

WILLIAM BOONE AND OTHERS  
 vs.  
 SAMUEL BOONE AND OTHERS.

} JULY TERM, 1850.

—  
 [PARTITION.]  
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THIS Court will not sustain a bill for a partition, where the title of the complainant is denied, or not clearly established by the evidence; but will retain it for a reasonable time, to give him an opportunity to make out his title at law.

The fact that the defendant relies upon lapse of time, and limitations founded on long possession, is a strong reason for leaving the complainant to make out his title at law.

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 [The facts of the case are sufficiently stated in the opinion.]  
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THE CHANCELLOR :

This is a bill for a partition, and the title of the plaintiffs being denied, and not, in my opinion, established with that degree of conclusiveness which is required in such cases; the relief prayed cannot be granted, though the bill will be retained for a reasonable time, to give the plaintiffs an opportunity to make out their title at law.

In the case of *Wilkin vs. Wilkin*, 1 *Johns. Ch. Rep.*, 111, the Chancellor said, "The Court does not sustain a bill for a partition, unless the title be clear." And in *Cartwright vs. Pultney*, 2 *Atk.*, 380, Lord Hardwicke observed, that "where there are suspicious circumstances in the plaintiff's title, the Court will leave him to law."

As remarked by Chancellor Kent, in *Wilkin vs. Wilkin*, it appears to be the course of the Court, when the question of title on a bill for partition was in issue, to give the plaintiff a reasonable opportunity to try his title at law, and in the mean time to preserve the bill. In this case it is too clear for controversy, that the title of the plaintiff is involved in doubt and difficulties; that it is surrounded by suspicious circumstances,