tinued possession of the chattel in question by the bankrupt. The doubts expressed as to the true facts in the present case indicate the difficulty experienced when such subjective concepts as 'knowledge' become of direct relevance in bankruptcy proceedings.

P. G. NASH

LANDLORD AND TENANT — ASSIGNMENT — REFUSAL OF CONSENT — LANDLORD AND TENANT ACT 1953 (Vict.) s.14

Poulter v. Bigham[1]

Mr and Mrs P., carrying on a business on premises owned by B., wanted to sell out to X, and requested B. to consent to the assignment of their weekly tenancy; but the latter, anxious to run a business on the premises himself, refused consent, offering the P.'s instead a sum of money for the business. This offer was refused however, and Mr and Mrs P. sought an order under s. 14 of the Landlord and Tenant Act 1953 that a notice to quit pursuant to s. 37 (5) (n) of the 1948 Landlord and Tenant Act should not be given if the tenancy were assigned as proposed.

A stipendiary magistrate found that no reasonable sum had been offered in accordance with s. 14 (c) (ii) of the 1953 Act, but that consent to the assignment had not been unreasonably withheld, and therefore notice to quit could be given if the proposed assignment were carried out. Martin J. however, reversed this ruling, and ordered that no such notice to quit be given, since consent to the assignment *had* been unreasonably withheld.

In view of that conclusion, the most noteworthy part of this case would be classed by some as *obiter dicta*, since on the widest interpretation of 'reasonableness' the consent in this case would have been and, in fact, was held to have been withheld unreasonably.

The line of cases culminating in *Houlder Bros. & Co. Ltd. v. Gibbs*[2] was cited by counsel as laying down authoritatively that the reasonableness of the lessor's refusal is to be judged by reference solely to the 'personality' of the proposed assignee or the nature of his user or occupation.

This was doubted however by Lords Dunedin and Phillimore in *Tredegar v. Harwood*,[3] as Martin J. pointed out in an examination of the authorities. Lord Phillimore had put it thus:[4] 'If it is to be a question whether a man is acting reasonably, as distinguished from justly, fairly or kindly, you are to take into consideration the motives of convenience and interest which affect him and not those which affect somebody else.'

Evershed J.'s opinion in *Hill v. Swanson*[5] was that *Houlder Bros.*[6]

[1] [1955] A.L.R. 841. Supreme Court of Victoria, Martin J.
[2] [1925] Ch. 575.
[3] [1929] A.C. 72.
[4] *Ibid.*, 82.
[5] (1946) 62 T.L.R. 719.
[6] [1925] Ch. 575.

was still good, binding authority, and he found an ally in Tucker L.J. in *Lee v. K. Carter Ltd.*[7] But this latter case, together with *Swanson v. Forton*[8] (decided in the Court of Appeal) and *Dollar v. Winston*,[9] does go some way towards adopting Lord Phillimore's dictum. The Victorian case of *Batstone v. Nicholls*,[10] while in any case coming within the 'user' idea, also helps to reinforce Martin J.'s argument. The 'personality of the proposed assignee or the nature of his user or occupation' is certainly now not to be construed too narrowly.

So, it is submitted, the case is good Victorian authority for doubting the invulnerability of the *Houlder v. Gibbs*[11] line of cases, and, it is hoped, may well lead to more acceptable decisions based on all the facts concerning the lessor's refusing consent; for it now seems that 'where a proposed assignment of a lease is likely to result in some substantial prejudice to the lessor in reference to the premises in question, that may be regarded as something connected with the personality of the proposed assignee or his use or occupation of the premises,'[12] and consent accordingly refused may be held to have not been withheld unreasonably within s. 14 of the 1953 Landlord and Tenant Act.

J. D. PHILLIPS

[7] [1949] 1 K.B. 85.
[8] [1949] Ch. 143.
[9] [1950] Ch. 236.
[10] [1939] V.L.R. 325.
[11] *Supra.*
[12] [1955] A.L.R. 841, 845.

PRIVATE INTERNATIONAL LAW — ADOPTION — FOREIGN ORDER VALID IN COUNTRY WHERE MADE — MADE AFTER PARTIES ACQUIRED VICTORIAN DOMICIL — NOT RECOGNIZED IN VICTORIA

R. v. A. Ex Parte W.[1]

The applicants, whilst domiciled in Germany, initiated proceedings to adopt B, son of A, an unmarried woman; but the adoption was not completed until a time when all the parties were domiciled in Victoria. The child's mother, A, now sought an order authorizing both her and her husband to adopt B. At the same time the applicants, H.A.W. and E. W., sought an order nisi for a writ of habeas corpus, seeking custody of B, and at the same time the Court had before it a summons under Part VII of the Marriage Act 1928, whereby A sought custody of B, naming H.A.W. and E. W. as respondents. The three applications were heard together. It was held that custody of the child might be awarded to the mother, A, despite the foreign adoption order. A Victorian Court will not recognize a foreign decree purporting to affect the status of persons domiciled in Victoria at the time the decree is finally effected. (This is so even though the decree be valid according to the law of the place where it is made.) The child's mother, A, had the custody of the child awarded to her.

[1] [1955] A.L.R., 866. Supreme Court of Victoria, Herring C.J.