

week daily inspections are made, and a full round of the work is made during the week. (2.) The working-places are 10 ft. to 18 ft. high. The light from a safety-lamp is very poor, and if the mine is to be worked as at present, by present methods, there will be a great increase in the number of accidents to miners, and serious accidents, if not fatalities, as the result of defective lighting, the safety-lamps will be damaged and the end in view defeated. To prosecute for a breach of Special Rule 14 in Kelly's case will, at least, have the effect of producing stricter supervision; therefore, I now ask permission to summons Mr. Fletcher under Special Rule 14 of the Coal-mines Act, 1908, and also permission to employ a solicitor."

That was the request which Mr. Bennie made—that he should be permitted to issue a summons even though it failed. He also wrote to Mr. Fletcher on the 25th August, saying,—

"I wish to impress upon you that should any further indications of firedamp take place in your mine, to the personal injury of any workman or otherwise, of whatsoever dimensions, it may be necessary to insist upon the use of safety-lamps only in your mine. I trust you will give this matter your earnest consideration."

Now, up to that point, or up to the point of the disaster, Mr. Bennie has stated that he was not aware of the highly inflammable nature of this coal dust. Even Professor Dixon was surprised that this lignite coal was so highly inflammable. One cannot judge the actions of the officers of the Department, nor Mr. Bennie in particular, by recent events; you must judge him from the conditions which existed prior to the accident. He is a man of ripe experience, careful and attentive to his duties, and he saw no special reason sufficient to justify the use of safety-lamps at that particular time. In addition to that, as Mr. Tunks has put it, Mr. Bennie had in the mine a brother-in-law who was killed, Mr. Holden. Mr. Bennie could have obtained from Mr. Holden confidential information, but neither of them had any fears as to the dangers that existed in the mine. Then, those letters from Mr. Bennie to the Under-Secretary were submitted by Mr. Blow to Mr. Reed for his information, and Mr. Reed recommended that the opinion of a solicitor should be obtained, and if he (the solicitor) thought there was a reasonable chance of obtaining a conviction a prosecution should follow. The Minister authorized that to be done, and Mr. Bennie took the opinion of Mr. Miller, who is a reputable mining lawyer. Mr. Bennie prepared a statement of facts, but he also had a personal interview with Mr. Miller, and pointed out everything that had occurred not only in connection with Ralph's Mine, but also at the Extended Mine, and on those facts he advised the Inspector that there was no reasonable ground for the manager to apprehend danger. He puts it very clearly:—

"In the case now under consideration an underviewer made examinations, and for several days preceding the accident everything was reported safe and ventilation good. In view of the fact of which you inform us—that with good ventilation a mine could be clear and work could quite safely be undertaken a day after gas was reported—we cannot conceive a reasonable man who relied on the underviewer's reports having any fear whatever from danger of firedamp. So that the manager, we think, could not be held to be guilty of an offence unless he could be said to have neglected Special Rule 14, or, in other words, unless the steps taken by him would be less than the steps taken by a reasonable man to ascertain the presence of firedamp. As stated above, the Act and regulations provide what is to be done as to examining the mine, and although a bare compliance with the letter of the statute is not necessarily sufficient, yet such a compliance (which is undoubtedly shown in this case) is *prima facie* evidence of reasonable care being taken. And the evidence required to rebut such a *prima facie* case would have to show very definitely that the mine-manager did in some way neglect his duty; but there is nothing whatever in the facts submitted by you to us which suggests that the manager was in any way neglectful. And on these facts we do not think that a Magistrate could or would find the manager guilty of a breach of Special Rule 14."

As I said before, the instructions given to Mr. Bennie were to obtain a solicitor's opinion, and if there was a fair chance of a conviction being secured he was authorized to institute the necessary proceedings. The solicitor's opinion was unfavourable, and Mr. Bennie notified the Under-Secretary to this effect, and enclosed a copy of the opinion, adding that no good purpose could be served by a prosecution. I put it to the Commission that there is not a tittle of evidence to show that Inspector Bennie has in any way neglected his duty. He only acted on instructions from the Under-Secretary, and every instruction given him was faithfully and carefully carried out. I do not think that I need take any further time so far as Mr. Bennie is concerned. He is the only officer whose official inspection you are authorized to consider. In regard to this, section 8 of the order of reference says you are "to ascertain if the provisions of the existing law are sufficient to give the Inspector of Mines full authority to order the use of safety-lamps and other appliances if in his opinion such appliances are necessary." It is true that the Inspector of Mines has no power to issue what may be termed an administrative order. I do not contend that he has the power to order that safety-lamps must be used, or that he can insist on it under an administrative order, but what I do submit is this: that there is power indirectly under section 58 to secure the safety of the lives of the miners in the mine. If there is an extraordinary danger in the mine it is quite open for him to call the men out. I am not now referring to this particular mine, but speaking generally. I put it to you that under that section and on the evidence of Mr. Bennie, Mr. Fletcher, and Mr. Bishop, if there is real danger and if the Inspector ordered the men to be called out until the danger is removed, the men would be called out. Under the special rule there is also power to effectively secure the safety of the lives of the miners in the mine. As I have said, the Department obtained an opinion to the effect that they could not succeed under the special rule; and it appears from the file that the Minister was not aware that the proceedings had been dropped until the disaster had occurred. Mr. Bennie then directed that safety-lamps should be put in. I submit with confidence that there is not a tittle of evidence to show any negligence or breach of duty on the part of Mr. Bennie or any official of the Mines Department.