

persons by whom it might be exercised on behalf of the Crown. And sec. 661 (2) settles that by designating those to whom it shall be accorded.

The right exists if insisted on. Until Parliament sees fit to withdraw it, the Crown through its representative can assert the privilege. And it must be left to counsel, in the judicious exercise of his discretion, to decide whether he will claim it.

In my opinion the second question should also be answered in the affirmative.

OSLER and MACLAREN, JJ.A., gave written reasons for the same conclusions.

MACLENNAN and GARROW, JJ.A., also concurred.

FALCONBRIDGE, C.J.

FEBRUARY 16TH, 1905.

WEEKLY COURT.

RE ROONEY.

Will—Construction—Devise—Estate in Fee—Condition.

Motion by Sarah Jane Laing and others, children and some of the heirs-at-law of Thomas Rooney, deceased, under R. S. O. 1897 ch. 129, sec. 39, and Rules 938 et seq., for the opinion, advice, and direction of the Court and the determination of a question respecting the will of the deceased, viz., what estate and of what nature did the widow of the deceased take under his will in the lands therein mentioned?

The will was as follows:—

I give, devise, and bequeath to my wife, Ann Jane Rooney, 50 acres of land, being composed of north quarter of lot 15, concession 8, township of Arthur, as long as she remains unmarried. To my daughter Sarah Jane Laing the sum of \$1. To my daughter Mary Ann Rooney the sum of \$100, to be paid by my wife, Ann Jane Rooney, at the time she gets married. To my daughter Rachael the sum of \$100, to be paid by my wife, Ann Jane Rooney, at the time she gets married. To my daughter Matilda Rooney the sum of \$100, to be paid by my wife, Ann Jane Rooney, at the time she gets married. To my adopted daughter Sarah Morrison the sum of \$100, to be paid by my wife, Ann Jane Rooney, at the time she gets married. To my son Arthur Rooney the sum of \$100, to be paid by my wife, Ann Jane Rooney, when he becomes of age. To my son Thomas John Rooney the sum of \$1. And to my son Robert Rooney the