

we feel assured, very soon acquire a sufficient acquaintance with the mere technicalities of this branch of their jurisdiction.

47. We would suggest that the District Court should sit, in its Mining Appellate Jurisdiction, at least four times a year.

48. Where the property at stake was worth a sum of £200 or upwards, we would recommend the allowing of a further appeal from the District Court to the Supreme Court—the Supreme Court to have power, amongst other things, to order a new rehearing before the District Court.*

49. In all cases, upon a deposit of £10, we would permit an appeal to the District Court; but in the case of an appeal to the Supreme Court the deposit should be at least £30. We have before stated that power should be given to the Warden to state a special case for the opinion of the Supreme Court, and pending such opinion to make necessary interim orders, so as not to cause any delay in the prosecution of gold workings. A certain amount of delay is unavoidable in all litigation,—but in order to reduce the practical consequences of this inevitable evil, we have already (*see par.* 39) suggested that, pending the final settlement of disputes in all cases of appeal, the Warden should be empowered to make all necessary orders for the interim working of claims, and appropriation of the proceeds of such workings. And, in concluding our observations upon the Administration of Justice generally, and the constitution of the Court of Appeal in particular, we must be allowed to express our belief that, if the recommendation of your Commissioners with regard to the appointment of Wardens be carried out, the tribunal of first instance will give such general and well-grounded satisfaction as to render the necessity for resort to any second Court of rare and exceptional occurrence.

[I regret that I am unable to concur in the recommendation, as made in the above paragraph, viz., that the District Court should be the Court of Appeal in mining cases. I think that, though in some instances, where the property at stake was of large value, the District Court might be suitable enough as a Court to which to appeal from the Warden's decision; yet, in the great majority of cases, so great a delay would arise, and such an expense to the litigants be incurred, as to be most hurtful to the mining interest. Were the operations of gold-mining confined merely to persons associated together by the means of joint stock Companies, I should perhaps not have an objection to the Appeal Court which is recommended by my colleagues; but I submit that Parliament will have, in gold-mining matters, to legislate as much for the wants of the individual miner as for those who go into large undertakings, by means of Companies; and for this reason, that our Gold Fields must ever, from the nature of the thing, be quite as much developed by the parties of four or five individual diggers as by joint stock Companies, by the means of their hired labour and costly machinery. District Courts cannot, unless indeed the Country goes to increased expense for additional Judges, be held more frequently than at the present time; and it follows that mining appeal cases would, in numberless instances, have to stand over for hearing for three, and even four months. Where the property in dispute was of considerable magnitude, such as a rich quartz claim, worked possibly by a Company, it is true a receiver could be appointed, and the claim be worked until the dispute was settled; but on new alluvial Gold Fields, such as Gulgong, the Bushman's, &c., such a method of working claims while the grounds was in dispute would be quite impracticable. It would come to this,—that the disputed claim must, as a rule lie unworked till the time came for the District Court to sit; and thus a number of men, litigants in mining disputes would be hanging about a Field idle for months, and a quantity of auriferous ground would remain for long periods unworked. The losing party in the case, heard before the Warden, knowing that the District Court being the Court of Appeal the claim must often lie unworked for a long time, would very often make an appeal, and pay the small sum necessary, on the mere chance of something turning up in his favour, combined with the certainty that, even if his opponent ultimately triumphed, he, the loser, could inflict a serious injury on him by the delay he could cause. I think this state of things would be most undesirable. It would cause very great difficulty to the Government officers to manage new Gold Fields, would entail a serious loss to the miner, and a great waste of our mineral resources.

What is wanted, in regard to nine-tenths of the mining disputes that arise, is a simple, cheap and expeditious mode of rehearing the case which has been previously heard by the Warden. A Commissioner or Warden, in the excitement and turmoil of a great rush, often gives decisions which, in a calmer moment, and when additional facts could be adduced, he would be glad to reverse; and it is highly necessary that the miners' property should be protected from the effect of the hasty judgements which the best and ablest officer is likely to give.

The Appeal Court, such as is recommended by the majority of the Commission, would be a tribunal consisting of a Jury of miners, to decide questions of fact (to give a verdict), presided over by a District Court Judge to interpret the law. It appears to me that an Appeal Court might be constituted, on Gold Fields of any extent, which would be much cheaper for the litigants than the District Court, more expeditious in the settlement of cases, and in which precisely the same class of men as jurors might be obtained. I would suggest that the Government should appoint some gentleman of known respectability in the locality where the Appeal Court is to be constituted, as Chairman of the Court of Appeal; and that upon intimation being given to him by the Warden that notice of appeal was lodged and the required fee paid, he should empanel a Jury of miners, *id est*, persons being holders of miner's rights, who thereupon should in a few days meet and under his presidency, hear and decide the case. The Jury to give a verdict, as in the District Court, the Chairman to preside, and, if necessary, interpret the law. The fee to be paid by the losing party, in such a Court, need not be more than that under the Gold Fields Act of 1866, viz., £3, and the time between the day of lodging the notice of appeal and the day of hearing need not be more than three or four days.

No doubt, notwithstanding, the Jury would be the same in such a Court as I have indicated as in the District Appeal Court, and the persons presiding would not be so efficient in the one as in the other. It would be most certainly of some advantage to have the Chairman or Judge a lawyer of high attainments, such as a District Court Judge; but of the two evils, viz., the incomparatively inefficient Judge on the one hand, and the great delay and the expense to litigants on the other, I am most strongly of opinion that the lesser evil by far would be the local Appeal Court.

It may be said, and I think with some reason, that it would not be altogether wise to leave the absolute determination of the right to valuable mining property to a local Appeal Court; but I think this objection might be obviated, possibly, by some competent person, such as the Warden, being authorized to certify when, from the intricacy of the question in dispute or the magnitude of the property at stake, the circumstances justified it, that the appeal case should go direct from the Warden's Court to the District Court.

Should the recommendation of the Commission in reference to the Administration of Justice on Gold Fields by the Wardens and the creation of a Mining Department be acted upon, I have little doubt that the vexatious delays, which in almost all matters relating to Gold Fields management have so harassed the miner, will be obviated; unless, indeed, the "Law's delays" are brought to bear on him in another direction by a Court of Appeal being constituted such as the

* With respect to the granting of rehearings we advisedly limit the power to the Supreme Court, the final Court of Appeal; for although we are aware that in the neighbouring Colonies both Wardens and Judges of Courts of Mines have power to grant rehearings before their own respective Courts, we do not think it desirable to adopt this plan, for we think such a plan tends to disastrous uncertainty in the administration of the Law, and to a great probability of careless and ill-considered adjudications in the first instance.