devise in the will to Mary Henderson, make title to the lands in question?

W. H. Blake, K.C., for the vendors.

MEREDITH, J.—My opinion is, that, upon the death of Mary Henderson, John Henderson and the heirs of Hubert Henderson took the whole estate of which the testator died seised in the land, but subject to the legacies charged upon it by the will, if any of them remained unsatisfied; and that, notwithstanding any estate which Mary Henderson took under the will, they can make title.

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BOYD, C.   JANUARY 10TH, 1903.

CHAMBERS.

RE DENNIS.

Will—Construction—Devise of Land at Majority—Vested Estate Subject to be Divested—Benefit of Rents During Minority—Costs of Summary Application for Construction—Affidavits.

Motion by executors upon an originating notice under Rule 938 for an order declaring the construction of a clause in the will of Jarvis Dennis, deceased, the question being how the rents were to be disposed of during the infancy of testator's grandson, the will being altogether silent upon the point. The land was devised to the infant at majority, but he was not then residuary devisee.

T. Brown, Norwich, for executors.

G. G. Duncan, Norwich, for residuary devisee.

F. W. Harcourt, for the infant.

BOYD, C.—The land devised to the grandson when he arrives at 21 is, by the effect of the proviso that if he dies before receiving the share devised it is to go over, to be treated as vesting in him now, but subject to be divested should he die before attaining 21. See Phipps v. Ackers, 9 Cl. & Fin. at p. 591. The effect of this construction will be to give the infant the benefit of the surplus rent of the place which remains over and above what is duly and properly expended for repairs thereon. This is to be not less than $50 each year, but this amount may be exceeded if the necessity arises in the opinion of the executors. Order accordingly. Costs out of the surplus of rents; but no affidavits are to be taxed which are of a contentious nature and are not of service in presenting the neat question of law.