

the honest conviction that their title was good, shall be subject to such partition. There certainly would be no equity in so doing, especially as the property which remains to be divided between his two other children and their representatives, is nearly equal in value to the parcels held and claimed by Hardy and wife, and Mordecai Haines, due allowance being made for the moneys expended by them in improvements.

It does not clearly appear, from the return of the commissioners, whether the lots, Nos. 1 and 2, comprehend the lands of which these parties have been in possession. They state them to be the lands claimed by Mordecai Haines and Nicholas Hardy, and Eleanor his wife, and it is presumed they are the same parcels of which they have respectively been in possession, and upon which they have expended their money in improvements. If this be so, my opinion is, that they are not subject to partition among the heirs at law of Nathan Haines, and that the lot, No. 3, remains only to be divided between the two other heirs, or their representatives.

The commissioners state in their return that the land cannot be divided among the parties without serious loss to them all, and that it cannot be divided into more than four lots without materially reducing its value, and they give their reasons for this opinion. But they have only divided it into three parts, and it does not appear whether the third lot, which, (assuming lots Nos. 1 and 2 to have been held as aforesaid,) in my opinion, is the only part subject to partition, is capable of being divided into two parcels. That is, between the remaining two heirs of the deceased, excluding Mordecai Haines and Hardy and wife. It will, therefore, be necessary to remand the commission with directions to make partition of the real estate whereof the said Nathan Haines died seized into two parts, according to the views herein expressed.

ROBERT J. BRENT, for Complainants.

WILLIAM H. G. DORSEY, for Defendant.