Lord Loughborough in Pickering v. Stamford, where both these great Judges express themselves so strongly against looking into the will to find the intention in such a case, it is not easy to see unless upon the view pressed in the argument of Sir William Grant as to the difference in such a case of the testator not making a complete disposition, and making a disposition that by an unforeseen accident totally fails, the argument being that in the latter case the exclusion is meant merely in favour of the persons to whom the will expressly gave the whole of the rest of the property. . . . If that be the principle of the decision in Pickering v. Stamford, it cannot apply to a case where on the face of the will there is an intestacy as to a great part of the estate."

In 16 R.R. 187, in a note by one of the editors to Leake v. Robinson, after discussing Pickering v. Stamford, it is said: "It may be observed that the law as thus settled does not prevent a testator from effectually bequeathing property to his wife in bar of her claim to her distributive share in his undisposed of personal estate. For if a testator thus contemplates a partial intestacy, and clearly shews that such a testamentary provision is intended to operate in favour of her next of kin claiming under such intestacy, the widow may be put to her election, or such a provision may even operate as an ultimate disposition of the residue in favour of the next of kin to the exclusion of the widow." The latter paragraph is justified by a decision of V.C. Hall in Bund v. Green, 12 Ch. D. 819, where a testator said in so many words that A. & B., two of his next of kin, in consideration of certain provisions were to be excluded from the distribution of any personal estate as to which he died intestate.

[Reference to Davidson v. Boomer, 18 Gr. 475.]

In Hamilton Trustees v. Boyes (1898), 25 R. 899, sub nomine Naismith v. Boyes, [1899] A.C. 495, principles are laid down that, it appears to me, must govern the question. By his will the testator made certain provisions for his wife and children which were "to be in full of all claims by them for terce, jus relictæ, legitim, or otherwise." Owing to unexpected events there was a partial intestacy—the question was, did this provision exclude the wife and children from sharing, and though this case might have been determined upon the principle above indicated that a testator cannot prevent his heirs and next of kin taking when there is an intestacy, Lord McLaren says this: "I think we must apply to this clause of exclusion the ordinary and time-honoured principle of construction that such clauses are intended to enable full effect to be given to the testator's testamentary dispositions by