to operate, and could only operate, as an exercise of the power. For, if the will did not operate as an exercise of the power, but as a direct devise of the legal estate, it is quite clear that it could not deprive the widow of her dower. A dowress is always a favourite in the Courts, and if there is any ambiguity in the interpretation of the will, i.e., if it is open to question as to whether it operates directly as a devise of the legal estate, or, on the other hand, as an exercise of the power, it cannot be said that the widow is deprived of her dower —assuming for the purpose of the argument that the exercise of the power would have defeated dower. And it must therefore be determined (apart from the statute to be mentioned shortly) whether the will could and did operate only as an exercise of the power. The Judge determined that it was governed by sec. 30 of the Wills Act, R.S.O. 1914, ch. 120, and that *In re Greaves' Settlement Trusts*, 23 Ch. D. 313, made this plain. Section 30 provides that a general devise of the real estate of the testator, or of the real estate in any place . . . or otherwise described in a general manner, will include real estate over which the testator has a power to appoint by will in any manner, and will operate as an execution of such power, unless a contrary intention appears by the will. That is to say, if a testator has a power over, but no property in, a piece of land, and makes a general devise, without expressing that it is an exercise of the power, the general devise will operate as an execution of the power. But, with deference, there is nothing in the section to indicate that, where a testator has both property in and a power over land, and makes a general devise, that devise is to be taken as an exercise of the power and not as a direct devise of the property.

Nor does *Re Greaves' Settlement Trusts* determine this. In that case land was settled on trustees on trust to pay the income to G.'s wife during her lifetime, with a power in G. to appoint by deed or will. The trustees sold the land, pursuant to a power in the settlement, and invested the proceeds in their own names in the 3 per cents pending another investment in land, which, if bought was to follow the trusts of the settlement. Before land was purchased G. died, and by his will bequeathed "all the money and moneys that I die possessed of, &c." Fry, J., held that the will did not pass the moneys in the 3 per cents because they stood in the names of the trustees, and the testator was not possessed of them, and that it derived no aid from sec. 27 (our sec. 30) as an exercise of the power. The decision as reported is therefore not an authority for his Lordship's dictum. But, even if the decision had been the other way, it would not have helped. For in that case the property in the 3 per cents (treated as land under the direction for conversion) was in trustees, and G. had only a power of appointment; whereas in the case in hand M. had both property and power, and had the power to devise directly without resort to the power.

It is therefore submitted with deference, that M. had all the legal and beneficial interest in the land in fee simple, by the limitations in the conveyance, and in default of appointment, and having died seised his widow was entitled to dower.

Assume, however, that the conveyance is to be interpreted as a conveyance to M. to such uses as he should appoint, and that it must operate only by virtue of the Statute of Uses, i.e., that M. could only dispose of it by exercising the power. Upon this view another consideration arises.