

they could show its precise terms, this court could not reject their application. But they are not here as complainants, and all they ask is, that the court will not interfere actively against them, and take from them property of which they have been long in possession, and upon which they have made expensive improvements, upon the faith of a promise or agreement that the property should be theirs.

No one, of course, can dispute the right of Nathan Haines to dispose of his property among his children according to his own pleasure, unless, indeed, such disposition should be in conflict with the claims of creditors, and their rights cannot be affected by this proceeding in any way. The case in *Peters*, before referred to, shows that money expended under a belief that the property belonged to the party making the expenditure, should be regarded as constituting an equitable lien, and though the contract, for the want of precision in its terms, could not be specifically enforced, the property was ordered to be sold, and the proceeds applied in the first place to the payment of the sums expended, and the balance, if any, paid over for the benefit of the creditors of the father of the female complainant, and in further proof of the favor with which the complaints were considered by the Supreme Court, they were not held responsible for the rent, either during their own occupancy, or whilst it was held by tenants.

But it is not now the purpose of the court to intimate any opinion with respect to the rights of the creditors of Nathan Haines, if his personal estate should be insufficient to pay his debts, as is stated in the answer of Hardy and wife, and Mordecai Haines. The creditors are not here, and, of course, are not to be prejudiced by the reasoning or judgment of the court in this case.

The question, and the only question now to be determined is, whether, in a proceeding for the partition of the real estate of Nathan Haines, among his heirs at law, the parcels of land which Hardy and wife, and Mordecai Haines, are and have been in the possession of, claiming the same as their own, and upon which they have expended large sums of money, under