secondly, that the distress warrant was issued before the expiration of the time limited for appealing from the Warden's decision. This rule was not argued in Dunedin until the middle of last month, and no decision has yet been given on it. Indeed, it is very hard to say when His Honor Mr. Justice Chapman will give judgment. This rule contains a stay of proceedings, pending the rule being argued and decided. Nevertheless, in spite of this fact, the defendant and his alleged partners, on 24th May, retake possession of the tunnel from the bailiff, and have been working out the claim ever since.

For their conduct in interfering with the bailiff, you, on the 17th ultimo, got a rule *nisi* to have the defendant and his alleged partners committed for contempt of Court.

There is no knowing when this rule will be heard.

I have tried to get an injunction on the claim from the Warden, and have been refused. I have been advised by counsel in Dunedin that you cannot get an injunction from the Supreme Court.

I may mention that the defendant did not lodge his notice of appeal until the very last day allowed for doing so, viz., on the 4th May.

Since the first rule *nisi* was obtained, the District Court has sat twice, but the Judge refuses to go on with the appeal until the Supreme Court gives judgment on the rule that has been argued. The appeal stands adjourned to 17th instant.

If something is not done very soon, the defendant's claim will be worked out, and you will be left with nothing to come down on.

I have, &c.,
WESLEY TURTON.

No. 2.

WEDNESDAY, 14TH AUGUST. Before His Honor Mr. Justice Chapman.

THE QUEEN *v.* BEETHAM (WARDEN) AND ANOTHER.

His Honor delivered the following judgment in this case:—

Rule *nisi* directed to Beetham, Warden of the Gold Fields at Queenstown, and Eager, plaintiff in the action of Eager *v.* Grace, to show cause why a writ of prohibition should not issue on two grounds. First, that the Warden's Court at which the complaint of Eager against Grace was heard was illegally constituted, inasmuch as the Warden and Assessors acted together as co-ordinate judges of law and fact; and secondly, that the distress warrant or execution was issued before the expiration of the time limited for appeal from the decision of the said Warden's Court. The rule was argued before me on the 11th, 12th, 13th, 17th, and 23rd of July, when I took time to consider my judgment. The length to which the argument extended affords a presumption of the importance, as well as the difficulty, of the question involved in the first ground. Very little guidance is afforded by the decisions of other Courts, and my decision must ultimately turn on the language of the several sections of "The Gold Fields Act, 1866," which apply to the constitution and practice of the Wardens' Courts; for it is from the language of the Act alone that the intention of the Legislature must be collected.

I start with this proposition: that if an Act of the Legislature constitutes a Court, consisting of a presiding Judge (by whatsoever name he may be called) and Assessors or Jurors, the maxim of the common law expressive of the distinct functions of the Judge and the Jurors must prevail, unless by the language of the Statute a contrary intention be manifested. The question, therefore, involves a careful examination of the wording of the sections providing for the constitution of the Warden's Court with or without Assessors, compared with the language of some of the sections treating of the District Courts when assisted by Assessors. In this I have been greatly assisted by the learned counsel on both sides. Of the constitution of the District Courts and their Assessors there cannot be a doubt. The Assessors are treated as composing a Jury. They make oath "a true verdict to give." The presiding Judge instructs them in the law, and they deliver their verdict in the same manner as any other jury. *Primâ facie*, therefore, there is nothing in the name Assessors to lead to an inference that they are other than Jurors. But there are undoubtedly peculiarities in the language of the sections relating to the Wardens' Courts, and to the functions of the Assessors, distinct from the language of the sections relating to the District Courts. Much ingenuity and critical acumen has been displayed by the learned counsel on both sides: and not without reason,—for the whole question turns upon whether these peculiarities are sufficient to warrant the inference that the legislation intended that the maxim of the common law already referred to should be departed from, and that the Warden and Assessors should act together as one body, deciding either unanimously or by a majority, upon which I shall have something to say hereafter. By section 60 of the Act, the Wardens have power to act alone or with Assessors. The next five sections provide for the jurisdiction of the Wardens' Courts, both territorially and with reference to the subject-matter of complaints, including cases of encroachment. By section 68, the Warden is required to make such decree or give such judgment as shall be just, without regard to any rule of law, or practice of any Court of law or equity. This is similar to provisions in several English Statutes, establishing Courts of request or Courts of conscience—the import of which was very carefully considered by Mr. Justice Richmond in *Pearson* v. *Clark*, 1, Macas. 136, upon a careful review of the judgment of the Court of C.P. in *Scott* v. *Bye*, 2, Bing., 344. Section 8 of "The Gold Fields Amendment Act, 1867," No. 2 (No. 1 provides only for the delegation of the Governor's powers), repeats the provisions of 68; and adds that the Warden's decision shall comply therewith, and with the provisions of the Gold Fields Act, the Amending Act, and the Rules and Regulations made, or to be made, under the Acts. The Act of 1866 provides for the summoning of Assessors, and clearly shows that the Warden may act "alone or with Assessors," and several provisions follow as to Assessors; but by a strange oversight, no provision was made for the number of Assessors, or as to the terms and conditions upon which they were to be resorted to. This omission, however, was discovered shortly after the passing of the Act, and by section 4 of the Amending Act of 1867, No. 2, provision was made for the number of the Assessors, for summoning them on the requisition of either party or at the discretion of the Warden, and for their payment, as effectually as is done by section 89