The question of election must, I think, be determined from the will itself. I do not think that former wills can be looked at to aid in the interpretation; nor, if looked at, do I think that they would in any way forward the contention of the executors and residuary legatees. The testator has deliberately omitted the express provision putting the niece to her election; and, instead of referring to the Bay street property specifically, he refers merely in general terms to such property as he owns in Ontario.

The will itself is not, I think, sufficient to put the niece to her election, as the only clause in any way relating to the Bay street property is item 7 of the will. By this Mr. Harvey G. Snider is appointed special executor "to settle any and all business matters that I may have on hand at the time of my death in the city of Toronto." To him is given "absolutely and in fee simple . . . any real estate, lands and premises that I may own at the time of my death in the Province of Toronto (sic) Canada" in trust to sell and remit the proceeds to the general executor.

I have read, among others, the cases referred to by counsel, and I find the law so clearly and accurately stated in Halsbury, vol. 13, that it is not necessary to refer to the cases in detail: "To raise a case of election under a will, upon the ground that the testator has attempted to dispose of property over which he had no disposing power, it must be clearly shewn that the testator intended to dispose of the particular property, and this intention must appear on the face of the will, either by express words or by necessary conclusion from the circumstances disclosed by the will. The presumption is, that a testator intends to dispose only of his own property, and general words will not be construed so as to include other property, nor will parol evidence be admitted to shew that the testator believed such other property to be his own so as to allow it to be comprised in the general words. Similarly, where the testator has a limited interest in property, and purports to dispose of the property itself, the presumption is, that he intends to dispose only of his limited interest; and, if it is sought to carry the disposition further, it must be shewn that he intended to dispose of more than that interest."

Reliance is placed upon the fact that the testator speaks of giving property to his executor in fee simple and authorises the execution of deeds to convey to the purchaser the absolute fee simple, and directs the payment of incumbrances out of the proceeds. All this, I think, quite insufficient to rebut the pre-