purported to remarry, but after the death of the testatrix, this marriage was declared "null and void to all intents and purposes in the law whatsoever". Accordingly, Pennycuick J. held that except insofar as the found had been affected by completed transactions, the declaration of nullity disentitled the next-of-kin of the testatrix from sharing in the estate at any time between the death and that declaration.

The presumption that a person signing a will does so as a witness, arose with unfortunate consequences for the daughters of the testator in *In The Estate of Bravda (deceased)* [1968] 1 W.L.R. 479. Under s. 15 Wills Act 1837 (U.K.) a person is prohibited from taking any benefit under a will to which he is an attesting witness. Thus, in the present case, the two daughters of the testator, who were to have been the sole beneficiaries under his will, signed the will, at their father's request in addition to two other persons. The testator told them this was "to make it stronger", it being a holograph will. However, when the will was presented for probate, the presumption against them arose, and they were unable to produce sufficient evidence that they had not signed as witnesses to rebut the presumption, and they were thus disentitled by s. 15 from claiming their interests under the will.

T. M. Pryde.

EVIDENCE

Despite assertions to the contrary by some, the writer remains concerned that the public at large has such little protection provided to it by the recent Transport Amendment Act 1968. It is hard to imagine an occasion when the 'good cause' required by the Act before a breath test may be taken could not be found. The mere whiff of alcohol on one's breath is sufficient to give rise to 'good cause'. In *R.* v. *Price* [1968] 1 W.L.R. 1853 a constable having followed a car for half a mile stopped to advise the driver who had stopped of his own accord that his rear light was not functioning. On smelling alcohol on his breath a breathalyser test was taken. It was subsequently held that the broken light gave the constable sufficient cause.

However in *Dorn* v. *The Police* [1968] N.Z.L.R. 988 the necessity for evidence to relate a blood sample count to the offence alleged was emphasised. Dorn was found in an alcoholic state in bed, his damaged car being outside. He was found guilty of driving while under the influence of drink. It was held on appeal that there was no evidence of his condition while driving, his mode of driving, or the time of his driving, evidence of a blood count of 230 was not sufficient to prove the case against him. It is unlikely such a defence could be raised in prosecutions under s. 59A but it will still be available in prosecutions under other sections.

R. v. *Richards* [1968] N.Z.L.R. 1950 in the Supreme Court extends the decision in *R.* v. *Benyon* [1963] N.Z.L.R. 635 to Public Trust officers. Section 17 (1) Public Trustee Act 1957 provides, in terms similar to s. 62 Hospitals Act 1957, that Public Trust staff shall maintain, and aid in the maintenance of, secrecy concerning all matters coming to their knowledge appertaining to the business of the Public Trust Office. Four staff members were called as witnesses and it was

argued that under s. 17 some of their evidence was privileged. McCarthy J. held referring to *R.* v. *Benyon* (*supra*) that s. 17 did not give rise to any privilege and that the officers were therefore competent and compellable witnesses.

In *R.* v. *Taylor* [1968] N.Z.L.R. 981 the Court of Appeal was called to consider a direction by the trial judge to the jury regarding the defence of alibi. The defence submitted that alibi is a defence of a special character and that the jury should have been told that they must reject the alibi before they could convict. It was held that the defence of alibi is not different in character from defences such as provocation and self defence and therefore a direction that the burden of proof was on the prosecution and that all evidence should be taken into consideration in deciding as to whether reasonable doubts may arise was sufficient.

In *R.* v. *Burgess* [1968] 2 Q.B. 112, 117-8, Lord Parker C.J. summarised the procedure relating to confessions succinctly thus:

> The position now is that the admissibility is a matter for the judge; that it is thereafter unnecessary to leave the same matters to the jury; but that the jury should be told that the weight they attach to the confession depends on all the circumstances in which it was taken, and that it is their right to give such weight to it as they think fit.

The evidence of children given in non sexual cases was discussed in *R.* v. *Parker* [1968] N.Z.L.R. 325. In this case the appellant appealed against his convictions and sentence on two counts that he was deemed to be a rogue and a vagabond. He was convicted on both counts largely on the evidence of two girls aged 7 and 9. The judge in his summing up stressed the importance of examining with care the evidence of these two girls but gave no full formal warning. It was held in the Court of Appeal that in non sexual cases it is not necessary for a judge to give specific warnings that it is dangerous to convict on children's uncorroborated evidence. It is sufficient that he advises the jury to pay particular care to their evidence and to explain the tendency of children to invent or distort.

S. Stamers-Smith.

FAMILY LAW

The last year has seen several important changes take place in New Zealand Family Law. Chief among these has been the Matrimonial Proceedings Amendment Act 1968. This Act reduces the period of waiting for a divorce from three to two years in the cases of desertion, of failure to comply with a decree for Restitution of Conjugal Rights, of habitual drunkenness or drug addiction, of agreements to separate and of decrees of separation, separation orders, or other decrees. As well, where the parties are living apart and are not likely to be reconciled, the waiting period for a divorce is reduced from seven years to four years. Although a divorce is available now more quickly, the period of time granted to the parties in order to effect a reconciliation has been extended from two months to three months, amending ss. 26, 29 (5) and 34 (2) of the Matrimonial Proceedings Act 1963.

Although the Matrimonial Property Amendment Act 1968 did not make any important changes to the law, it did clear up one very