

SIMMER AND JACK MINES LTD v GF INDUSTRIAL PROPERTY CO (PTY) LTD & OTHERS 1978

(2) SA 654 (W)

<p>Importance</p>	<p>This case is useful for articulating the criteria relevant to determining the ownership of mine dumps. One of the arguments raised in the case was that the dump had acceded to the soil and thereby become an immovable form of property. The court did not rule out the possibility of dumps being regarded as immovables but the test lies with the intention of the parties. There was no evidence that Simmer and Jack Mines had otherwise acquired rights to the mine dump in question as a movable. The legal position of mine dumps as movable or immovable forms of property could have important implications in the application of environmental law, particularly where statutes establish a duty of care on the landowner.</p>
<p>Parties</p>	<p>Applicant: Simmer and Jack Mines Ltd First Respondent: GF Industrial Property Co (Pty) Ltd Second and Third Respondents: Persons to whom the first respondents had granted permission to remove sand on the mine dump situated on the first respondent's property.</p>
<p>Facts</p>	<p>The dispute in this case revolves around the question of Simmer & Jack Mines Ltd's rights to a mine dump situated on a portion of the farm Elandsfontein in the district of Germiston. The land on which the dump was situated had been proclaimed in terms of the Gold Law Act 35 of 1908 (T) and in respect of which Simmer & Jack held various kinds of mining rights.</p> <p>During 1965, Simmer & Jack sold a portion of the land to GF Industrial Property Co (Pty) Ltd for purposes of industrial development. The sale of the land was subject to all rights to precious minerals and other minerals in, on or under the land being reserved in Simmer & Jack's favour as well as to all mining titles and all rights attaching to the property under the Gold Law. The mine dump was consequently partially situated on the land owned by GF Industrial Property Co and partially on land still owned by Simmer & Jack, but the greater portion was on the property of the first respondent.</p> <p>At the time the proceedings were initiated, GF Industrial Property Co had given the second respondent permission to remove sand from the mine dump in exchange for a consideration. Simmer & Jack launched urgent interdict proceedings on the basis that the dump was its property, that the sand had value for purposes of the recovery of gold and/or a commercial value for the manufacture of silicate bricks, for sale for foundry purposes or for roadmaking (and other purposes). It contended that it was suffering irreparable and loss and damage because the sand was being removed in large quantities daily. It maintained that, as a result of a variety of factors, it was unable to apply for a permit to utilize the dump and could possibly do so only</p>

	after the elapse of many years, by which time the sand would have probably been completely removed.
Relief sought	The applicant sought an interim interdict against the first respondent prohibiting it from removing sand or from permitting anyone to remove sand from the mine dump.
Legal Issues & Judgment	<p>Issue 1: The key legal issue in this case revolved around whether the mine dump was a movable or an immovable form of property. If the latter, then Simmer & Jack’s rights thereto were reserved in terms of the deed of sale which had been entered into with GF Industrial Property Co as well as in a certificate of rights to minerals registered in favour of Simmer & Jack when the property was transferred (at 658C).</p> <p>Judgment: In order to determine whether the residues which comprise the mine dump had acceded to the land, the most important consideration was the intention of a person annexing a movable to an immovable (at 658E). In this regard, the court noted firstly that the person or persons who produced the mine dump never intended it to accede to the soil. In fact, letters in Simmer & Jack’s custody revealed its attitude (in the early years after becoming owner of the land) that the dump was derelict and that the sand could be sold (at 658G). It was obvious that the first respondent, in intending to establish an industrial township, did not intend for that the dump should accede to the soil (at 658G-H). The fact that the dump had been grassed also constituted no <i>prima facie</i> evidence of accession because it had been done in compliance with the provisions of the Atmospheric Prevention Pollution Act 45 of 1965 (at 658H). On the basis of the applicant’s intention, therefore, the court held that Simmer & Jack had failed to make out a <i>prima facie</i> case that the dump was an immovable and that they had accordingly acquired rights thereto (at 658H). The court further found that there was nothing else to establish that the applicant had acquired ownership of the dump as an immovable. For example, the applicant had failed to obtain the necessary permissions to use the surface of the ground for a sand dump (at 659C–E). Other evidence pointed to the fact that the applicant had abandoned the rights it may have had to the dump when the property was sold to GF Industrial Property Co. It had reserved, for instance, no right of way to gain access to the dump for purposes of exercising its rights (at 659H).</p>
Outcome	The application was dismissed.
Obiter	None.