Wills Act 1837. In this case the testator acknowledged his signature while the will was in his pocket. Sir Jocelyn Simon P. held that " . . . if there is to be acknowledgement within the statute the attesting witnesses must either see or be capable of seeing the signature; or at the very least must see or be capable of seeing a will on which there is a signature."

R. C. Pearson

FAMILY LAW

Perhaps the most interesting development in this field during 1969 was the passing of the Status of Children Act 1969. It seems to have been intended that this Act should remove the concept of illegitimacy from our law. The main effect of the Act is to be found in s. 3 (1) where it is provided that the relationship between every child and its parents "shall be determined irrespective of whether the father and mother are or have been married to each other."

The Act came into effect on 1 January 1970 and will apply to wills and settlements made after that date. The rule of construction whereby reference to "children" was deemed to mean only legitimate children, has by s. 3 (2) been abolished and in future, by virtue of s. 3 (3) the use in a will, etc., of the words "illegitimate" and "lawful" will not prevent the relationship being determined in accordance with s. 3 (1).

The general implication to be drawn from the Act is that the discrimination and disabilities which previously applied to some children because of the legal relationship of their parents, are to disappear.

Rights of Action at Common Law

It seems that there still exists in New Zealand a right of action against a person who has enticed a wife to leave her matrimonial home and who harbours her against the will of her husband. This was the decision of Wild C.J. in *Spencer* v. *Relph* [1969] N.Z.L.R. 237, and his ruling was affirmed by the Court of Appeal, *ibid.*, 713. It was emphasised in an action for enticement the plaintiff husband must show that his wife would not have left but for the actions of the defendant. Similarly an action for harbouring will not succeed where there is proof that the wife had reasonable cause to leave her husband. These rights of action, relics from a time when the position of wife had strong overtones of servitude, have something in common with the action for damages for adultery. This action may now be further limited in its effect in that damages may be regarded as appropriate only where the co-respondent deliberately set about breaking up the marriage which was shown to have been reasonably happy and stable and would otherwise have continued—*Harlen* v. *Harlen and Price* [1969] N.Z.L.J. 674.

Matrimonial Proceedings

The common law rule against the use of interrogatories in proceedings where adultery is alleged was applied by Haslam J. in *C.* v. *C. and Another* [1969] N.Z.L.R. 852. The seventy-three questions in the interrogatories given in that case were said to amount to a cross-examination of the defendants and were categorised as being "fishing" in their nature. His Honour considered that the motion was unnecessary and expensive and accordingly dismissed it.

It would appear that the Court of Appeal may have finally settled the dispute over the standard of proof to be applied in divorce cases where adultery is alleged. In *Green* v. *Randle and Randle* [1970] N.Z.L.R. 237 the Court examined the conflict of authority on this point with particular reference to *Blyth* v. *Blyth* [1966] A.C. 647. On behalf of the husband in *Randle's* case it was submitted that since the passing of the Matrimonial Proceedings Act 1963, the Court need not be "satisfied" beyond reasonable doubt as to the existence of adultery. Section 28 of the Act of 1963 having removed the words which were said to give rise to high standard of proof, the Court of Appeal was able to adopt the test accepted by the Hight Court of Australia in *Wright* v. *Wright* (1948) 77 C.L.R. 191, that the standard of proof necessary to establish adultery is that which is appropriate to civil actions. However, the Court did caution that such proof should always be in proportion to the gravity of the offence alleged.

For a separation to constitute a ground for divorce under s. 21 (1) (m) of the Matrimonial Proceedings Act 1963 it must have been in full force and effect for the prescribed period. According to Wilson J. in *Smith* v. *Smith* [1969] N.Z.L.R. 52 this means really living apart and not some less complete degree of separation as for instance where the parties continue to live in the same house but abstain from sexual contact. In this case the parties had done just this having previously signed a separation agreement which included a clause to the effect that the wife might continue to live in the matrimonial home for a reasonable time until she could find somewhere else to stay. It was stated in the agreement that this was not to affect the obligations of the parties as set out in the agreement. In the event the wife did not leave until eight months later. Wilson J. ruled that the separation did not come into full force and effect until that later date.

In *R.* v. *R.* [1969] N.Z.L.R. 27, Wilson J. had to consider the effect of the words "unlikely to recover" as they are used in s. 21 (1) (l), Matrimonial Proceedings Act 1963. The unsoundness of mind of the respondent has to be such that there is unlikely to be such recovery as will enable her to perform her ordinary duties as a spouse. A recovery may fall short of complete recovery but it must be sufficient for these purposes and be of reasonable permanence.

If it is established that a spouse has been an habitual drunkard the "habituality" of his vice will not be seen as being interrupted by a short period of sobriety while he is in prison—*Hohua* v. *Hohua* [1969] N.Z.L.R. 289 (*per* Tompkins J.).

Matrimonial Property

Under s. 79 of the Matrimonial Proceedings Act 1963, the Court has a wide jurisdiction on hearing a petition for divorce to make an order for the just distribution of the matrimonial property. In *L.* v. *L.* [1969] N.Z.L.R. 314 the Court of Appeal had to examine whether this jurisdiction persisted in circumstances where the parties had entered an express agreement as to the occupation of the matrimonial home. The Court found that the terms of such agreements may indeed be varied by the Court and that its wide power to do justice between the parties in such cases is not inhibited by s. 6 (2) of the Matrimonial Property Act 1963.

The effect of an expressed common intention was also discussed in *Wacher* v. *Guardian Trust and Executors Company of N.Z. Ltd.* [1969]

N.Z.L.R. 283. This case concerned an application under s. 5 of the Matrimonial Property Act 1963 to the effect that a deceased wife's estate be adjudged beneficially entitled to a half share of the couple's joint holdings in a flat-owning company. The wife had died four days before her husband and the issue between their respective estates was whether the couple's joint interest in that company amounted to an expressed common intention such as would, by s. 6 (2) of the Act, exclude the operation of the Magistrate's discretionary powers under s. 5 (3). Tompkins J. held that s. 6 (2) does not apply unless the common intention is applicable to the circumstances existing when the Court is required to exercise its discretion. He did not think the parties' expressed intention in putting the flat shares in their joint names was applicable to the situation where they had both died nearly at the same time, and so he gave judgment for the applicant.

Maintenance Orders

In *Hagglow* v. *Hagglow* [1969] N.Z.L.R. 339, Richmond J., in dismissing an appeal from a decision of the Magistrate's Court made under s. 39 of the Destitute Persons Act 1910, said that the jurisdiction of that Court to vary a maintenance order depends on a change of circumstances having been established. Any variation which the Magistrate makes must be justified with reference to that change in circumstances. In this case, while the greater cost of living justified an increase in maintenance, the Court had also to take into account the fact that the payments were being made not by the husband but by his parents. As it was apparent that the Magistrate had made his varying order with reference to these circumstances, His Honour was not prepared to alter that order.

I. A. Muir

LAND LAW

Caveat

"The need for a change in the law, tentatively referred to by Richmond J. at 357, is surely clear and compelling. The registered proprietor should, it is submitted, have that protection of the caveat procedure which he has hitherto been thought to have." (F. M. Brookfield (1969) 3 N.Z.U.L.R. 454).

The comment relates to *Re an Application by Liquidator of Haupiri Courts Limited (No. 2)* [1969] N.Z.L.R. 353, which resolved the doubt expressed *per curiam* in *Re an Application by Liquidator of Haupiri Courts Limited* [1969] N.Z.L.R. 348, whether section 137 of the Land Transfer Act 1952 created a right in the registered proprietor to caveat his own interest.

In *Re an Application by Liquidator of Haupiri Courts Limited* (*supra*), in which the Supreme Court held that a liquidator of a company as such has no caveatable interest in his company's land until it is vested in him by the court, Richmond J. referred to the view expressed by E. C. Adams in *The Land Transfer Act 1952* (1958) 298 that a registered proprietor may caveat his own interest under section 137 of the Land Transfer Act 1952. He stated that the general purposes of the section as described by the Privy Council in *Miller* v. *Minister*