putting all persons who take benefits from the will under a disability to put forward legal claims which would have the effect of withdrawing something from the estate disposed of. As regards all that remains over when the provisions of the will are satisfied, in this case the whole residue, the law of intestacy takes effect just as if it had been formally excepted from the will." This statement is accepted without modification by Lord Halsbury and, with some qualification, by Lord Watson, who points out that there is not a strict analogy between the English and Scotch law.

Lord Shand quotes Pickering v. Stamford, and accepts as law Lord Cowper's earlier decision and shews that the difference between the right of the widow under English and Scotch law can make no difference, as the question arises on the will. Lord Davey quotes from Pickering v. Stamford the passage from Lord Alvanley's judgment extracted above and says that it expresses the doctrine of English law, though he concurs in the view that in the case in hand the testator elected to die intestate with the usual result. The quotation of these two conflicting statements by different Lords, without comment or attempt at reconciliation, does not clear the situation.

In the result, I think, this testator intended to prevent his wife asserting dower in the lands in question to the prejudice of the scheme of his will, i.e., an immediate sale of the lands, and that having elected to accept the benefit offered by the will she cannot assert any claim against the lands, but, as to the proceeds of the lands not disposed of, he died intestate, and that the widow has the same right in the surplus as if the testator on the face of his will had declared that it was to be so distributed.

Whether this surplus descends as realty or personalty is a question of difficulty. The will contain an imperative direction to sell, and a sale was clearly necessary for the working out of the scheme of the will. It is not the case of an asset not being dealt with by the will, but of failure of the testator to deal with the proceeds resulting from the conversion. At one time the executors might have taken beneficially, but now there clearly is a resulting trust in favour of either the heirs at law or next of kin.

The cases shew that though this fund is personalty the heir at law takes. The testator did not intend to divert the land from his heir and prefer his next of kin, and so, though the heir must take as personalty, he and not the next of kin, takes: see, for example, Re Richerson, [1892] 1 Ch. 379.

I have been unable to find any case dealing with the right of the widow, but cannot see why this fund should not be dealt with