

WESSELS, J.  
(In Chambers)  
Nov. 21st, 1911.

*Ex parte* ROETS.

*Minors.—Contracts.—Prospecting Contract.—Share of Minerals.—Encumbrance of Property.*

*A prospecting contract with minors should contain provision for the minors to share in any minerals that may be found during the prospecting. It should also provide that in the event of the option not being exercised, the property shall revert to the owners free and unencumbered by any discoverer's or other right.*

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The applicant, who was the mother and natural guardian of the two minors, Jacoba Maria and Petronella Wilhelmina Roets, applied for an order confirming a certain prospecting contract in respect of two portions of the farm "Dwarsfontein," No. 145, district Pretoria, in which the minors were interested.

Under the said contract the grantees were given the right to prospect and mine for and remove for their own benefit all minerals, metals and precious stones in the farm in question against payment by instalments of £500 for the first year and £500 for each of the two following years. In addition they were given the right to purchase the said farm at any time during the prospecting period for the sum of £3,000.

The Master recommended that the contract should be confirmed subject to the condition that  $7\frac{1}{2}$  per cent. of the gross value of any metals, minerals or precious stones recovered during the prospecting period and before the exercise of the option to purchase, should accrue to the owners in addition to the rent. He also recommended as conditions of confirmation of the said contract, that the rent should be payable in advance, that in the event of the option to purchase not being exercised, the property should revert to the owners free and unencumbered by any discoverers' or other rights, and that any amounts due to the minors should be paid into the Guardians' Fund to their credit.

*W. S. Duxbury*, for the applicant, moved.

WESSELS, J. : This is a question whether a prospecting contract with minors should or should not be confirmed. I think the Master is perfectly right in his suggestion that in all cases of mineral leases affecting minors there should be a clause in the contract to the effect that, if during the prospecting any valuable metals or minerals or precious stones are found, the minors shall be entitled to a certain proportion of them. You may have a case where the prospecting extends over a year, and where the value of the property of the minors is greatly diminished by valuable finds being removed from the property. It is a speculative matter, and one does not know what may or may not be recovered during the prospecting of a farm. If nothing is recovered, no harm is done by inserting a provision that the minors shall be entitled to a certain percentage of what is found. If, on the other hand, something valuable is found, it would be a scandal that the minor who owned the property should not share in the find, and that the find should go entirely into the pockets of the lessee. Therefore, I think that the Master is quite right in insisting that, in all similar contracts in which the interests of minors are involved, there shall be a clause to the effect that the minors are entitled to a certain percentage of what may be found. I think that the Master is also quite right in saying that the property ought to revert to the owners free and unencumbered; there ought not to be any discoverers' rights, or any other right, registered against the property after the lease has expired. With regard to the third objection of the Master, that the first year's rental of £500 should be paid in cash in advance, I do not think that that can be insisted upon. It may be, in certain cases, that it is a proper condition to insert in a minor's contract. But I do not think it can be insisted upon here, because the interest of the minors is very small—only one one hundred and twentieth of the farm—and there is no principle involved in insisting on the first year's rental being paid in advance and in a lump sum. In the other matters there are questions of principle involved. I am, therefore, prepared to confirm the contract, provided that the clause suggested by the Master, in regard to the payment

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to the owners of  $7\frac{1}{2}$  per cent. of the gross value of any metals, minerals or precious stones recovered during the prospecting period, be inserted, and also that the property should revert to the owners free and unencumbered.

[Attorneys for Applicant, DE VILLIERS & DE KOCK.]

[Reported by ADOLF DAVIS, Esq., Advocate.]

DE VILLIERS, J.P.,  
BRISTOW & CURLEWIS, } UNGER vs. SIMMER DEEP, LTD.  
JJ. Nov. 22nd, 1911.

*Master and Servant. — Workmen's Compensation. — Serious and Wilful Misconduct.—Act 36 of 1907, sec. 2.*

*A ganger, having been warned by a shift boss not to enter an unsafe stope in a mine, entered the said stope with a gang of Kafirs. A timberman then told him again that the stope was unsafe, but he remained there and was injured by a fall of rock due to the unsafe condition of the stope:—Held, that he had been guilty of "serious and wilful misconduct" within the meaning of sec. 2 of Act 36 of 1907, and was not entitled to recover compensation for his injury from his employers.*

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Unger vs.  
Simmer Deep,  
Ltd.

Appeal from a decision of the R.M., Germiston.

Appellant sued the respondent company for compensation under the Workmen's Compensation Act in respect of injuries sustained by him in the course of his employment. The defendant company set up several pleas, amongst others, that the accident was caused by the plaintiff's own serious and wilful misconduct.

This plea was upheld by the Magistrate, and the claim was accordingly dismissed with costs. All facts appear from the judgment.

*R. Gregorowski* (with him *L. Blackwell*), for the appellant: There was no wilful misconduct on the part of the appellant. Even if it was negligence on his part