

hearing taking place in Court, the Warden should be invested with a discretion either to conduct the investigation in Court or on the ground. In all cases, either party should be entitled to demand a view, and the Warden should be at liberty to make an inspection upon his own mere motion. We would permit either party to demand that the evidence should be taken down in writing, and in all cases we would require a record to be kept of the decision, with a minute of the grounds for such decision. The Warden should be empowered to award and enforce the payment of costs, and in all cases the Warden should have ample power to enforce by execution his own decisions; with, in certain aggravated cases, a power to issue process in the nature of execution against the person for unsatisfied judgments. We think that power should be given to Wardens to draw up a special case for the opinion of the Supreme Court.

Assessors.

43. There has been considerable difference of opinion as to the utility of permitting the intervention of Assessors in cases of mining dispute, but on the whole, we would recommend that either of the litigant parties should have the option of requiring Assessors, and we would give the Warden the power of calling in Assessors even if not required by either party. The functions of the Assessors should be merely confined to issues of fact. These Assessors should be holders of miners' rights, or leaseholders upon the roll of Mining Jurors for the year, and should be chosen for the nonce by the Warden. The costs of payment to the Assessors to be upon a scale to be fixed in the Rules, and to be costs in the cause.

Jury panel of Assessors.

44. We recommend that a Jury panel, from which Assessors both in the Court of first instance and in the Court of Appeal, should be chosen, be prepared in the manner following:—Let a list be prepared annually, by the Warden of the District, of all proprietors of registered mining property,—such proprietors being resident within the district,—and from this list let the Warden select alphabetically a limited number (say forty-eight) of practical miners, which forty-eight shall constitute the Jury panel for the year. This plan, we believe, will on the one hand secure the attendance and the services of valuable assistants in the administration of justice upon the difficult and complicated questions likely to arise; and, on the other hand, will fairly distribute the work amongst all who should be competent and compellable to serve.

Court of Appeal.

45. Upon the question of the constitution of the Court of Appeal we have taken a great deal of evidence, and have received a variety of suggestions. It is unnecessary to say anything more as to the entire unsuitability of the present Appellate Court, viz., a Court composed of "two or more Justices in any Court of Petty Sessions assembled,"* but perhaps it may be worth while to point out that under this section a case which may have been decided in the first instance before the most experienced paid Commissioner, perhaps assisted by practical miners sitting with him as Assessors, may at the mere caprice of any successful litigant be brought on appeal before a Bench of unpaid Magistrates situated at the most remote bounds of the Colony, and composed of two Justices utterly ignorant of mining affairs, and yet not impossibly quite satisfied of their competence to review and over-ride the decision of any tribunal whose decision the law—through some curious freak of legislative eccentricity—may have submitted to their consideration. And to show how large are the powers committed to such an Appeal Court, we would desire to call special attention to the very recent case of *ex parte Irwin and others*, 10 Sup. Ct. Rep. 49, wherein the Chief Justice, in his judgment, concurred in by the rest of the Court, says:—"Does not the twenty-first section take away our power of entertaining the appeal? On this point the argument that it does is unanswered, and is we think unanswerable. Surely the Legislature never intended the Judges of this Court to upset or vary the decision of the Appeal Court established by that section; for we, most likely, are not so competent to decide cases between miners, concerning claims and other disputes arising on the Gold Fields, as those Appellate Courts convened for that very purpose; therefore, I am of opinion that our jurisdiction is here taken away." Now, it must be obvious that it is not longer to be tolerated that interests of such vast importance as are and will be involved in litigation upon gold-mining matters, should be jeopardised by being intrusted to the arbitrament of such a Court of Appeal, whose decisions are thus authoritatively pronounced to be absolutely final.

See sec. 21 of present Act.

Case of *ex parte Irwin and others*. Appeal final.

Court of Appeal recommended.

46. We do not stop to examine in detail the different plans which have been suggested in the evidence we have taken; but we desire to say that, notwithstanding some few objections to it, we, recognizing the expediency of availing ourselves of existing judicial machinery, and thinking that on the whole the District Court can be made the best Court of Appeal, are of opinion that the District Court should be made a Court of Appeal in mining matters. Such appeal we recommend to be in the nature of a rehearing of the whole matter, provision being made that upon disputed questions of fact the Court might, if so desired, have the assistance of a Jury of miners, such Jury being not chosen by ballot, but struck from the mining Jury panel. The high degree of intelligence and legal culture which is to be looked for in a District Court Judge would furnish sufficient guarantee that, at all events in the great majority of cases, the litigants and the public interested would obtain a sound judicial exposition of the law bearing upon the questions; while the objection on the score of the possible absence in the Judge of a special acquaintance with mining knowledge would be obviated by his having the assistance upon questions of fact of a Jury, themselves, in all probability, skilled and practical miners. The Judges themselves, moreover, with that painstaking industry and care which always accompany the conscientious discharge of their high and important functions, would,

* The Gold Fields Act now in force was assented to on the 27th September, 1866. By this Act power to decide mining disputes was given to any Justice of the Peace, with or without Assessors, and the appeal from his decision was to "two or more Justices in any Court of Petty Sessions assembled,"—with or without Assessors.