn't know that this piece of wall was loose.

(Q.) If you had known it was loose, or if you had had reasons to suspect it was loose, what would you have done? (A.) You mean that night?

(Q.) Yes. (A.) If I had known it was loose, I would either have told them to pull it down or they could have turned the tripod or stood beside the tripod and clamped the machine so it would have caught Quinton Hutchinson.

CROSS EXAMINATION by Mr. Moncure

(Q.) Mr. Stoll, you are a brother of Amos Stoll, I believe? (A.) Yes sir.

(Q.) When did you first go to work, the first time you went to work at the mines? (A.) At these mines?

(Q.) Yes Sir. (A.) I think it was in 1900, the first time I ever worked there.

(Q.) How long did you work there then? (A.) I have never kept any account.

(Q.) Well, about how long? (A.) I suppose five or six months, something like that.

(Q.) What work did you do there? (A.) I was breaking ore with my brother.

(Q.) Breaking ore down in the mine? (A.) In old number 1 shaft.

(Q.) That was at the top? (A.) Yes sir; the old shaft. They don't work it any more.

(Q.) You were just breaking ore off. How long did you stay off? (A.) I was drilling and shooting the ore, that is what I mean by breaking the ore.

(Q.) Drilling and Shooting. How long were you off them? (A.) Before I went to work again?

(Q.) Yes; how many years? (A.) About three or four years.

(Q.) Then you went to work again and who did you work with then? (A.) I worked with a man, a colored man by the name of Will Ross, and with my brother again, afterwards.

(Q.) You worked with your brother again? (A.) Yes sir; the second time I worked there.

(Q.) What kind of work did you do then? (A.) Drilling and shooting ore again.

(Q.) How long did you work there that time? (A.) About five or six months, I guess, something like that.

(Q.) You worked four or five months before and five or six then and then you left. How long did you stay away that time? (A.) I stayed away until the following August and I worked there two weeks again.

(Q.) Two weeks? (A.) Yes sir.

(Q.) What did you do that two weeks you were there? (A.) Breaking ore.

(Q.) How long did you stay away then? (A.) Until this time.

(Q.) How long had you been working there when Mr. Hutchinson was killed? (A.) A month or something over a month.

(Q.) So you had worked four or five months the first time and five or six months the second, making nine or eleven months altogether, and then two weeks after that, making less than a year, and you had been there a month, making altogether less than a year that you had been there. (A.) About a year.

(Q.) Not nine years, but altogether about a year. (A.) Yes sir.

(Q.) This last time you were working there, you were doing what? (A.) Timbering mostly, except a few days I shot ore and some days I mucked.

(Q.) Timbering mostly, and some days you shot ore and some days you mucked? (A.) Yes sir. What I mean by that, drilling and shooting ore, you understand.

(Q.) In your experience there altogether, you had never before been pit boss, had you? (A.) No sir; I never had.

(Q.) There were a great many men in that mine had been there longer than you had? (A.) Yes Sir.

(Q.) And had worked there regularly? (A.) Yes sir.

(Q.) This night when you were named as shift boss, you had been working all that day, hadn't you? (A.) Yes sir.

(Q.) On the shift? (A.) Yes sir.

(Q.) And then you went on at night as shift boss? (A.) Yes sir.

(Q.) And that was two shifts together? (A.) Yes sir.

(Q.) You went on the day shift as a mucker? (A.) Yes sir.

(Q.) Had you worked the night before? (A.) No sir; I hadn't worked the night before.

(Q.) Then you were missing only one night from rest? (A.) Yes sir; I worked only one night

(Q.) Now Mr. Stoll you say that you were down there during the day and you noticed a rock and you saw it, that is either slate or ore, you don't know which, fall? (A.) Yes sir.

(Q.) Tell the jury about how big that was. (A.) That piece, it wasn't a very large piece.

(Q.) About how big? (A.) I don't know, about as big as the top of that derby over there, to illustrate it as good as I can.

(Q.) Where did that fall from, exactly. Just one second. (Indicating) This representing the incline coming down here and this representing the front or the level, where did that piece of rock fall from? Just show the jury. This is the roof here, you understand. From what portion. You can indicate on that. (A.) To the left of the incline on the right-hand wall of 19 level.

(Q.) How far? (A.) Right near the corner, where the level is turned from the incline.

(Q.) Over here (Indicating) (A.) Yes sir.

(Q.) When that fell did you test the wall? (A.) No sir; I did not.

(Q.) You did not? (A.) No sir.

(Q.) Did you request Clarence Williams, or George Stewart, or Tom Alexander to test it? (A.) No sir.

(Q.) So nobody tested it, so far as you know? (A.) No sir; nobody

(Q.) And that was over there close to where the machine was setting? (A.) No sir; it was back of the incline.

(Q.) You said over here? (A.) Yes sir; on that right hand wall, on the same wall.

(Q.) Here is the incline. (A.) On that same wall back towards the incline, or near this piece of ore.

(Q.) How far from that piece of ore? (A.) A couple or three feet.

(Q.) A couple or three feet from that ore, and not eight or ten feet? (A.) Yes sir.

(Q.) When you went down there that night and Frank Williams told you there was some dropping of the slate, and you were pit boss, did you then make any test? (A.) No sir.

(Q.) You did not? (A.) No sir.

(Q.) What does the dropping of slate indicate, Mr. Fred Stoll? (A.) It might indicate that there was something loose, and it might indicate that there wasn't. I have seen it drop when there wasn't any more loose than what was dropping.

(Q.) You were pit boss and you didn't make any test to see. (A.) No sir.

(Q.) Why didn't you do it? (A.) I didn't think it was necessary to make any test because Frank Williams and Hutchinson had been there some time and I thought they understood their business.

(Q.) But you were the boss over them? (A.) And from what I understood of this dropping it was back over the incline, it wasn't where they had to go.

(Q.) And if it had fallen there it would not have caught him? (A.) No sir; if it had fell where I thought it was.

(Q.) Yet you knew that men were passing backwards and forwards along there? (A.) Not necessarily; they could go around it.

(Q.) But coming in and going out they necessarily had to pass close to that piece, and might have been killed, and yet you took no precaution? (A.) If a man passed around there and saw anything fall, I took it for granted he wouldn't pass around under it.

(Q.) So you took no precautions – in other words, if a man knows a place is loose he wouldn't walk under it? (A.) I wouldn't suppose so.

(Q.) And you knew it was loose, they told you it was loose, and you took no precaution? (A.) I took no precaution, I didn't test this piece of rock, and I made no examination.

(Q.) And you took no precaution against it, did you? (A.) No sir.

(Q.) Now tell the jury, if you will, please sir, how high up on the side this piece of ore, or slate, or rock, whatever you call it, fell from that which Killed Mr. Hutchinson? (A.) I didn't measure it. I don't know that.

(Q.) Well, estimate it. You went down and looked at it. (A.) I would suppose about three or four feet from the bottom; that is, from the bottom where the piece of ore was to the ground.

(Q.) And how high up did it go when it came out. How tall was the piece of ore, about how many feet.

(A.) Wide or long?

(Q.) Wide and long both. (A.) About three feet wide and I suppose four or four and a half feet long.

(Q.) Three or four feet wide and four and a half feet long? (A.) Yes sir.

(Q.) That piece fell, did it not, from right past the hole that you used to bail water out of? (A.) No sir; that piece fell right smart ways from there.

(Q.) How many feet is the hole from it, about two feet or three feet or what? (A.) Well, I guess about six or seven feet.

(Q.) You guess about six or seven feet? (A.) Yes sir.

(Q.) Now, the entrance is here and the hole to bail water is over here, out in front of it. (A.) The hole to bail water out is back in the incline, that hole we dip water out of.

(Q.) I am talking about that little hole they used to dip it out of and put it in the barrel. (A.) That is what I am talking about, that hole was back at the incline, right near the corner.

(Q.) It was over here--- the incline is here. (A.) If your incline is here, right here is where you turn your level.

(Q.) And that is where the hole was, is it? (A.) Yes sir; right back near the corner.

(Q.) Now, did you tell Mr. Hutchinson when you went down there, when he was fitting his machine, that a piece of ore had fallen off that wall that day? (A.) No sir. I did not.

(Q.) You did not? (A.) No sir.

(Q.) Did you in any way warn him that pieces had fallen there? (A.) No sir; these pieces I seen falling was a long ways back from where the machine was sitting, and there was no danger of those pieces falling on him.

(Q.) But when you were up in other levels, you didn't know where they were going to walk around? (A.) No sir; I didn't know that.

(Q.) Where are you employed now, Mr. Stoll? (A.) I am farming, sir.

(Q.) You are working on your father's place, or your own? (A.) My father's yes sir.

(Q.) How long did you work at the mine after this accident? (A.) I worked up until about the middle of April.

(Q.) The middle of April? (A.) Yes sir.

(Q.) You never was pit boss anymore? (A.) No sir.

(Q.) Now, how was it that Tom Reynolds hadn't timbered that place at that time? (A.) He was never requested to timber this place where this piece of ore fell from.

(Q.) He was requested to timber another part of that place, wasn't he? (A.) He was requested to set a prop against the piece of slate back at the incline.

(Q.) That was not done, was it? (A.) No sir.

(Q.) That request was made when? (A.) Saturday morning, the 25th of March.

(Q.) Of February, you mean? (A.) Of February; yes sir.

(Q.) And that was done three days afterwards? (A.) That piece of slate didn't fall on Quinton Hutchinson

(Q.) That piece that he was requested to put the prop under, that would not have fallen on Quinton Hutchinson. (A.) He left it because he examined it in my presence and said he didn't think it was dangerous and would give it up for a bad job, found it was a bad place to put a leg hole in the bottom.

(Q.) And when Mr. Hutchinson was killed you went down and timbered it? (A.) Didn't put that prop there, no sir ----

Mr. Barbour: We object to that.

Mr. Moncure: I will withdraw that question.

Mr. Barbour: I want the jury to understand that that is not to be considered by them.

RE-DIRECT EXAMINATION – By Mr. Barbour

(Q.) Mr. Stoll, you were asked if you had taken any precaution after Mr. Hutchinson said something to you? (A.) Mr. Williams

(Q.) Not Mr. Hutchinson, but Mr. Williams, said something to you about there being some crumbling of slate back towards the incline? (A.) Yes Sir.

(Q.) What precaution was that there that you could take that night except to order them out of that mine? Was there anything else you could do? (A.) I could have told them to go to their level where they had been working.

(Q.) Was there anything else you could do except order them out of the mine? (A.) Order them out of that place.

(Q.) And you did not consider it unsafe for them to remain there in the work you were engaged in? (A.) No sir; I wouldn't be afraid to work there myself.

(Q.) And nobody was hurt by reason of that piece crumbling? (A.) No sir; that piece of slate was there when I left the mine.

Mr. Moncure: Did you see the crumbling that night?

The Witness: No Sir.

Mr. Moncure: You don't know where it was, that crumbling?

The Witness: I thought from what he said, where it was.

(Witness Excused)

Whereupon ---- Ralph Decator, a witness called by and on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION by Mr. Barbour:

(Q.) Mr. Decator, what is your age? (A.) Twenty-three the first day of March

(Q.) Where are you employed now? (A.) The Western Union, in Tennessee.

(Q.) The Western Union Telegraph Company? (A.) Yes Sir.

(Q.) And your place of employment is in Tennessee? (A.) Yes Sir.

(Q.) How long have you been in the employment of the Western Union Telegraph Company? (A.) Five Years.

(Q.) Has that employment been continuous? (A.) No Sir, just off and on.

(Q.) Well, where were you employed in the ninth of March, the early part of March, 1909, this last March? (A.) The early part of March?

(Q.) Yes? (A.) The Cabin Branch Mine.

(Q.) What were you doing there --- what was your employment? (A.) Mucking down there.

(Q.) Who were you mucking with on the night of March 2nd? (A.) Robert

(Q.) In what level were you at work? (A.) Level 19

(Q.) Who were the machine men down there that night? (A.) Clinton Hutchinson and Frank Williams.

(Q.) What time did you go on? (A.) Seven o'clock.

(Q.) Who was your shift boss? (A.) Fred Stoll.

(Q.) How many times did you see Fred Stoll in level 19 that night? (A.) Twice.

(Q.) He was down there twice? (A.) Yes sir.

(Q.) Did you see, or was your attention called in any way to any falling slate or ore in that level that night? (A.) I seen it chipping about five o'clock, the first chipping.

(Q.) Where was that? (A.) Right up in the top.

(Q.) How far from the incline? (A.) Oh it was about ten foot from the mouth of the incline.

(Q.) Ten feet from the mouth of the incline, towards the face of the ore that these men were drilling? (A.) Yes towards the face of the ore.

(Q.) Was anything said by you all in reference to it? (A.) Not at that present time, not at 12 o'clock there wasn't.

(Q.) What, if anything, was said by you to Quinton Hutchinson? (A.) Not when the first slate fell, nothing was said about that.

(Q.) Nothing was said about that? (A.) Not about the first slate falling.

(Q.) Was that before or after you had stopped work for your midnight meal. (A.) It was before we stopped at midnight.

(Q.) What did you observe in the way of cracking thereafter, and when? (A.) Well, after the first place was falling, and about between 1 and 2 o'clock, some more began to chip and fall and I taken the pick and began to pull down some of it and I was pulling down some of the slate and I stuck the pick in one piece and started to pull it down and Frank Williams said "I wouldn't pull that down; it might cause more to fall," and I said "If you think there is any danger of more falling, I will go up and get a pit bar and get it down," and he says "I don't think there is any danger," and Quinton said "Well, if you don't think there is any danger, we will start back to work again." So we went back and started to work again and about five minutes this ore or slate fell on him.

(Q.) You were there then when this fragment fell on him? (A.) Yes Sir.

(Q.) State to the jury whether that fragment was ore or slate, if you know. (A.) It was ore.

(Q.) And where was it that you drove your pick? (A.) Right into the crack along the side of the wall on the corner. I drove the pick into it and started to pull it down from off the corner.

(Q.) Was that in the crack between this ore and the slate? (A.) Yes sir; a crack, I suppose, I could get my finger in it.

(Q.) Had you observed that crack before? (A.) Not until I had struck the pick into it I had not.

(Q.) Did that make any print on the face of the ore? (A.) The piece seems --- it was loose when I pulled the pick out --- it would shake when I pulled it with the pick.

(Q.) And about five minutes after that this piece fell? (A.) Yes sir; about five minutes after that.

(Q.) It fell on Quinton and how long did he live after that thing fell on him, do you suppose? (A.) I suppose after that stuff fell on him, the time he lived, I suppose, about ten or fifteen minutes, something like that. Of course, some of them said he was breathing when he was brought out, but I never did examine him closely when he was brought out. From the time the ore fell on him until we got him out was about ten or fifteen minutes. We were all frightened and we couldn't judge what time it was.

(Q.) Who took Quinton out of the mine? (A.) Who brought him out in the skip?

(Q.) Yes. (A.) Ben Davis brought him out to 14 level, that is where the engine sets; he brought him that far by himself and then they put him in the big skip and me and Ben Davis both rode out with him.

(Q.) Were you back in the mine after that? (A.) Yes sir; But I never went down anymore that night. I went back there the next morning.

(Q.) Did you see the piece of ore that had fallen? (A.) Yes sir; I seen the piece of ore and showed Mr. Stoll the print of the pick.

Mr. Moncure: We object to that.

The Court: I overrule the objection.

EXCEPTION by counsel for plaintiff.

By Mr. Barbour:

(Q.) You pointed out to Mr. Stoll the next morning the very place that your pick had made in that ore?

(A.) Yes sir.

CROSS EXAMINATION by Mr. Moncure.

(Q.) You say, Mr. Decatur, that you have been employed by the Western Union Telegraph Company about five years? (A.) Yes sir; off and on.

(Q.) Where is your home, Mr. Decatur? (A.) I live about two miles from Cabin Branch mine.

(Q.) You were born and raised there? (A.) Yes sir.

(Q.) When did you first go to work for the Cabin Branch mine? (A.) When I first went to work, I couldn't tell you exactly when I went to work for the Cabin Branch mine, but when I first went to work for them I was a small boy, just working for twenty-five cents a day, picking slate. That is the first time I went to work there.

(Q.) How long have you worked there for them altogether? (A.) Well, altogether – I worked on top for them about two years.

(Q.) How long had you been working there before Mr. Hutchinson was killed this last time? (A.) I had been there two weeks and two days.

(Q.) Mr. Decatur, you knew Mr. Hutchinson, did you? (A.) No sir.

(Q.) You didn't know him? (A.) No sir.

(Q.) Did you know Mr. Williams? (A.) I had seen Mr. Williams before, but I had never seen Mr. Hutchinson before that I could remember.

(Q.) You didn't know Mr. Williams personally? (A.) No; only when I seen him.

(Q.) What was your work there? (A.) Mucking.

(Q.) What were your wages? (A.) A dollar and a half a day.

(Q.) How long had you been mucking down in that place? (A.) I had been mucking in there, I don't know exactly how long I had been mucking there, I don't know whether it was a week that I had been working in there exactly to the day. I couldn't tell you, because I never kept no account of it. It was somewhere near two weeks I had been working in that place.

(Q.) You had been in the bottom level two weeks? (A.) Yes sir;

(Q.) Had you ever seen any stone tipping there before? (A.) Not until that night at 12 o'clock.

(Q.) That was the first time you had seen any chipping there or stone fall there? (A.) Yes sir; that night at 12 o'clock.

(Q.) Mr. Decatur, who was the pit boss there that night? (A.) Mr. Fred Stoll.

(Q.) When he came down did you tell him anything about it? (A.) He never came down --- the first time he came down.

(Q.) Did you tell him anything to him about it? (A.) Nobody said anything to him about it. Me and my buddy went to working on that side.

(Q.) And you never heard anybody say anything to him and you never said anything to him? (A.) No sir.

(Q.) And he made no test of any kind? (A.) No sir.

(Q.) Now at 12 o'clock --- (indicating) now this is the level down there, that book, and of course it has a roof over it, and take this as the incline going down? (A.) Yes sir.

(Q.) Now show the jury where that tipping was. (A.) Well sir, here was the incline coming down here. Well, say here was the piece of stuff over here that fell, this chipping was along in here somewhere.

(Q.) In the middle? (A.) Yes sir.

(Q.) And it was not where the piece fell? (A.) No sir.

(Q.) It was about four or five feet from it, or six or seven feet? (A.) No sir; it wasn't over three feet, the first that was tipping, wasn't.

(Q.) Now Mr. Decator, the piece of rock that fell was how big? (A.) I ain't much judge of it, but I suppose about two ton, the piece that fell.

(Q.) Mr. Decator, where was the machine setting show these gentlemen. (A.) Well, here was the face of the ore and here was the piece up here and they was driving the last hole over in this corner and they was driving here and here was the tripod sitting here and the back part of the machine was up close to this ore.

(Q.) And where was Mr. Hutchinson? (A.) He was over here behind his machine and the ore fell down and caught him right up against the machine.

(Q.) The second piece of ore that fell before this piece of ore fell down and caught him, how big a piece was that, the second piece of ore that fell --- is that the one that caught him? (A.) The first piece that fell was the piece that caught him. There was no second falling of ore.

(Q.) How big was the piece that fell before that? (A.) Before I started to pulling down. I suppose it was about a hundred pounds, or fifty pounds of slate, something like that.

(Q.) Of slate? (A.) Yes sir; the first stuff that was pulled down.

(Q.) Where was that pulled down from? (A.) The last time, when I pulled it down, it was lapping with this piece of ore.

(Q.) How far from the piece of ore that killed Hutchinson was it? (A.) It was lapping with the piece of ore that killed Hutchinson.

(Q.) Now where did it fall to. Show me on here where it fell to? (A.) Here was the ore up in this wall, here was the machine sitting here, this wall was on kind of slanting, and this piece of ore shot out of this wall and came down and caught him against the machine.

(Q.) I am not talking about that piece of ore, but the other piece that weighed fifty or a hundred pounds.

(A.) It was lapping the piece of ore.

(Q.) Where did it fall then? (A.) It fell out the middle.

(Q.) Out of the middle of the piece? (A.) The piece that fell out the middle and the piece I pulled down was lapping with this piece of ore.

(Q.) How many feet was that from Hutchinson? (A.) This here was over here, close to the piece that fell down, and Mr. Hutchinson was standing here.

(Q.) But the piece you pulled down. (A.) This piece I pulled down, I couldn't tell you exactly how close it was to him, as near as I can come at it, the piece I pulled down was about five feet from him.

(Q.) Five feet? (A.) But it lapped the end of this other piece of ore that fell on him. (A.) No sir, but I could see where it fell off from the piece of ore that it lapped over.

(Q.) Did you take your pick and test that piece that fell down that afterwards killed Mr. Hutchinson? (A.) Test it after it fell?

(Q.) No, before it fell. (A.) I started to pull it down before it fell, and Mr. Williams ---

(Q.) I mean the two ton piece? (A.) this piece I started to pull down holding this piece against the wall.

(Q.) That piece of fifty or one hundred pounds was holding it? (A.) Yes sir; and I stuck a pick in it and started to pull it down and Frank says "No; I wouldn't pull that down, it might cause more to fall in." and I told him if he thought there was danger I would go up on the hill and get a crow bar and pull it down.

(Q.) How high up was the piece that fell and killed Mr. Hutchinson from the floor? (A.) From the floor it was about somewhere between 10 and 15 feet.

(Q.) How high up from the floor was the piece you pulled out? (A.) It was about 15 feet.

(Q.) About 15 feet. Why was it you say you did not notify the pit boss when he came down that that ore was falling? (A.) Me and Roger Carr was mucking over on this side of the incline and they were running the machine over on that side and we weren't working any in there.

(Q.) When the pit boss came down there, didn't you hear Frank Williams tell him that a piece of ore had fallen out, had fallen from the top? (A.) No sir.

(Q.) If Frank Williams had told him and he and Fred Stoll had talked about it, wouldn't you have heard it? (A.) Yes sir.

(Q.) You would have heard it? (A.) Yes sir

(Q.) When did you leave the employment of the Cabin Branch Mining Company? (A.) The day I left the Cabin Branch mine was, I don't know whether it was the 4th or March or 5th of March, because I never kept no account of it. I went right off then and went with the Western Union.

(Q.) Did you work there anymore? (A.) I was at his burying. I left the day he was buried.

(Q.) What day was it that he was buried? (A.) I don't know whether it was the 4th or 5th.

(Q.) Where was he buried? (A.) In Dumfries.

(Q.) You never worked there any more at all after that? (A.) No sir.

(Q.) You stayed there long enough to make a statement to Mr. Dietrich? (A.) I made a statement for Mr. Dietrick. Yes sir; I made a statement before he was buried.

(Q.) Before he was buried? (A.) Yes sir.

(Q.) And you went down in the mine --- with what Mr. Stoll was that? (A.) I never went down with either one. Mr. Stoll was down there when I went down there.

(Q.) Which Stoll was that? (A.) Amos Stoll.

(Q.) Now how many skip loads did it take to carry --- how much did you say that weighed? (A.) About two ton.

(Q.) And show the jury how it caught Mr. Hutchinson, what part of the back it caught him in? (A.) The machine caught him right along there and the piece of ore right across here.

(Q.) And he had his back to the wall? (A.) Yes sir.

(Q.) And it slipped out and caught him there? (A.) yes sir.

(Q.) I will ask you this question, how close to the wall was Mr. Hutchinson working. (A.) When the piece fell he was close to the wall.

(Q.) About how far, measure it and show the jury. (A.) About like this (Indicating)

RE-DIRECT EXAMINATION – By Mr. Barbour

(Q.) Please state to the jury whether or not Mr. Fred Stoll was down in that level after you tried to pull that piece down? (A.) No sir; he wasn't down there after I tried to pull the piece down.

Mr. Moncure: How many pieces had fallen before Fred Stoll was down there the last time, before Quinton Hutchinson was killed?

The Witness: There wasn't but one piece fell out of the wall the last time, but I pulled down several little pieces.

Mr. Moncure: You pulled down several pieces?

The Witness: Yes Sir.

By Mr. Barbour:

(Q.) There is one more question. I understood you to state that the place where you pulled it down was about 15 feet up. Up from where? (A.) From the foundation. I could just reach up with a pick, and reach the top of it.

(Q.) It was as high as you could reach with a pick? (A.) Yes sir; I couldn't tell you exactly, but it was somewhere along there.

(Whereupon, at 4:30 o'clock, p.m. an adjournment was taken until tomorrow morning, Thursday, at 10 o'clock, (A.)m.)

Manassas, Virginia,
November 11, 1909

The Court met pursuant to adjournment at 10:00 o'clock (A.)m.

ROGER GRAY, a witness who had previously testified, was recalled by counsel for defendant for further examination.

Mr. Moncure: Since he was sworn.

The Court: I understood he was discharged as a witness, and now you call him as a witness.

Mr. Barbour: He was called as a witness for the plaintiff.

Mr. Moncure: Of course, I know Mr. Barbour overlooked that fact. I know that is the rule we are held down to. Take Clarence Williams for example.

The Court: I understood he was discharged as a witness.

Mr. Barbour: The only question is, I was calling him not as a witness for myself, but for further cross examination. I talked with him probably three minutes this morning.

Mr. Moncure: About the very matter you are going to examine him about now?

Mr. Barbour: Although I had a paper in my physical possession, I was not acquainted with its contents, and did not know I had it; and it made a further statement in reference to his testimony that would put a different phase on it; not that it contradicted him, but simply went a little further. I did not know of that statement, and I desire to recall him for further cross examination. He came here this morning. We had to send to Washington for him, and he came to my associate's office and I talked to him in reference to that statement. Now, if under those circumstances, Your Honor thinks I should not recall him for further cross examination, then I will call him as a witness in my own behalf. Both sides had him summoned.

The Court: I think you had better call him as your witness.

By Mr. Barbour:

(Q.) Mr. Gray, when you were on the stand on day before yesterday, I believe you made some statement in reference to sounding of a piece of slate or ore made by Mr. Ralph Decator. Please state what was the location of that piece of ore or slate?

(The Jury retired from the Court Room)

Mr. Moncure: I Object. This matter, of course, is important, and I want to make myself as impressive to the court as possible on this proposition. In all fairness, Mr. Gray was recalled here to be asked about a statement made to the late Mr. Davies upon the proposition that Mr. Barbour did not know of the contents of this statement. Now he is recalled and questioned about another matter, although he may be questioned later about that. But he is questioned upon cross examination upon a matter that was at that time in the mind of the attorney, or should have been, because that has nothing to do with the written statement here, If your Honor please. In other words, he was cross examined fully and cross examined about this very

rock and said they made soundings and he told the location of it; and now the question is asked again as to the location. If Your Honor please, is that fair? Is it fair that this man, in all fairness, should be asked about that because he has been off the stand and hence had a chance to talk to him.

(Discussion followed)

The Court: I think, Mr. Moncure, he called this witness as his own witness. He is not under cross examination, and I think he has a right to ask that question. It would be unfair for this man to know any facts and keep it from this jury. What his statement is going to be or what Mr. Barbour is going to ask him, I don't know.

Judge Tebbs: In noting an exception, we wish the grounds of our exception stated, which are that he had been fully cross examined on this very point, and since the counsel has discussed the matter with him, and now puts him on as his witness.

Mr. Barbour: I don't know that I have asked him this particular question. I have talked to him in a general way and I may have gotten confused what he stated on the stand and in the written statement I had.

The Court: After he testified and was cross examined and now put on the stand as Mr. Barbour's witness, I think it but fair to let the jury hear what he has to say.

EXCEPTION by counsel for plaintiff.

The Court: Read the question to him.
(The stenographer read the pending question)

The Witness: I think you are mistaken on that. I don't think I said Ralph Decatur sounded any ore or slate.

Mr. Barbour: What was he sounding?

The Witness: I told you that Ralph Decatur was sounding a piece of slate over on top, I told you that the piece of ore and slate that fell out and killed Hutchinson, I didn't know was loose.

Mr. Barbour: What was the location of the piece of slate he was sounding?

The Witness: The piece of ore or slate he was sounding. I told you he wasn't sounding any ore or slate. The piece of stuff that fell out and killed Quinton Hutchinson was half ore and half slate. He never sounded that piece. I told you I didn't know it was loose. This piece of slate was over on top.

Mr. Moncure: Since it develops that his answer is exactly the same as it was yesterday, I don't think the counsel has a right to ask it.

The Court: Now what is the next question? Have you any other questions?

Mr. Barbour: Yes sir; this is simply preliminary to the point I want to develop.

(The Jury then returned to the Court Room)

By Mr. Barbour:

(Q.) Mr. Gray, when you were on the stand, I understood you to make some reference to a piece of slate which Mr. Ralph Decatur sounded. Will you please state to the jury the location of that piece of slate?

Mr. Moncure: Your Honor understand we note an exception to that.

The Court: Yes sir.

Answer – The location of that piece of slate?

(Q.) Yes sir. (A.) You mean the piece that fell out, or the piece that Ralph Decatur wanted to go up the hill and get a bar and pull out?

(Q.) That piece that he wanted to go up the hill and get a bar and pull out; if he did want to do that? (A.) The piece of ore--- say that is the roof up there and that is the foot wall, the piece of ore was up inside the foot wall, and the piece of slate was back here, and I suppose the end of it was about three or four feet, something like that.

(Q.) Three or four feet from where? (A.) From the piece that fell out.

(Q.) The end of it? Which end? (A.) The end that he wanted to pull down.

(Q.) How far did that piece of slate extend in the direction of the piece of ore? (A.) Well it looked like to me it run back to the piece of ore.

(Q.) Ran back to it. Did it overlap it?

Mr. Moncure: That's leading. Please don't lead him.

By Mr. Barbour:

(Q.) Did it overlap it or not?

Mr. Moncure: I object to the question.

The Court: I sustain the objection.

By Mr. Barbour:

Q. Please state whether or not it overlapped it?

Mr. Moncure: That is the same thing. I still object to it.

The Court: Can you not get him to describe it.

By Mr. Barbour:

(Q.) Please state its location in reference to the piece of ore, and in reference to its overlapping it?

The Court: I think that is proper.

Mr. Moncure: If he can.

Answer I told you that the piece of slate run back to that piece of ore.

(Q.) Please state its location in reference to the piece of ore, and in reference to its overlapping it?

The Court: I think that is proper.

Mr. Moncure: If he can.

(A.) I told you that the piece of slate run back to that piece of ore.

(Q.) Did it overlap it or not?

Mr. Moncure: I object to that question.

Mr. Barbour: It is apparent that this witness -----

Mr. Moncure: We just save the Point, and won't argue it.

The Court: I want to see if Mr. Barbour can put the question in any other way to get his answer.

The Court: I want to see if Mr. Barbour can put the question in any other way to get his answer.

Mr. Moncure: The only question is whether he knows it overlapped it or not. It is putting words in his mouth.

Mr. Barbour: This witness seems to be able to take care of himself.

The Witness: The piece of slate that run back there, it seems like to me it was touching the piece of ore, overlapping or something, some way or other.

By Mr. Barbour:

(Q.) And what was said in reference to getting a pinch bar and pulling it down?

Mr. Moncure: Your Honor understands that we object to all this

The Court: very we;

(A.) This piece of slate Ralph Decatur wanted to go up the hill and get a pinch bar and pull it down, and Frank says "No; don't pull that down, it might make the rest of it worse", That's just what I told you in here the other day.

(Q.) If that piece had been pulled down at that time what would have been the effect on this piece of ore, Mr. Gray?

Mr. Moncure: Does Your Honor think that that is proper?

The Court: How could he tell, Mr. Barbour, any more than this jury.

Mr. Barbour: He is a man that was there that day and had the advantage of seeing the exact locations, and is a miner himself.

The Court: What experience has he had in mining?

Mr. Barbour: I think he stated his experience. We are not qualifying him as an expert, but as a practical and experienced man in that mine.

The Court: Let him show whether he knows.

Mr. Barbour: What would have been the effect of pulling down that piece of slate?

The Court: If you know.

The Witness: Well, I couldn't say exactly what it would be because, if you pulled that piece down, that piece was hanging in there might loose, and that other piece was mighty apt to fall out, or it might not.

Mr. Barbour: That piece of ore?

The Witness: Yes sir; I am not certain about that.

Mr. Moncure: The answer is objected to and moved to be stricken out.

The Witness: Of course, I don't know. It might or might not, because there was that piece hanging in there pretty loose that fell.

The Court: The answer is stricken out.

Mr. Barbour: Of course, that applies to the response to this question alone.

The Court: Yes, of course, as to what the effect of that would have been.

Mr. Barbour: I want to find out for the purpose of the record, he speaks of that other piece hanging in there pretty loose.

The Court: What do you mean by the other piece hanging in there pretty loose, you said.

The Witness: That piece that fell. It must have been hanging in there pretty loose. If it hadn't it wouldn't have fell. But as to knowing that piece was loose, I told you all I didn't know anything about it. I told you that. But it must have been loose. If it hadn't it wouldn't have fell out.

Mr. Moncure: I move to strike that out.

Mr. Barbour: I understand it goes out. I am not asking that the jury consider that. I just want it in the record, and I save the point on that.

The Court: All this statement which he makes as to the effect, or what would be the result, that part is stricken out.

By Mr. Barbour:

(Q.) Did Ralph Decatur pull down any slate that night? (A.) Yes sir; they was over there pulling down some, and Frank, Decatur and Quinton was in there together. They were in there sounding and they was pulling down some.

(Q.) All three of them? (A.) All three of them was in there, I suppose so. I told you all the other day they was in there.

(Q.) All three of them were pulling down the slate? (A.) I didn't say all three of them were pulling it down. I say they were in there sounding the slate and pulling it down.

(Q.) Will you please reply now to the question whether all three of them were pulling down the slate or not?

Mr. Moncure: I object to that because it is leading. Let him tell what the three were doing.

Mr. Barbour: If Your Honor please, anybody can see that this witness is adverse to me. You can see that.

Mr. Moncure: I object to that statement.

The Court: I overrule the objection. Let him answer the question, if he can.

Mr. Barbour: I have to drag out of him everything I get.

Mr. Moncure: I object to that statement.

Mr. Barbour: I am saying that to the court.

The Court: Read the Question.

(The stenographer read the pending question)

The Witness: I told you three of them were in there together.

The Court: Do you know whether they were pulling down the slate or not? If you do, please answer the question.

The Witness: I told you they were pulling slate down in there.

The Court: Do you know whether all three of them were pulling it down or not?

The Witness: No sir; I don't know whether all three of them were pulling it down or not. Of course, I wasn't on that side with them, and I never paid no attention to them.

CROSS EXAMINATION by Mr. Moncure

(Q.) Now Mr. Gray, just this question: Did you go down in that place, No. 19, after Mr. Hutchinson had been killed? You were there when he was killed, were you not? (A.) Yes Sir.

(Q.) And that piece of slate they were talking about still stood there, did it not? (A.) That piece of slate that Ralph Decatur wanted to pull down was there when I went out.

(Q.) That piece was there when you went out? (A.) Yes Sir.

(Q.) Now you say that this piece was loose up in the top about three or four feet from the ore---- the loose piece was out from it about three or four feet; is that correct --the loose place? (A.) The loose place.

(Q.) The piece up in the top, the end of it furthest from the ore, was about three or four feet, you say?

(A.) Yes sir.

(Q.) And when you say the slate extended back, you mean that ledge of slate extended back to the ore, and that is all you mean, isn't it? (A.) That is all I mean.

Mr. Barbour: Mr. Gray, you mean that this very piece of slate that he was trying to pull down extended back to this ore; did you not?

The Witness: I told you where they were pulling down, the end was three or four feet, but it extended back to the ore.

Mr. Moncure: You meant by that, the slate itself ran all the way back to the ore. You mean to say that the slate, the beginning of which he was talking about, extended all the way back to the ore?

The Witness: The piece of slate?

Mr. Moncure: In other words, that ledge of slate. It was all slate above.

The Witness: Yes sir; the whole top was slate.

Mr. Moncure: And the slate extended back until it adjoined the ore?

The Witness; Yes.

The Court: Mr. Gray, I want to ask a question. Do you mean that this piece of slate that he was trying to pull down extended back, or the entire roof extended back; which do you mean?

The Witness: Both extended back. The roof extended back, and the piece of slate. The whole top of the roof was slate.

Mr. Moncure: What I mean is was there a crack all the way back to the ore, Mr. Gray? You did not see a crack there all the way back to the ore?

The Witness: I never noticed all the way back to the ore.

Mr. Barbour: I want to ask you if you did not state that this loose slate, or piece of slate that Ralph Decatur started to pull down overlapped this piece of ore?

The Witness: Well, I did tell you that the piece of slate ran back to the piece of ore.

Mr. Barbour: Came right in contact with it?

The Court: I think he answered that.

(Witness Excused)

Whereupon --- AMOS STOLL, a witness who had previously testified, was recalled by counsel for defendant, and testified as follows:

DIRECT EXAMINATION – by Mr. Barbour:

(Q.) Mr. Stoll, you have already been sworn, I believe? (A.) Yes sir.

(Q.) Mr. Stoll, I failed to ask you on yesterday in reference to one point about this case. My information was that your brother knew about it. I found out afterwards that you were the one. When you went down into the mine the morning after this accident, did you notice where this tripod that this boring machine was on had been located? (A.) Yes Sir.

(Q.) Could you tell from the marks there its location? If you could, explain to the jury how you could tell its location with reference to this piece of ore that had fallen?

Mr. Moncure: I will just formally object to the question.

The Court: All right, sir.

Answer - Yes sir. When I went down the next morning the tripod had just been laying down there and a piece was setting under this piece of ore, and the tripod was lower down because it shows the whole impression where the tripod had been setting during the night.

Mr. Moncure: We object to that, because he does not know where it was setting there.

The Court: I overrule the objection. He says he could see from the prints in the wall where it was.

By Mr. Barbour:

(Q.) Please state to the jury it was setting with reference to this piece of ore? (A.) Well for instance, my hand would be the wall, my thumbs would be the piece of ore, the tripod leg was setting in the piece of ore, where the dividing part of the ore and slate was together. The other leg was setting down beside this ore on the block. That is, a tripod has three legs and the two hind legs were setting, one in this division of the ore and slate and the other on the block in this position (Indicating) from it in that way.

The Court: Could you tell from the condition of the ground there where that machine had set during the night when it was working?

The Witness: Yes sir.

The Court: No question about that?

The Witness: Yes sir; I could tell.

By Mr. Barbour:

(Q.) What effect would the operation of a machine with its legs so set in the dividing line between a piece of ore and a slate bed have on the piece of ore?

Mr. Moncure: Does Your Honor think is a proper question?

The Court: I think he can state as an expert what he thinks it would have affected, and then it is for the jury to say whether they concur in it. They are not bound by what he says. Go ahead.

(A.) In running the machine, the pressure upon it, there is a great deal of vibration on this tripod, a great deal of jostling and this leg in that position would constantly work back as the jostling of the machine would work on it, the vibration, the leg would be continuously working in this piece of ore with the slate in that shape, and the jostling would naturally set as a pinch bar on the piece of ore above it.

By Mr. Barbour:

(Q.) Will you please state to the jury the location of this dividing line with reference to the floor of the level. How far that point was from the floor of the level, whether it was on the floor of the level, on the side of the level, or the wall or what? Just tell them exactly how the location was? (A.) On the side of the wall, just stretching that way about four foot from the bottom of the ground. That is, on an average, I judge about four foot.

CROSS EXAMINATION By Mr. Moncure:

(Q.) Did you ever see a machine of this kind loosen and cause a cave in from the side of the wall? (A.) Very often; yes sir. I had it happen myself when I was working.

(Q.) And you are familiar with that? (A.) Yes sir.

(Q.) As pit boss. How deep was the hole on the floor on the side of the floor that this foot of the tripod made? (A.) Well, it was, as near as I could tell, from the line of the rock where it slid off in the morning – of course. I wasn't there at the time, but as near as I could learn and could see on this slate, it would measure about an inch and a half this leg had been between the ore and the slate.

(Q.) You don't know whether that hole was made with a pick or a foot, do you? You cannot say whether that hole was made there with a pick or with a tripod? (A.) I couldn't say. You could see the tripod leg had been in this place.

(Q.) You don't know whether the tripod leg made that hole, do you, or not? (A.) No more than I could see it had been there. That's all I could say.

(Q.) You don't know what made the hole. You say that was four feet below the place that slipped out above? (A.) No sir; four feet from the bottom up to this place.

(Q.) You mean that the tripod, one leg was up four feet on the side? (A.) Yes sir.

(Q.) This leg that the augur works on was stuck up like that four feet from the floor? (A.) Yes sir; four feet from the floor.

(Q.) You mean you saw a hole there? (A.) That is the natural position of setting a tripod. You would set the leg back there to set it up.

(Q.) You say that is the natural position to set it? (A.) In that case it would have been, because he had no other room to set the tripod leg down on, and he would have to set it back there to set the tripod.

(Q.) Was it you that said that Mr. Fred Stoll was there when that was set? I believe it was your brother that said he was there? (A.) No sir; I wasn't there.

(Q.) What gentlemen have you talked about that tripod with since you got off the stand yesterday, Mr. Stoll? (A.) I don't know as I talked with any gentlemen since I got off of the stand yesterday about the tripod.

(Q.) You never mentioned it to anybody? (A.) I don't recollect anybody saying anything to me about the tripod or I saying anything to anybody else.

(Q.) You have stated that you directed the setting of the machine the day before? (A.) The night before. I just assisted in helping to set up.

(Q.) They didn't set it up right and you took it down and set it up yourself? (A.) They set it up all right, only they had got the clamp of the saddle on the front side of the tripod instead of the back side. It was just reversed, that was all.

(Q.) And so you had it taken down and set it up? (A.) Just turned it over.

(Q.) How did you set it up then? Up in the wall four feet? (A.) No sir; we didn't set it in the same place.

(Q.) Did you set it up in the wall on the other side? (A.) It was there just as the conditions would make it?

(Q.) Did you do that the night before? (A.) No sir; I didn't. We was too far from the wall when we set up.

(WITNESS EXCUSED)

Whereupon ---- THOMAS (A.) RANDALL, a witness called by and on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION by Mr. Barbour

(Q.) Mr. Randall, what is your age? (A.) I was thirty-five the first day of this month, Nov. 1st.

(Q.) Where do you live? (A.) I live in Cove's District near Cabin Branch mine.

(Q.) What is your employment? (A.) Timbering.

(Q.) Where? (A.) Timbering at the mine.

(Q.) At the Cabin Branch mine? (A.) Yes sir.

(Q.) How long have you been working in that particular branch of mining? (A.) How long have I been working for the company.

(Q.) Yes Sir. (A.) Well, I couldn't exactly tell you right to the day, but somewhere about sixteen or seventeen years I have been working there.

(Q.) What positions have you fitted in the mine, Mr. Randall? (A.) Well, I have done pretty much everything with the exception of running the engines and something like that. I have been shooting ore and timbering, sinking and turning off levels, driving levels, and sinking in the inclines and timbering and robbing.?

(Q.) And robbing? (A.) Yes sir; I have robbed on the rib.

(Q.) What is a miner's duty when he is robbing? (A.) Well, it is slabbing the ore from the rib and leaving the timbers behind, and they call it robbing at the ground and leaving it on the timbers.

(Q.) That is not at the ore that has already been developed? (A.) Yes sir; the ore has been gone by and taken out where the levels has been turned off and upsets drove through from one level to the other one. Then they get ready to take the ore and timber on back, you know.

(Q.) how long have you been engaged in timbering especially? (A.) Since I first timbered now, it has been about, I couldn't tell you exactly right to the year it was in, but somewhere about seven or eight years I have been timbering. During the time I have been timbering, I have done other work off and on in between times, when there would not be any timbering. Once in a while I would drill and shoot ore. But that has been the principal part of my work in the last seven or eight years.

(Q.) Are you head timberman there, the head of the timbering men? (A.) Yes sir; I call myself about the head timberman there. I have done more timbering than anyone else that is there; yes sir.

(Q.) Are you familiar with level number nineteen? (A.) Yes sir; I certainly was.

(Q.) You recall the time or about the time that Mr. Quinton Hutchinson met his death? (A.) Well, I was in there on Saturday before the accident happened, and the week following I wasn't in there. I didn't work any in the week he got killed. I was in there on Saturday.

(Q.) Please state to the jury what the conditions were in that mine on that Saturday? (A.) Well, when I left the mine on Saturday, about that part of the mine, about ten minutes to four o'clock, the place was all right then. It was perfectly safe. There wasn't anything in there dangerous at all, everything in their safe as far as I seen.

(Q.) Do you know where this piece of ore was located that killed Hutchinson? (A.) On the Saturday evening this accident happened, this here piece of ore, it wasn't loose, the rib wasn't loose then. There was one or two shots taken --- from what I could see when I went back, there had been a shot or two on that side after I left on Saturday.

(Q.) How much of that piece was uncovered when you left there?

Mr. Moncure: If Your Honor please, he says two shots had been taken after he left there. What has that got to do with the time Mr. Hutchinson was killed?

The Court: I think he can tell what the condition was then and what the condition was afterwards.

By Mr. Barbour:

(Q.) How much of this piece of ore that afterwards fell was uncovered at that time? (A.) Well, I will tell you, after I went back, part of this ore that fell had been shoveled up and I suppose sent out. I never seen all of this piece of ore and on the Saturday evening this piece of ore, there wasn't anything loose in there at all, wasn't anything loose on the ribs or on the top there. It was perfectly safe and sound.

(Q.) What I want to get at Mr. Randall was whether or not that piece of ore was uncovered -- whether the face of the ore had been carried out beyond that piece of ore at that time? (A.) In the whole length of the piece, it hadn't but it had been shot on that side, and uncovered the rib more than what it was when I left.

(Q.) How much had been -----

Mr. Moncure: What day are you talking about now?

Mr. Barbour: Saturday; prior to the accident.

The Witness: In on that side of the incline, I never measured it, according to what I could tell about the place, it was somewhere about twelve or thirteen feet back in from the incline, the heading was.

By Mr. Barbour:

(Q.) I am not talking about from the incline, but this piece of ore that fell. Was any of it exposed on Saturday when you left there? (A.) Part of this ore, now understand, part of this ore where it came from out the rib. Part of that ore, about the end of that ore, was showing on Saturday evening.

(Q.) How much of it? (A.) It was showing, but I couldn't tell you. I couldn't place exactly how much was showing. I didn't measure what was showing because it hadn't gotten loose then. There wasn't anything loose then, and that is the reason I never noticed about the distance of the ore that was showing, because there wasn't anything loose on that side. I sounded it and there wasn't anything loose.

(Q.) Can you state to the jury whether or not any of it was exposed at that time.

Mr. Moncure: He has already stated that some of it was.

The Court: How much was showing Mr. Barbour has asked you. Do you know or do you not?

The Witness: I couldn't tell you. That will be pretty hard to say.

By Mr. Barbour:

(Q.) What I am asking about is, was part of it showing? (A.) Part of this rock was showing but it hadn't gotten loose.

(Q.) Part of what rock? (A.) Part of this rib that fell off was showing there when I left, but it wasn't loose.

(Q.) How much? (A.) It would be impossible to say.

(Q.) I am trying to get an estimate. (A.) It would be almost impossible for me to explain how many feet or inches were showing of that rib.

(Q.) Can you give me an estimate? (A.) Well, as near as I can tell, it was about somewhere as near three or four foot.

(Q.) Exposed at that time? (A.) Yes.

(Q.) then when were you next back in the mine? (A.) I wasn't back in there any more mot until on Monday after the accident had happened.

(Q.) Will you state to the jury when you went back there, did you make any examination of the place that this piece of ore had fallen from?

Mr. Moncure: If Your Honor please, he goes back on Monday after the Wednesday this man was killed and people had been working down there. Do you think it would be fair to ask that question unless you show that nothing had been disturbed in the meantime, because if that is good evidence, then to-day you can go there and get evidence.

Mr. Barbour: I will put on evidence to show there had been no change in that location.

The Court: I think you should show that.

Mr. Moncure: He can't show that.

By Mr. Barbour:

(Q.) What is the character of the appearance of the place that this piece fell from.

Mr. Moncure: I object to that.

The Court: If there had been any change in that piece in the mean time, I don't think he could testify to it.

Mr. Barbour: There hadn't been any.

The Court: You haven't shown that. You will do that ?

Mr. Barbour: Yes sir; I will do that.

The Court: If they changed the condition of that wall ---

Mr. Barbour: I am talking about the change in the location of that piece.

Mr. Moncure: My information is that they worked and blasted in there before this man went down to that place.

The Court: Unless you show there had been no change, I don't think it would be proper. Of course, if you say you will connect it up, I have no doubt you will, but I think you would have to show that there was no change.

Mr. Barbour: I will just recall Mr. Amos Stoll now on that matter.

Whereupon ---- AMOS STOLL a witness who had previously testified, was recalled by counsel for defendant and testified, as follows:

DIRECT EXAMINATION by Mr. Barbour

(Q.) Mr. Stoll, when you were on the stand a little while ago, you testified as to certain appearances, certain holes that you observed in the dividing line where this piece of ore slipped from. When was it that you saw that print there? (A.) On the morning of the 3rd of March.

(Q.) The morning after this accident? (A.) Yes sir; the morning after this accident.

(Q.) Did you subsequently call anybody's else's attention to that place? (A.) No; I can't say that I did.

(Q.) Were you ever down there with Mr. Tom Randall? (A.) Not until the week following that.

(Q.) The week following that you were down there with Mr. Randall? Did you call his attention to those holes at the time?

Mr. Moncure: If Your Honor Please. I object to that.

The Court: I will sustain that objection.

By Mr. Barbour:

(Q.) Had there been any change in the condition of the place that that piece of ore skipped from, between the time you saw it on Wednesday morning, the 3rd, and the time you were down there with Mr. Tom Randall? (A.) No sir; there wasn't any difference in the place at that certain point.

CROSS EXAMINATION by Mr. Moncure

(Q.) Those holes that Mr. Hutchinson bored and Mr. Williams that had been blasted in the meantime?

(A.) No sir; they stayed there for I think in the neighborhood of a week and a half or two weeks before they were ever shot.

(Q.) No more work was done in that place at all down there? (A.) No more than timbering up the following week.

(Q.) And no work was done there --- no work at all done in there until the following week of any account?

(A.) No more than timbering work.

(Q.) You didn't do anything else there? (A.) No blasting or mining; no sir.

(Q.) There is one question I want to ask you. I understood you to say yesterday that on the second, that is the day shift on which Fred Stoll and Frank Williams were mockers and others worked on and Tom Alexander and George Stewart were machine men, that there was no blasting that day? (A.) No sir; not on that side. On the north side about forty feet from there.

(Q.) And there was no blasting on the night before? (A.) The night before, Hutchinson and Williams was working the night before.

(Q.) And there was no blasting on the night before? (A.) Yes sir.

(Q.) There was no blasting there that day? (A.) Not on the day shift, but on Monday night, the night of the first.

(Q.) Monday night, that was the last blasting. (A.) That was the last that Hutchinson and Williams put off.

(Q.) That was the last blasting? (A.) Yes sir.

(Q.) And they hadn't blasted that night when Mr. Hutchinson was killed? (A.) No sir.

(Q.) So there had been no blasting over there at all since Monday? (A.) No sir.

(Q.) And you were down in there Monday and Tuesday? (A.) Yes sir.

(Q.) Both? (A.) Yes sir; and Wednesday morning.

(Q.) Wednesday morning after he was killed? (A.) Yes sir.

(WITNESS EXCUSED)

THOMAS (A.) RANDALL then resumed the stand and his examination was continued, as follows:

By Mr. Barbour:

(Q.) Now Mr. Randall, please state to the jury what you observed in reference to the condition of this place that this piece of ore slipped from? (A.) About the shaking, or in what way?

(Q.) Whether or not there was any indication as to a tripod leg having been put in any proximity to it?

(A.) Well, gentlemen, I didn't see the tripod setting up to this rib, but from the condition that the holes was arranged into the rock, they had the tripod, one leg braced in the crack of this piece of ore, between the ore and the slate, under the lower edge of it, braced into the rib, and the leg braced into the rib on the right hand side was braced under the bottom edge of this ore and slate.

Mr. Moncure: You think that.

The Witness: The way the holes were arranged in the stone that would have been the way that they would have done it.

Mr. Monroe: That is the natural way?

The Witness: That would have been the best way, and they told me that was the condition ---

Mr. Moncure: Don't say what they told you.

By Mr. Barbour:

(Q.) Can you tell the jury, Mr. Randall, what occurred in that mine on Saturday in reference to placing a post or prop under a piece of slate near the incline? (A.) Yes sir; I can't tell you how that was.

(Q.) Just tell us how that was? (A.) I had been working down in that place only the week before this accident happened. I stood a couple sets of timber down into the incline, underneath the incline, near the place where the fellows were working. I went down on a Saturday morning and the fellows were in there, were getting ready to set their machine up, and we scaled down some of the top and pulled down what was loose there from the shots that had been put in, I suppose, the night before. We pulled down what joists were in there, and there was one piece of slate there in the top, it wasn't bad at all; and in case it might get bad, the boss told me I could stand a prop under it.

(Q.) Who do you mean by the boss? (A.) Stoll.

Mr. Moncure: You were ordered to prop it? Don't tell what he told you.

(A.)(Continuing) And he told me ----

Mr. Moncure: Let him go ahead. I won't object.

(A.) (Continuing) I didn't have any other work urgent anywhere else, and he said I could stand a post against that while I was down there, that it might get loose, and it would be well enough to stand a prop against the slate. And so after he had gone away and left me, had gone back up the hill towards where the other men were working, I taken the pick and tried --- dug down in the bottom and it wasn't enough slate to stand the prop on, and the slate, it wasn't bad neither, wasn't dangerous, so I just let the prop go, as I

didn't have time for it to go in under that any way, not the condition that the bottom was in, I had a right smart shoveling and mucking to do to get a solid foundation for to stand it on, and I just let it go. It wasn't dangerous anyway. It wasn't loose.

(Q.) Did that roof ever fall? (A.) No sir.

(Q.) Has it ever fallen yet? (A.) When I got back there on the Monday after this accident happened, I couldn't miss a thing that had fell from the roof at all, everything was just as I left it, no more than this place had slid out of the rib.

CROSS EXAMINATION by Mr. Moncure:

(Q.) Mr. Randall, you say you were down there on Saturday, that was the 27th of February? (A.) I was down there. I don't know what day of the month it was.

(Q.) That was the Saturday before Mr. Hutchinson was killed? (A.) I didn't bother about keeping the correct date of it.

(Q.) It was Saturday before Mr. Hutchinson was killed? (A.) Yes sir; it was the Saturday before he got hurt; yes sir.

(Q.) Who was timbering with you then? (A.) Fred Stoll was working with me.

(Q.) Fred Stoll was working with you? (A.) Yes sir.

(Q.) And you were taken sick when? (A.) I was taken sick on that Saturday night, and wasn't feeling well all day Sunday and I kept getting worse. I had a bad cold.

(Q.) Fred Stoll was your assistant timberman wasn't he? (A.) Yes sir; he was working with me.

(Q.) You all were the only men timbering there then? (A.) Well, there was places ---

(Q.) I say you all were the only timbermen there then? (A.) I was the only company timberman; yes sir.

(Q.) So when you were taken sick that left no company timberman except your assistant? (A.) I don't know nothing about that. I wasn't there. When I wasn't there I don't know who they had to take my place. I don't know nothing about that.

(Q.) Did you get that prop ready for that piece --- (A.) Did I get it ready.

(Q.) Yes? (A.) No; I never bothered any more about it after I didn't have time to get it in on Saturday, I never thought any more about it then. After I went home I was too sick to think about a post or anything else.

(Q.) You know Mr. Ratcliff, Mr. Raymond Ratcliff's father, the merchant down there? (A.) Yes sir; I am well acquainted with him.

(Q.) The day after the death of Mr. Hutchinson, or the next day after that, in Mr. Ratcliff's store, didn't you tell him that you had been ordered to timber this place, but that you were taken sick and you couldn't timber it? The place where Hutchinson was killed? (A.) I told him, we was talking about it, I hadn't heard what had killed him, and we was talking, Mr. Ratcliff and myself and the doctor was in there, Doctor Cline, and we was talking, and I hadn't heard what had fell on the man, and I says, "I expect that piece of slate that I was going to stand a post under. I wonder aint that what fell".

(Q.) Stand a post under. You didn't say timber, did you? (A.) No sir; I always call it timbered.

(Q.) Did you say "timber that place" or "stand a post under that piece of slate"? Which did you say? (A.) I said, I don't know whether I said timber or stand a post, but I always call timbering standing a post, as much so as timbering any other way.

(Q.) Now you say "robbing ore". What do you mean, tell the jury, by robbing ore, where you put the timbers up, then to take the ore that is there with the slate? (A.) The way that we work there, when we get down and turn headings off, and then drive back as far as they want to go, and then drive up to the next level, and then they start on the rib and commence shooting the ore off and following the place up with timbers all along back, whenever it is necessary for a prop.

(Q.) Now then this piece that came out and killed Mr. Hutchinson, had that been taken off by you all, you would have called that robbing ore, wouldn't you? (A.) You never would rob a level, you never rob a level until you drive it out to its end wherever you want to carry it --- drive it out to the end and start your up-rise and then you start at the end of your level and work on back towards the incline.

(Q.) Now then you had passed that piece and were working on with your heading, weren't you? (A.) Yes sir.

(Q.) So when you came back to take that out, that would have been robbing? You would have finished your up-rise and then robbed that? (A.) In these other levels you take out your dip rib on your bottom levels all the time. In robbing you don't rob out your dip, you always rob your rise side.

(Q.) How do you get it out the other side? (A.) When you turn your other levels off below that one.

(Q.) You come back and take that out? (A.) You take that out.

(Q.) You don't call it robbing, but you take it out just the same. You come back to it and take it out? (A.) Yes.

(Q.) And you say that this piece of slate that you noticed and tried on Saturday --- you were going to timber that for what reason? (A.) Because the bottom was loose and wouldn't hold, and it was in the way, and it wasn't dangerous.

(Q.) But you were going to timber it for what reason? (A.) Just to make it ---

(Q.) Just for the looks of the thing? (A.) In a green man's eye, if he sees a crack, maybe if it wouldn't fall for ten years, he would think it was dangerous. Everything that's got a crack in it won't fall.

(Q.) You were going to timber for the same reason that Mr. Amos Stoll gave, for the looks of the thing?

(A.) He told me it would look better for the post to be put in --it might get loose -- he said, it might get loose, and if it would, the post would be ready for it when it fell.

(Q.) Then you were going to timber because it might get loose? (A.) He said, for to stand the post there.

(Q.) Now then you say that in blasting back there that that might loosen it? (A.) I don't know. In the course of time, if you leave it there, it will naturally --- naturally the crack will keep opening, of course.

(Q.) In other words, the blasts loosen those things in there --- hard blasts loosen that stuff? (A.) That is the way they get the rock out, they loosen it with the powder.

(Q.) But you said a little while ago --- maybe I misunderstood you --- you said a little while ago, in blasting that piece might become loosened? (A.) The piece might get loose? Might get loose, you see. The air will get into the rock and naturally slack it.

(Q.) And the jar of the blasts will help it some? (A.) I suppose it will all help it some.

(Q.) So that blasting in there does loosen rocks, if there is a crack, or ore, or anything else? (A.) Some blasts.

(Q.) Of course. Especially if it is very close to it? (A.) There are some places where you can put the powder in the cracks, and you can't loosen it.

(Q.) But if it happens to have a crack in it, an ordinary blasts will loosen it some, the jar of the blasts. That is true, isn't it Mr. Randall? That is a fact isn't it? (A.) Oh yes. Of course, shooting around that stone sometimes will loosen it and sometimes it won't though.

(Q.) Sometimes it does loosen the stone? (A.) Sometimes it will loosen rock and sometimes it won't.

(Q.) But sometimes it loosens rock somewhere near it? (A.) Sometimes it will loosen it, just according to the condition, and how it is placed.

(Q.) When you were down there on Saturday that place looked all right to you, except for that one place, where you were going to put a post? (A.) The place was all right anyway. I wasn't loaded up with very much work that day and I wanted to do something or other, that's what I was paid for. Of course I was going to stand a prop down there. I was going to stand a prop there, but it wasn't necessary, but I was going to put it there merely to be employed, to have some employment.

(Q.) Because you were told to do it? You timber where you are told to timber, don't you? (A.) Certainly.

(Q.) Who tells you to timber? (A.) The boss man.

(Q.) Who was he? (A.) Sir?

(Q.) Who was he? (A.) Mr. Stoll and Mr. Watson and other bosses that has been underneath the ground there.

(Q.) But Mr. Watson was sick for two or three days there, wasn't he? (A.) You couldn't prove that by me because I never seen him.

(Q.) You only saw Mr. Amos Stoll, didn't you? (A.) I seen him there on the Saturday that I was taken sick that night. I seen him then. He came in, I have been told ---

Mr. Barbour: Don't say what you have been told.

The Witness: I say, that is the last day I seen him, was the Saturday I was there.

By Mr. Moncure:

(Q.) As I understand from you, where this post you were going to put in --- were ordered to put in--- was on the left hand side --- here is the incline going down there? (Indicating) (A.) Yes sir.

(Q.) Here is the incline going down, and there is the level or sump. This is on the left hand side. Now just show the jury about where? (A.) I don't know as I could, on a book like that.

(Q.) Well, here is the roof to it. (A.) This was the incline coming down, and the headings run each way.

(Q.) Now show us about where it was? (A.) On the south side, on the dip, you might say, right at the corner, sorter.

(Q.) That is where you were going to put the post? (A.) I was going to stand a prop there.

(Q.) This is the entrance coming down here, these are the headings, and over here was where you were going to put the post? (A.) Yes sir.

(Q.) And that piece of slate is standing there yet? (A.) I can't tell a bit of difference now and what it was then. I didn't see any difference. I didn't miss anything from the roof at all.

(Q.) Now this thing is arched over, isn't it, at the top? (A.) Well, no sir; you couldn't arch a top like that.

(Q.) You did a hole in ground and the top is round, isn't it, or supposed to be? (A.) It's in different shapes, sir.

(Q.) But it comes together over like that? (A.) Yes sir.

(Q.) And in the top of that thing over on this side was a loose piece of slate, or you thought might become loose by blasting. (A.) It might.

(Q.) And you were ordered to put that post up there to hold that up? (A.) Yes.

(Q.) And that slate continued on, did it, to the ore --- one solid mass of slate went on to the ore? (A.) No sir; there wasn't no ore there; the ore was cut out.

(Q.) Now you have shot there, haven't you? (A.) Yes sir.

(Q.) And you have worked the machine, have you not, in your time? (A.) Yes sir.

(Q.) And you have worked in certain positions where it is usual to stand one leg against the wall (A.) I have put them in almost all kinds of shapes.

(Q.) And it is usual to do it that way? (A.) That's the way I would set it up.

(Q.) And that is the usual way to do it? (A.) That is the way I should think a miner would set it up.

(Q.) That's the way he would set it up naturally? (A.) Yes sir.

RE-DIRECT EXAMINATION – by Mr. Barbour

(Q.) Mr. Randall, if you saw a piece of ore sticking in the wall, would you put a tripod leg right in the dividing line between the slate and the ore? Would you do that?

Mr. Moncure: I object to that question.

The Court: I overrule the objection.

(A.) If I was working with the machine, I always pull down all the loose ore and all the loose slate that I thought there was any danger in at all. I always trim the place down, and always aim to take all of the loose ore down anyway. I always tried to get all that down and all the loose slate I thought there was any harm in at all.

(Q.) Is that the duty of the miner to trim his room when he goes in there? (A.) Yes sir; that is what I have always been learnt there, that every man had to watch out for his own place and trim its own place down.

(Q.) And if he finds anything unsafe, what does he do? (A.) I go to the boss man.

(Q.) Now Mr. Randall, how far was this piece of slate that was protruded, and which you started to timber and didn't timber, from this loose piece of ore? (A.) Well, it was about, from the looks now of the hole in the rib that I seen, the hole in the rib where it had slid out, understand ---

(Q.) How far from the hole in the rib from this place? (A.) The piece of slate that I was going to stand this prop against, it looked to be about four or five feet, something like that. I never measured it.

(Q.) And that piece of slate is still there and has never fallen? (A.) I don't miss anything from the roof at all. It's just as it was when I was there on the Saturday.

(Q.) What is regarded as a safe distance from the face of the ore to timber. What is the necessity for timbering, I mean, when you are driving a level just as you were here? (A.) Driving a level?

(Q.) What is the technical expression for the work that was being carried on that level at that time? What do you call it? (A.) I can't understand you just exactly.

(Q.) I am not sure that I understand myself. I am a sort of green hand at this business? (A.) You have got to come at me in a way I can understand.

(Q.) Certain work was being carried on at this place, and ore was being taken out? (A.) In this 19

(Q.) In 19 level. What do you call that work that those men were doing just at that time? (A.) They were shooting ore. The men were shooting ore, turning headings off, as I was told.

(Q.) Were they sinking or turning headings? (A.) I was told they were turning headings. It wasn't none of my business what they were turning them for. It wasn't up to me; but I was told they were heading.

(Q.) Now when they are turning levels, how close to the face of the ore do you timber? (A.) When they turn headings?

(Q.) Yes. (A.) You hardly ever do stand any timbers into the headings in driving and turning headings off, sometimes put in maybe one or two sets of timbers across the first entrance from the incline. It has been one or two places in there has been a set of timber put in across, a prop or something like that to kind of hold the corners or something like that, but it isn't at all of them, just one or two places.

(Q.) Now why is that? (A.) Well, sometimes ----

(Q.) It is necessary, is what I want to know.

Mr. Moncure: He says he timbers when he is told to timber, and he gets that order from somebody else. I do not think it would be proper to ask that question.

By Mr. Barbour:

(Q.) I would like to ask this witness if he waits for orders to do his timbering? (A.) Well, I will tell you, gentlemen, at a place when I go in the mine there to work, and being off for a day or two and don't know exactly what they have to do around, I always wait for orders for them to tell me to go to a certain place. If I had worked at a place, and tomorrow I come back, and had left my tools at the place, I always just taken them and went to work at that place, if I hadn't got through. If I had got through, I usually find out from the boss where was the next place.

(Q.) Now Mr. Randall from your experience, can you tell whether a place is safe or needs timbering or not? (A.) I certainly think I do. I think I do. Certainly I know when it needs timbering.

Mr. Moncure: I object to that.

The Court: I overrule the objection.

By Mr. Barbour:

(Q.) If you saw a place that needed timbering, would you wait to get orders to timber it? (A.) I would go to see the boss about it and tell him the place needed some work done there.

(Q.) Now please state to the jury if that level, when you saw it on Saturday night, or Saturday afternoon, needed any timbering.

Mr. Moncure: I object to that.

The Court: I overrule the objection.

(A.) It didn't need any timbers more than I tell you that there was a seam in the rock, and it might get loose some, and he told me I might stand a prop against it as long as I was down there with my tools.

(Q.) Did you think that place needed timbering? (A.) No sir; I didn't think so.

(Q.) And you have been seven years a timberman (A.) off and on for about seven years.

(Q.) And a miner for fifteen years? (A.) Yes sir; been working at the mine.

By the Court:

(Q.) I understood you to say that you believe you knew when it did need timbering? (A.) Any man has an idea, of course. I never have had no practice --- never was turned out with no experienced miner. We had no papers, but I always claimed to know when a place needed timbering down there at the mines. I always claimed I knew. Of course, somebody might say I didn't know nothing about it, but I always thought I knowed.

(Q.) You are always guided by what you know, until you are proven wrong? (A.) Yes sir; I always thought I knowed; yes sir.

RE- CROSS EXAMINATION – by Mr. Moncure

(Q.) Mr. Randall, of course, as you got your orders from the pit boss or shift boss for timbering, he was the one that made the examinations and tests to see whether or not the timbering was necessary? (A.) He did and myself, together.

(Q.) But I am speaking now of No. 19 down there. You were down there. You did not go around and test all the walls on Saturday? (A.) Yes sir; I certainly did.

(Q.) You tested all the walls and sounded them? (A.) Yes sir; I sounded all around the walls, top, side and bottom and everything.

(Q.) And found nothing loose? (A.) There wasn't nothing loose only some loose muck in the bottom that was shot out.

(Q.) So that was in perfect condition on Saturday? (A.) Yes sir.

(WITNESS EXCUSED)

Whereupon ---- GEORGE STEWART (Colored), a witness called by and on behalf of the defendant, having been first duly sworn, was examined and testified, as follows:

DIRECT EXAMINATION by Mr. Barbour:

(Q.) George, where do you live? (A.) Dumfries.

(Q.) What is your age? (A.) I will be thirty-four the 27th of this month.

(Q.) What is your business, George, your occupation? (A.) I run the machine at the mine.

(Q.) How long have you been a miner? (A.) I have been working in the mine for sixteen or seventeen years.

Q This same mine? (A.) No sir; I have been here for about ten years.

(Q.) What other mines have you worked in besides this? (A.) I worked at home and in West Virginia also.

(Q.) What mine did you work in West Virginia? (A.) I worked in Douglas, down at Douglas, West Virginia.

(Q.) Are you employed now by the Cabin Branch Mining Company? (A.) Yes sir.

(Q.) How long have you been in their employ? (A.) Well, I have been here for five years now this time, five or six years.

(Q.) Were you employed in Cabin Branch mine in level nineteen on Tuesday afternoon the evening before Mr. Hutchinson met his death down there? (A.) Yes sir.

(Q.) What were you doing there that evening? (A.) We drilled that evening and shot the same as usual.

(Q.) Who was working with you, George? (A.) Tom Alexander was my buddy.

(Q.) Tom Alexander? (A.) Yes sir.

(Q.) You and Tom were running a machine? (A.) Yes sir.

(Q.) Was there anybody down there mucking? (A.) Clarence Williams and I forget what the boy's name is, the other fellow that worked with him at the time, because Clarence had a buddy and his buddy was off, and I don't know what one was on with him at the time. His buddy was sick and they had another fellow there.

(Q.) Do you know whether it was Fred Stoll or not? (A.) It might have been Fred. I don't know whether it was Fred or not. Yes sir; I think it was Fred Stoll.

(Q.) Did you hear any talk between Clarence Williams and his buddy that evening? (A.) It was Mr. Fred Stoll there with him. Yes sir; I heard them speak about some piece of stuff being loose or something.

(Q.) What piece of stuff? (A.) It was slate. Some slate back up in the roof there, a piece of slate it was. We had all noticed it. I had noticed it being kinder heavy. Of course, we pulled down some of the loose off of it and this piece was kinder shot but not enough to be taken down.

Q. What did Clarence say to him? A. I didn't pay no attention as to what he said. I understood him to say something about its being loose or something about that. I don't know what it was. Clarence called Fred's attention to the rock. I know it was something like that.

Q. Did you see them, where they pointed to? A. Yes indeed, I saw the piece, the little piece that fell down from there.

Q. Did Clarence on that occasion say anything to him about a piece of ore being loose? A. I never heard anything about no piece of ore being loose.

Q. Did Clarence sound any piece of ore? A. I didn't see that.

Mr. Moncure: If Your Honor please, it seems to me those questions are leading.

The Court: I think Mr. Moncure is right about that.

By Mr. Barbour:

Q. What did Clarence Williams do in the way of testing any ore there on that occasion? A. Nothing that I seen him do to try no ore, because nobody didn't know anything about no ore. There was no ore there. This what I told you about was a piece of slate up there. There was nothing I seen done about no ore at all.

Q. I will ask you this question, what was the condition of that level for safety on that occasion. A. of course, the place was all right up until --- we drilled in there Saturday before that on that side and we went in there that evening at Three o'clock and another shift they had done drilled the holes and we went in and shot the holes and I came back and I trimmed down the same as usual and set up my machine again.

Q. What do you mean by trimming down? A. Trimming what was left from the shots. Of course, you know where there is shooting that something is left.

Q. Is that part of the duty of a miner then he goes in there? A. That is his duty, to look out for himself. That is a miners duty, when he goes in there after being shooting, you know, on the shift, to take a pick and try around, to try things to see how it is. That is their duty.

Q. Why do you do that? A. To look for anything coming down, you know, to keep it from falling on you. If we didn't do that, it might get heavy or something and there is no telling what it might do. Those things have to be looked after. That is always a miner's duty.

Mr. Moncure: I want to move to strike out the answer and just save an exception, the entire answer.

The Court: I overrule the motion.

EXCEPTION by counsel for plaintiff.

Q. Now what was the condition of that level for safety when you all left it on Tuesday evening? A. On Tuesday evening.

Q. Before the accident. A. When we left there, it was all right. I found nothing there that was any danger in whatever, when we left that evening.

Q. What time did you leave on Tuesday evening? A. About five o'clock. We all leave a little before five, between four and five. We shoot as we go along up the hill. Everything was all right and in perfectly good condition with the exception of this here piece of stuff I told you about, this piece of slate back here. Of course, that was not over our way.

CROSS EXAMINATION – by Mr. Moncure:

Q. That piece was not ever where you all were working? A. No.

Q. That was toward the other end. A. It was right down as we turned off, right where we turned off.

Mr. Barbour: Right at the incline

The Witness: Right at the incline.

By Mr. Moncure:

Q. George, this representing the level where you were working; this being the incline where you were working, I mean the sump or level, and this being the incline going down to it, that day, you all were working over here, weren't you (indicating) A. That we were working over here on the south side.

Q. Facing coming down? A. Yes sir. We were over here. This is the incline coming down and we were working over here on the south side.

Q. You are sure of that, are you? A. Yes sir. That was Tuesday, you understand.

Q. Tuesday before Mr. Hutchinson was killed? A. Yes sir; we was on the south side.

Q. On the left hand side as you come down? A. Yes sir.

Q. You are sure of that? A. sure.

Q. This piece of rock that was loose, show me where it was. A. Here is where we turned off, and this piece of slate was right up here (indicating)

Q. Stand round this way. This piece of slate was right up over here, the piece of slate that was loose (indicating) A. yes sir.

Q. Are you sure you worked on this side? A. In the south side.

Q. You turn to the left as you go down? A. Turned to the left, yes sir.

Q. Did you try that piece of slate? A. The piece of slate?

Q. Yes. A. Certainly it had been tried

Q. Did you try it? A. Yes sir; I tried it.

Q. You tried it to see if it was all right? A. That piece of slate; Yes sir.

Q. What did you try it with? A. With a pick.

Q. And it was all right? A. I don't say it was all right, but kinder loose, but not loose enough to pull down you understand.

Q. Did you hear any crumbling of ore there that day or slate? A. At the time those boys were talking, a little piece of slate or a little chip fell.

Q. How big was that piece that fell? A. I don't know exactly.

Q. About how big? A. I never paid no attention to see how big it was.

Q. You saw where it came from, you saw it when it came down? A. I couldn't say really. No; I didn't see it fall.

Q. You didn't see it fall? A. No sir.

Q. And you didn't see it afterwards? A. I heard something fall.

Q. You didn't see it fall and you didn't see it afterwards? A. No sir. You see I was over there.

Q. You were attending to your work and were not paying much attention to it and they were attending to that? A. Yes sir.

Q. The reason you knew about it, you heard something fall and you heard them talking about it? A. I heard something fall and I knew where it fell from.

Q. You didn't see it fall though? A. I didn't see it fall and when I came back there bringing the machine across there, the boys told me it was up there and then I looked up there and seen ----

Q. You say you didn't see it afterwards. What were you doing, running the bit or turning the crank? A. I don't know which I was doing. We were both working on it.

Q. One did one and one the other, and you interchanged? A. Yes sir.

Q. You all interchanged and sometimes you used the bit and sometimes he used it? A. Sometimes I used it and sometimes he done it.

Q. And you were paying no special attention to that slate there? A. No more than I knowed where he told me it fell from. I knowed where that piece of stuff was heavy, understand and then the place wasn't any more that as far as from here to that desk, if that far.

Q. And you and your partner or buddy, as they call it, were busy, one boring and the other turning the crank and were paying no attention to what was going on there? A. we heard the thing fall and knowed where it fell from, because I had examined the place and knowed the condition and knowed just where it was.

Q. When you examined it, did you find it loose? A. I found a piece of rock or slate up there which was heavy. It was heavy enough to be pulled down.

Q. And that piece of rock adjoined the ore, did it not? A. Which ore are you speaking of?

Q. The ore on the side ---- that piece of slate adjoined the ore did it not? A. The ore is in the face of it and this was up in the roof.

Q. Up in the roof of the place, how far from the side was it, from the top of the side? A. You have got me now. I couldn't tell you about inches or anything like that.

Q. You say that after you blast, you clean for the loose rock? A. Yes sir.

Q. Round there? A. Sure.

Q. Pieces hanging out loose, you clean them off, take them down, or pull them down, and get them out of the way. A. Yes sir; pull down and then they can't fall.

Q. Those are the pieces that you see loose hanging up. A. Certainly.

Q. Now suppose a man was to test the side of a wall and were to learn from that test that the piece was loose, ore or slate, what is the proper thing to do? A. Pull it down.

Q. If you don't pull it down, what do you do? A. When we find it loose, we see how it is, whether it would pull or anything like that. We pay some attention to it, somebody does, to find out if its heavy enough to come down or not.

Q. If it is only a small piece of slate, you don't bother about that, unless it is very loose? A. A little small piece that is the time you pull it down, but when it comes to a piece that you can't pull, then you have to do something else.

Q. Then you timber? A. Yes sir.

Q. And if you can't timber, then you either work away from it or go out of that level. If it is too heavy to pull down, you either work away from it on the other side or get out of that sump level?

Mr. Barbour: He said if it was heavy enough, you pull it down.

By Mr. Moncure:

Q. If you can't get it down with your pick? A. If you can't get it down, we try it with the pinch bar and work with a hammer and wedge, but you know that if a man is working there for seventeen or eighteen years he ought to know something about it.

Q. He must either take it down, or timer, mustn't he? A. Yes sir.

Q. Or if he can't do either one of those at that time, he must get away from it. A. But understand now, we have a rule there in the mine that when we find anything like that where we can't work to go to the boss.

Q. You go to the boss? A. The shift boss, and he goes ---

Q. He attends to it? A. Yes sir.

Q. You put the responsibility on him? A. That is his place.

Q. So when he knows of that condition, he has to look after it? A. He has to have it attended to.

Q. Of course, you were working on one side with your buddy, as you call him, and Clarence Williams and Fred Stoll were working on the other. A. Hold on. Did I tell you that Clarence Williams and Fred was working on the other side? I don't know exactly what side they was on.

Q They worked side by side. A. We both worked side by side, one day at one place and the next day in another.

Q. And on this day, Tuesday, the day before Mr. Hutchinson was killed, they were working backwards and forwards getting the muck? A. They always get it where ever they could get it convenient.

Q. And you were paying attention to the boring and were not paying any attention to Fred Stoll and Clarence Williams? You were not watching them all day about what they were saying? A. Certainly not. I wasn't watching them all day.

Q. So they may have said a great many things to each that day you did not hear? A. I have no doubt they did. I don't claim to hear everything they say.

Q. You remember one time of your attention being called to that slate, because when it dropped, you heard the noise.

Q. Yes sir and I knew where it was. I had done examined the place. I turned it off and I knowed the condition of this place and when this piece of rock fell, I knowed where it fell from. I turned this place off and knew where it was. Of course, there was this other part, and that was up in the face of this piece of ore. That was slate.

Q. That was adjoining to the slate? A. The ore, you know, is the thing we mine for.

Q. And the slate, you don't mine for. A. No; we are after getting ore out. We don't timber up no ore or leave it in there.

Q. You either get it out before you go to work there or get it out any time you can get it? A. We take it out one way or the other.

Q. Now after this piece fell and you knew where it was from, you didn't pay any attention after that to Fred Stoll and Clarence Williams, did you? A. I didn't no sir.

RE-DIRECT EXAMINATION by Mr. Barbour

Q. I understood you to say in response to Mr. Moncure's question that you never timbered ore at all? A. We never timber up no ore. No sir. We always take that out.

Q. You want to get that down instead of keeping it up there? A. We don't timber that up.

Q. And what attracted your attention ---- A. Was this piece. I knew this piece of slate was getting heavy.

Q. Whenever anything falls, you want to look out then? A. I knew everything about the place and I knowed when this piece of stuff fell I knowed where it was and there was nothing there to go back for because I knowed the condition of the place.

Witness Excused

Whereupon --- TOM ALEXANDER, (Colored) a witness called by and on behalf of the defendant, having been first duly sworn, was examined and testified, as follows:

DIRECT EXAMINATION by Mr. Barbour

Q. Tom, how old are you? A. I will be 24 the 5th day of June.

Q. Where do you live? A. Dumfries.

Q. What is your employment -- what do you do for a living? A. Mine.

Q. How long have you been a miner? A. About eight years.

Q. What do you do in the mine? A. Well, drilling and mining and driving inclines.

Q. Were you in the employ of the Cabin Branch Mining Company on the day before Mr. Quinton Hutchinson met his death. A. Yes sir.

Q. Where were you engaged on that occasion? A. I was working down in 19
Q. In level 19 A. Yes sir.
Q. Who were you with? A. A fellow named Stewart – George Stewart.
Q. You and he were buddies? A. Yes sir.
Q. Who else was down in that level with you? A. Clarence Williams and Fred Stoll.
Q. What shift were you on that day? A. On the day shift.
Q. What time did you come off? A. Five o'clock.
Q. Please state to the jury what, if anything, you heard that transpired between Fred Stoll and Clarence Williams in reference to the condition of any of the walls or sides of that mine? A. The only thing I know, I heard Clarence Williams say --- I heard a piece of rock fall, about the size of my head, and I went over to the incline where he was, and I said, "Clarence, where is that falling from" and he said, "It was up here by the side of the rib."
Q. Did you see where the piece of rock fell from? A. Yes sir.
Q. Where did it fall from? A. Right from at the wall at the mouth of No. 19.
Q. Was it slate or ore? A. Slate.
Q. What, if anything, was said on that occasion in reference to the condition of any ore? A. No sir; I didn't hear it.
Q. Was anything said about any ore? A. No sir.
Q. Could you have heard it, if anything had been said there? A. No sir; I couldn't
Q. What is that? A. No sir; because I went on back to my work.
Q. About what time was that? A. I couldn't tell you what time it was, sometime between seven and twelve, sometime along in there. I couldn't tell you exactly what time it was.
Q. And that was the only conversation that you heard in reference to it? A. Yes sir.

Whereupon ---- JOHN U. DIETRICK a witness called by and on behalf of the defendant, having been first duly sworn, was examined and testified, as follows:

DIRECT EXAMINATION by Mr. Barbour

Q. Mr. Dietrick, where do you live? A. I live at Dumfries; that is, near Dumfries, My home is at Cabin Branch Mine which is a mile and a half from Dumfries.
Q. What relation to do you occupy to the Cabin Branch Mining Company? A. I am Vice President and Manager.
Q. Did you obtain a statement from Mr. Frank Williams as to his knowledge of the circumstances surrounding the accident? A. I did, sir.
Q. Was that statement reduced to writing? A. It was sir.
Q. In whose presence, Mr. Dietrick? A. In the presence of Mr. Emery and Roger Gray.
Q. Was the statement either read over by him or read to him? A. It was read to him, and I handed it to him to read provided he wished to do so.
Q. Do you know whether he read it or not? A. I don't remember really whether he read it or not.
Q. Is this the statement? (Handing Exhibit "Williams No. 1 to the witness) A. Yes sir.
Q. On that occasion did Mr. Frank Williams draw any distinction as to his having sounded the slate roof but not the sides of the mine?

Mr. Moncure: As I understand, he put down what he said. The statement speaks for itself.

Mr. Barbour: Yes; I suppose he did.

By Mr. Barbour:

Q. Is this an accurate statement? A. That is exactly as Frank Williams told me. When Frank Williams came in with Roger Gray, I said "Frank, the information I wish ----

Mr. Moncure: One minute ----

The Court: Ask him what occurred. I think that statement must be the test, as Mr. Moncure says.

Mr. Moncure: I object to so much of that statement as is not proper evidence.

The Court: This is only as to the accuracy of it. The point as to the evidence we disposed of yesterday.

Mr. Barbour: If that statement has not already been offered, I offer it.

Mr. Moncure: I just want to enter a formal objection.

CROSS EXAMINATION by Mr. Moncure:

Q. You took statements from all the men that knew anything about this matter, Mr. Dietrick, did you not?

A. I took statements from a number. I don't know that I got statements from all that knew anything about it. It was my object to get statements from all that knew anything about it.

Mr. Barbour: There was one additional question you asked Clarence Williams if he had made a statement to Mr. Dietrick on yesterday, and I asked Clarence Williams how long after the accident it was. I want to ask Mr. Dietrick about how long after this accident was it that you had that talk with Clarence Williams?

The Witness: I don't remember exactly, but to the best of my knowledge in the neighborhood of a month or five weeks, such a matter as that.

By Mr. Moncure:

Q. Can you give us the names of the people you took statements from, as far as possible? A. I don't know that I can remember all, William Murray, Amos Stoll, Fred Stoll, Roger Gray, Frank Williams, Tom Johnson Jr., George Stewart, Tom Alexander, and there might be one or two more.

Q. Ralph Decatur? A. Ralph Decatur; yes sir.

Q. Have you got Ralph Decatur's statement now? A. Have I ?

Q. Yes. A. No sir; I have not.

Q. Has your counsel got it? A. I judge they have. I don't know.

Q. Now do you think of anybody else, Mr. Dietrick that you took a statement from? A. Did I mention Tom Randall.

Mr. Barbour: You asked him if he had that statement of Decatur's in his possession. I will let you see it, if you will let the jury see it after you see it.

By Mr. Moncure:

Q. When did you take a statement from Decatur? A. I don't remember the exact date.

Q. How long after the accident? A. I judge it was the following day, to the best of my recollection. It was the 3rd of March, either the 3rd or 4th of March.

Mr. Moncure: Yes; I will take the statement.

Mr. Barbour: And then the jury can see it?

Mr. Moncure: Yes sir.

Mr. Barbour: I am glad to put it at your service.

Mr. Moncure: Mr. Decatur does not sign his name?

The Witness: I think he does.

Mr. Moncure: I see a mark here?

The Witness: I tell the truth I don't remember.

Mr. Moncure: Mr. Barbour, I haven't read the contents of this, except I have looked at his name signed by mark, and I would rather not introduce it in that case. I have not read it, and I only saw it is signed by mark. I would rather not introduce it. Mr. Dietrick, that is all.

(Witness excused)

Mr. Barbour: I think that is our case, sir.

END OF TESTIMONY ON BEHALF OF DEFENDANT

TESTIMONY ON BEHALF OF PLAINTIFF IN REBUTTAL

J. CLARENCE WILLIAMS, (Colored) a witness who had previously testified, was recalled by counsel for plaintiff, in rebuttal, and was examined and testified, as follows:

DIRECT EXAMINATION By Mr. Moncure:

Q. Clarence, will you tell the jury how high up you struck the ore with your pick?

Mr. Barbour: If Your Honor please, I do not see what that is in rebuttal of.

The Court: I will overrule the objection.

Answer – About that high, I think (Indicating just above his shoulder) Just about that high.

By Mr. Moncure:

Q. How tall are you? A. I don't know exactly

Q. How far were Stewart and Alexander working from you at the time struck this ore with your pick? A. About fifteen or twenty feet, between fifteen and twenty feet, something like that.

Mr. Moncure: That is all, Mr. Barbour

Mr. Barbour: Stand aside.

(Witness excused)

FRANK WILLIAMS a witness who had previously testified, was recalled by counsel for plaintiff, in rebuttal, and was examined and testified as follows:

DIRECT EXAMINATION by Mr. Moncure

Q. Frank, if you made the hole or place in the wall for your tripod or one leg of your tripod to stand in, will you please tell the jury how high up from the floor you made it, and what you made it in, whether slate or ore? A. Well, when I got ready to set my machine up, I taken a pick in the foot wall about two and a half or three feet and made a little hole to set my tripod leg in.

Q. Was that slate or ore? A. Slate.

Q. How far above that place where you set your tripod was it to the beginning of the ore? A. Well, about a foot and a half or two foot maybe, something like that.

Mr. Barbour: I did recall how high he said he cut the notch?

Mr. Moncure: About two feet and a half.

Mr. Barbour: Above the floor:

Mr. Moncure: Yes sir.

(Witness Excused)

Mr. Moncure: That is all, sir.

Mr. Barbour: At this period of the case, I wish to renew the motion to exclude the testimony of Clarence Williams in reference to the evidence that he gave in chief about the conversation that occurred between Fred Stoll and himself, in reference to this matter that we are talking about, because it is not connected up.

The Court: I overrule the motion to strike out.

Mr. Barbour: We save the point.

Court Instructions to the Jury

#1 The Court instructs the jury that the law presumes that the plaintiff exercised due and proper care on his part at the time he was injured, and the burden of proving that he was negligent is upon the defendant, unless such neglect appears from the plaintiff's evidence.

#2 The Court instructs the jury that the duty of the master to inspect its premises where its servants are employed, and to exercise reasonable care for their safety, is affirmative, and must be continuously fulfilled and positively performed; and if the master neglects this positive duty and his servant is injured as a proximate result of such neglect, the master is liable in damages; but the character of the supervision must vary with the nature of the employment, nor is the defendant liable, if contributory negligence was the proximate cause of the accident, but the character of the supervision must vary with the nature of the employment, nor is the defendant liable if contributory negligence was the proximate cause of the accident.

#3 The Court instructs the jury that a master is charged with notice not only of what he or his representative knew, but also of what he or his representative ought to have known by the exercise of reasonable care on their part to inspect and examine; and where there is a danger that the master or his representative ought to have known of by the exercise of reasonable care, and his servant is injured or killed by this danger that the master ought to have known of, if he or his representative had done his duty, then the master is liable to damages, if the neglect of the master to find out and remove or guard against the danger was the proximate cause of the servant's injury or death. But if the accident arose from hanging and shifting conditions of the mine, resetting from its operation of which the master was not informed and which he could not reasonable expected to have known, or if it was the result of are open and obvious danger of which plaintiffs accident had knowledge, or could have know in the exercise ordinary care.

#4 The Court instructs the jury that if they believe from the evidence that the plaintiff is entitled to recover, that then in ascertaining and fixing the damages in this case they should fix the same with reference to ---- FIRST. To the less sustained by Cleminia Hutchinson the widow of Quinton L. Hutchinson, fixing the same at such sum as would be equal to the probable earnings of the said Quinton L. Hutchinson, taking into consideration the age, business capacity, experience, habits, energy and perseverance of the deceased during the life time of the said Quinton Hutchinson, if he had not been killed. SECOND. By adding thereto compensation for the loss of his care, attention and association to his wife. THIRD. By adding such further sum as they may deem fair and just, by way of solace and comfort to his said widow for the sorrow and suffering and mental anguish, caused to her by his death.

#5 The Court instructs the jury that it was the duty of the defendant to exercise ordinary care to provide to work; and if they believe from the evidence that the place where the said Hutchinson was required to work was not reasonably safe, and that he was ignorant of this fact, and could not, by the exercise of ordinary care discover the danger, it was the duty of the defendant to inform him of it. And in the absence of an official or higher grade this duty devolves upon the mine or shift boss under whom he was working, as vice –principal.

#6 The Court instructs the jury that the master must give warning to his servants of all perils to which they will be exposed, of which he is or ought to be aware, other than such as they should, in the exercise of ordinary care, have foreseen as necessarily incidental to the business in the natural course of affairs, though more than this is not required of him. It makes no difference what is the nature of the peculiar peril, or whether it is or is not beyond the masters control. And it is not enough for the master to use care and pains to give such notice. He must see that it is actually given. If, therefore, he fails to give such warning, in terms sufficiently clear to call the attention of his servants to a peril of which he (the master) is or ought to be aware, he is liable to them for any injury which they may suffer thereby without contributory negligence.

#7 The Court instructs the jury that ordinarily the foreman or shift boss of a gang of hands employed in executing the master's orders is a mere fellow servant with the either members of the gang, but if he is discharging a non-assignable duty of the master he is to that extent a vice principal. One of these non-assignable duties is to exercise ordinary care to provide a reasonably safe place in which the servant is to work. If the place was originally safe, but has become unsafe during the absence of the servant, and he is ignorant of this fact, and cannot discover it by the exercise of ordinary care, it is the duty of the master to inform him of it, and in his absence this duty devolves upon the foreman of the gang as a vice-principal.

#8 The Court instructs the jury that a servant, by implication, assumes the ordinary risks incident to the service in which he engages, but not those risks which may be obviated by the master by the exercise of reasonable care on his part. A failure on the part of the master to observe, for the protection of his servant, that reasonable degree of care which the circumstances of the particular case justly demand is actionable negligence, and is not within the influence of the doctrine of assumed risks.

#9 The Court instructs the jury that while the plaintiff must prove his case by a preponderance of evidence, this means merely the greater weight of evidence, not proof beyond all reasonable doubt, which is required in criminal cases.

#10 The Court further instructs the jury that they are the sole judges of the credibility of the witnesses and the weight disbelieve the testimony of any witness or portions of said testimony, if in their opinion then they have sufficient reason to do so arising from and that although the plaintiff must prove his case by a preponderance of evidence, this does not necessarily mean that he must prove it by the greater number of witnesses. In ascertaining upon which side is the preponderance of evidence the jury should consider not

only the number of witnesses, but also their credibility and the reasonableness of their testimony when taken in connection with all the facts and circumstances of the case.

#11 The Court instructs the jury that even if they believe from the evidence that Quinton L. Hutchinson was guilty of contributory negligence and the burden is upon the defendant to so show, yet if the defendant knew of the negligence of the said plaintiff Hutchinson and could by ordinary and proper care after discovering the negligence of the said Hutchinson have averted the accident or injury causing his death, notwithstanding his contributory negligence and did not do so that still the plaintiff is entitled to recover.

Clemenita Hutchison, Administratrix of
Quinton Hutchison, deceased, Plaintiff,

vs

Cabin Branch Mining Company, a Corporation, Defendant

This day again came the parties by their counsel, and the following jury free from exception were impaneled and sworn the issue to try and true verdict render between the plaintiff and the defendant and having heard the evidence of the witnesses, the argument of counsel, retired to their room in charge of the Sheriff and after a little while returned into Court in charge of the Sheriff with their verdict in the following words and figured, to wit: "We the jury upon the issue joined find for the plaintiff and assess her damage at \$1750.00", and were thereupon discharged. Wherefore it is considered by the Court that the plaintiff recover of the defendant the sum of \$1750.00 and her costs by her about her suit in this behalf expended, and thereupon the defendant by its counsel in open Court paid to the plaintiff through her counsel the amount of the said judgment, to-wit, the sum of \$1750.00 and costs aforesaid and acknowledge the satisfaction of the judgment heretofore recovered by the defendant against the plaintiff in the Supreme Court of Appeals for the costs attended upon the reversal of the former judgment in this cause, and these facts are directed to be spread upon the records of this Court, and the Clerk is directed not to docket the final judgment this day awarded and to mark satisfied the judgment for costs above mentioned.

Virginia:

In the Supreme Court of Appeals, held at
the Literary Building in the City of
Richmond on Thursday the 9th day of March 1911

Cabin Branch Mining Company – Plaintiff in error
Against
Climenior Hutchinson, administrator of
Quinton L. Hutchinson, deceased – Defendant in error

Upon a writ of error and supersedes to a judgment rendered by the circuit court of Prince
William County on the 12th day of November 1909

This day came again the parties, by counsel, and the court having maturely considered the transcript of the record of the judgment aforesaid and arguments of counsel, is of opinion, for reasons

stated in writing and filed with the record, that the said judgment is erroneous. It is therefore considered that the same be reversed and annulled, the verdict of the jury set aside and the cause remanded for a new trial to be had not in conflict with the views expressed in the said written opinion of this court.

It is further considered that the plaintiff in error recover of the defendant in error, out of the estate of his intestate in his hands to be administered, its costs by it expended in the prosecution of its writ of error and supersedes aforesaid here.

Which is ordered to be certified to the said circuit court.

A copy,

Teste:

H. Stewart Jones C. C.

Plaintiff in error costs:

Attys. Fee	\$20.00
Writ tax	6.50
Printing	226.50
Transcript	98.00
Clerk's fees	6.50
Sheriff's fee	<u>.50</u>
	\$357.55