contemplated taking upon himself the alternative obligation of paying his sister the five thousand dollars. It is a case, then, in which the complainant has now, and has had, since 1837, when her brother died, an absolute title to the property charged with the payment of the money; in which she also had, and has had, since the same period, if not before, the property which her brother was required to surrender to her, and which, if so surrendered, the claim to the money could have had no existence, and of which, though there was no duly executed and delivered deed of relinquishment, there seems to me some evidence, at least, that she enjoyed the beneficial use in his lifetime. Under these circumstances, the claim to recover the five thousand dollars from the general personal estate from her brother is *strictissimi juris*, and should be made out in a very clear and satisfactory manner. I entertain no doubt whatever that by accepting the benefits conferred on him by his father's will, James D. Mitchell became personally bound for the payment of this money, if he refused or omitted to make the relinquishment required of him. If there could be any doubt upon the language of the will, the case of *West* vs. *Biscoe*, 6 *H. & J.*, 460, would remove it. But, although he became personally bound, the question still remains, he being dead, whether his own estate, or the estate devised to him, was primarily liable for the payment. I do not think this case can be distinguished in principle from that of *Mattheson* vs. *Hardwicke*, note to 2d *Peere Williams*, 664, the authority of which has received frequent and high approbation. In that case it will be found that a testator devised his estate to two persons, charged with the payment of debts and legacies. The devisees accepted the devise, and one of them paid all the debts and legacies, except one legacy of £100, for which he gave his note to the legatee, and died; but this note was held to be a mere collateral security, and that the devised estate was the primary fund for the payment of it. There could, of course, have been no doubt in that case that the devisee was, upon his note, personally responsible for the payment of the legacy. If the acceptance of the devise did not make him so, his note to