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.

English Courts have often been forced to decide whether they will recognize orders or decrees of foreign Courts which affect the status of a person. The most certain proposition which emerges from a multitude of decisions is that a decree affecting a person's status will be recognized if the Court pronouncing the decree is the Court of that person's domicil.[2]

The *raison d'être* for this principle has been reiterated many times. The law of the domicil is the law most intimately connected with a person, and should therefore be the governing law in matters of status, whereby a person's standing in his community is established.

There is very little authority about recognition of foreign adoption orders, and, indeed, no clear judicial pronouncement at all. But an adoption order definitely changes the status of the adoptor and of the adopted child. Therefore, logically, an English or Victorian Court should recognize the decree of the Court of the domicil of the adoptor and of the adopted child. This is the opinion of Dr Cheshire who says, 'this last solution appears correct in principle. Adoption alters the status of both parties, and therefore to attract extra-territorial recognition it must be valid according to each *lex domicilii*.'[3] Difficulties of course present themselves when the domicils of the two persons are different, as may well happen.

Herring C.J. was able to decide the present case according to the principle enunciated above. The learned judge found as a matter of fact that when the adoption order was finally confirmed by the German Court all the parties concerned were domiciled in Victoria. He further found that the adoption order of the German Court was not valid by German law until finally pronounced. When the adoption order established a relationship affecting status between the child and W., they were not domiciled in Germany. The situation was, however, complicated by a problem common in private international law. The adopting father was at all times a German national, and the German Court, in its own view, correctly assumed jurisdiction upon the basis of W's. nationality. Therefore, in Germany, W. is the legal father of the child, and can claim custody. No satisfactory judicial solution to this problem has been discovered. The only satisfactory solution seems to be some type of international convention. It is somewhat strange, to say the least, that a person can have two legal fathers in different parts of the world.

PETER E. WALLER

[2] See *Le Mesurier v. Le Mesurier* [1895] A.C. 517, (divorce) *Salvesen v. Adm. of Austrian Property* [1927] A.C. 641, 653 (annulment of marriage). But see now *Travers v. Holley* [1953] 3 W.L.R. 507, and *Ramsay-Fairfax v. Ramsay-Fairfax* [1955] 3 W.L.R. 849.

[3] G. C. Cheshire, *Private International Law* (4th ed., 1952), p. 401.