THE UNDISCLOSED PRINCIPAL: IS HUMBLE v. HUNTER STILL GOOD LAW?

Generally, when a person contracts with an agent whom he does not know to be an agent, the undisclosed principal may both sue and be sued on the contract; it is sometimes stated, however, that the undisclosed principal may not sue or be sued on the contract if the agent expressly contracts as a principal. The authority for this second proposition is the old case of *Humble v. Hunter*,[1] and during the hundred and twenty years since that case was decided doubts have been expressed, both by judges and textbook writers, as to whether *Humble v. Hunter* is still good law. The question of whether *Humble v. Hunter* is still good law arose in the recent New Zealand case of *Murphy v. Rae*,[2] and Moller J. held that *Humble v. Hunter* was still good law, but restricted its application and said:—[3]

> For myself I feel bound to hold that *Humble v. Hunter* is still good law, but that the principle derived from it is applicable only to cases falling strictly within the words of Lord Haldane . . . that is to say, where a person is described in a written contract as the 'owner' or 'proprietor' of property, *and* where it is *a term of the contract* that he should contract as 'owner' or 'proprietor' of that property. Moreover, I think the principle is to be applied only when a full consideration of the whole contract brings it clearly within that area.

It is submitted that Moller J. was correct in holding that *Humble v. Hunter* is still good law and that the principle only applies when it is clear from a consideration of the whole contract that it was intended that the agent should contract as principal, but that it is doubtful if Moller J. was correct in restricting the application of *Humble v. Hunter* to cases where the agent contracted as "owner" or "proprietor".

In *Humble v. Hunter*[4] the plaintiff's son signed a charter party agreement with the defendant in which the plaintiff's son was described as owner of the ship chartered. The plaintiff sought to prove that her

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1 (1848) 12 Q.B. 310, 116 E.R. 885.
2 [1967] N.Z.L.R. 103.
3 Ibid. at 109.
4 116 E.R. 885.

son had signed as her agent, and the Court of Queen's Bench (Lord Denman C.J., Patteson and Wightman JJ.) held that as the plaintiff's son had signed as owner evidence could not be admitted to show that he signed as an agent. All three judges laid stress on the fact that the son had signed as owner, but Patteson J. also said,[5] "The question in this case turns on the form of the contract."

In *Killick v. Price*[6] Lord Russell of Killowen said that he "gravely doubted" if *Humble v. Hunter* would be recognised as an authority at that time. However, his remarks were entirely *obiter,* as in the case before him the plaintiffs were well aware that the defendants were acting as agents. In *Formby v. Formby*[7] the plaintiffs sought to recover £50 from the defendant, as personal representative of T. Formby deceased, being the balance due on a building contract made between the plaintiffs and one J. Rimmer as agent for T. Formby. In the contract J. Rimmer had been described as "proprietor". In the County Court the plaintiffs adduced evidence to show that J. Rimmer had signed as agent for T. Formby and the County Court Judge gave judgment against the defendant. The Divisional Court held, upon the authority of *Humble v. Hunter,* that such evidence was not admissible and ordered judgment to be entered for the defendant. The Court of Appeal (Vaughan Williams, Farwell and Kennedy L.JJ.) restored the judgment of the County Court on the grounds that the objection to the admission of the evidence had not been taken in the County Court and an appeal upon a point of law cannot be entertained from a County Court unless the point has been taken in the County Court. All the members of the Court of Appeal indicated, however, that had the point been taken in the County Court they would have upheld the decision of the Divisional Court and that in their opinion *Humble v. Hunter* was still good law and that they did not agree with the opinion of Lord Russell of Killowen in *Killick v. Price.* Vaughan Williams L.J. said:—[8]

> In my opinion, upon looking at this contract it is clear that it was intended by both parties that Rimmer should be the contracting party. It is perfectly plain upon the face of the contract that it was intended that Rimmer should be the sole contractor. There is nothing in this contract to enable us to say that the terms of the contract are such that, without contradicting the written contract, evidence could be given to make an undisclosed

5 Ibid. at 887.
6 (1896) 12 T.L.R. 263.
7 (1910) 102 L.T. 116.
8 Ibid. at 117.

principal liable in addition to the party who actually signed the contract.

In *Rederiaktiebolaget Argonaut v. Hani*[9] a charterparty was made between the plaintiffs and a limited company "as charterers", and the defendant, claiming to be the undisclosed principle of the company, instituted arbitration proceedings under an arbitration clause in the charterparty. The plaintiff brought an action for an injunction to restrain the defendant from proceeding with the arbitration on the ground that he was not a party to the charterparty, and Rowlatt J. held that as the company had contracted "as charterers" the defendant could not sue on the contract, and said:—[10]

> . . . in these cases it is always necessary to look at the document as a whole in order to ascertain whether such words as 'as charterers" . . . are merely words of description . . . or are used for the purpose of describing an essential part to be performed by the party in the transaction which the contract is dealing with.

Shortly after *Rederiaktiebolaget Argonaut v. Hani* the matter came to be considered by the House of Lords in *Fred. Drughorn, Ltd. v. Rederiaktiebolaget Trans-Atlantic.*[11] In that case a charterparty agreement was made between "Messrs. Fred. Drughorn, Ltd., Owners . . . and Wilh R. Lundgren, of Gothenburg, Charterer." Lundgren commenced an action against the appellants for damages for breach of charterparty, but died before the action came on for trial. The respondents were then substituted as plaintiffs in place of him, claiming that the charterparty had been entered into by Lundgren as agent on their behalf. The House of Lords (Viscount Haldane, Lord Shaw of Dunfermline, Lord Sumner and Lord Wrenbury) held that evidence to show that the respondents were the undisclosed principals of Lundgren was admissible. Viscount Haldane approved of *Humble v. Hunter,* but distinguished it on the grounds that in *Humble v. Hunter* the agent had contracted as 'owner' while in the case before him the agent had contracted as "charterer", and said:—[12]

> It was held in *Humble v. Hunter,* that where a charterer dealt with someone described as the owner, evidence was not admissible to show that some other person was the owner. That is perfectly intelligible. The question is not before us now, but I see

9 [1918] 2 K.B. 247.
10 Ibid. at 249.
11 [1919] A.C. 203.
12 Ibid. at 206.

> no reason to question that where you have the description of a person as the owner of property, and it is a term of the contract that he should contract as owner of that property, you cannot show that another person is the real owner. That is not a question of agency—that is a question of property.

Viscount Haldane did not make any reference to *Rederiaktiebolaget Argonaut v. Hani.* Lord Shaw of Dunfermline agreed with the result arrived at by Viscount Haldane, but reserved his position on *Humble v. Hunter* and *Rederiaktiebolaget Argonaut v. Hani,* and said:—[13]

> I do not think that in this case I am called upon to express any opinion as to the decisions in *Humble v. Hunter,* or *Formby Brothers v. Formby.* The time may arise when the principles of these two cases may have to be reviewed in this House.
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> My second observation is that I am not prepared to be held as in any sense agreeing with the decision arrived at by Rowlatt J. in *Rederiaktiebolaget Argonaut v. Hani.*

Lord Sumner held that *Humble v. Hunter* and *Formby v. Formby* were not in point, and so expressed no opinion on them, and distinguished *Rederiaktiebolaget Argonaut v. Hani* from the case before him on the facts and said:—[14]

> In my opinion this charter cannot be considered as containing a stipulation that no one but Lundgren shall have the rights and liabilities of a charterer under it. I cannot see that the words, 'Wilh. R. Lundgren, of Gothenburg, Charterer,' designate Lundgren as the real and only principal and as the only person who is to have a charterer's rights and obligations under the charter . . . Unless this contract is read as stipulating that Lundgren charters for himself only, the appellants fail. I think it cannot be so read. It states that Lundgren charters, and so he does; but it does not say that he is not chartering for others, and if that is what he has done in fact the law allows them to prove it. *Rederiaktiebolaget Argonaut v. Hani* was a case in which the charterparty contained different words, namely, 'as charterers', on which, rightly or wrongly, great stress is laid in the judgment, and I think it is distinguishable.

Lord Wrenbury merely agreed with the other Law Lords without giving any reasons.

In *Danziger v. Thompson*[15] a tenancy agreement was made between the plaintiff and one of the defendants in which she was described as "tenant", and the plaintiff sought to adduce evidence

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13 Ibid. at 209.
14 Ibid. at 209.
15 [1944] K.B. 654.

that the defendant was in fact agent for her parents. Lawrence J. held that the evidence was admissible. In his judgment he made no mention of *Humble v. Hunter* and drew a distinction between the word 'tenant' and the word 'owner' and between the word 'lessee' and the word 'lessor', and said:—[16] "The description 'tenant' does not imply that the person so described is not acting as an agent or nominee . . . the description 'lessor' does imply an antecedent interest in the property whereas the description 'lessee' or 'tenant' does not." In *Epps v. Rothnie*[17] Scott L.J. expressed the opinion that *Humble v. Hunter* was no longer good law, and said:—[18] ". . . [*Humble v. Hunter* and *Formby Brothers v. Formby*] can no longer be regarded as good law, a view which is, I think, justified by the observation made on them by Lord Sumner in *Fred. Drughorn Ltd. v. Rederiaktiebolaget Trans-Atlantic.*" However these remarks were purely *obiter,* as the case was decided on the interpretation of the Rent and Mortgage Interest Restrictions (Amendment) Act, 1933, and neither of the other two members of the Court of Appeal (MacKinnon and Lawrence L.JJ.) considered the matter.

This, then, was the state of the authorities when *Murphy v. Rae*[19] fell to be decided. In that case there was a contract for the sale of a house by the plaintiff to the defendant in which the plaintiff was described as "vendor", and it was sought to adduce evidence to prove that the plaintiff was acting as agent for his wife. Moller J. held that the use of the word "vendor" did not bring the case within the principle in *Humble v. Hunter* and did not negative agency, and that the evidence was admissible: he held that *Humble v. Hunter* was still good law, but that the principle only applies when a person is described as "owner" or "proprietor" of property *and* when it is a term of the contract that he should contract as "owner" or "proprietor" of that property. It is submitted that Moller J. arrived at a correct conclusion on the facts before him, but that he was not altogether correct in his statement of the law on the matter which, is it submitted, is as follows.

Firstly: *Humble v. Hunter* is still good law. *Humble v. Hunter* was the unanimous decision of three judges of the Court of Queen's Bench and has never been overruled, and was expressly approved by the Court of Appeal in *Formby v. Formby.* The opinion of Lord Russell

16 Ibid. at 656.
17 [1945] K.B. 562.
18 Ibid. at 565.
19 [1967] N.Z.L.R. 103.

of Killowen in *Killick v. Price,* which was a case at first instance, was *obiter dictum* and unsupported by authority and was disapproved by the Court of Appeal in *Formby v. Formby. Humble v. Hunter* was again followed in cases at first instance by Rowlatt J. in *Rederiaktiebolaget Argonaut v. Hani* and, impliedly, by Lawrence J. in *Danziger v. Thompson*; for although Lawrence J. made no reference to *Humble v. Hunter* in his judgment, he impliedly approved it by distinguishing between the word 'tenant' and the word 'owner' and between the word 'lessee' and the word 'lessor' in order to arrive at his decision, for if he did not consider *Humble v. Hunter* to be good law he would not have needed to draw any distinctions. In *Fred. Drughorn Ltd. v. Rederiaktiebolaget Trans-Atlantic* none of the Law Lords expressly disapproved of *Humble v. Hunter,* although Lord Shaw of Dunfermline was certainly far from being enthusiastic about the case, while Viscount Haldane expressly approved of *Humble v. Hunter* when he said:—[20]

> . . . the principle is limited by another consideration, about which again there is no doubt, and the applicability of which to the present case is beyond question. In *Humble v. Hunter* it was approved, . . . and also in *Formby Brothers v. Formby* and in other cases. These are authorities for the proposition that evidence of authority of an outside principal is not admissible, if to give such evidence would be to contradict some term in the contract itself.

Viscount Haldane also impliedly approved of *Humble v. Hunter* when he distinguished that case from the case before him and said:—[21] ". . . the qualifying principle of *Humble v. Hunter,* that you shall not contradict the instrument by giving evidence of agency, has no application in this case."

In *Epps v. Rothnie* Scott L.J. expressly disapproved of *Humble v. Hunter.* However, the passage of his judgment in which he did so, like that of Lord Russell of Killowen in *Killick v. Price,* was *obiter dictum;* moreover, Scott L.J. said that his view was justified by the observations made on *Humble v. Hunter* and *Formby v. Formby* by Lord Sumner in *Fred. Drughorn, Ltd. v. Rederiaktiebolaget Trans-Atlantic*: it is submitted with respect that this is not so. What Lord Sumner said about *Humble v. Hunter* and *Formby v. Formby* in *Fred. Drughorn, Ltd. v. Rederiaktiebolaget Trans-Atlantic* was:—[22]

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20 [1919] A.C. 203, at 206.
21 Ibid. at 208.
22 Ibid. at 210.

> *Humble v. Hunter* and *Formby Brothers v. Formby* were expressly decided as cases in which the contract itself, truly construed, excluded the application of the rule as to undisclosed principals. There is a clear distinction between words in a contract which can be construed as saying 'AB, who prior to this contract was and who under it is and will be the single owner', and words which can only mean 'AB, who by this contract becomes liable to the obligations and entitled to the rights, which this contract allots to the charterer.' I think these cases are not in point. That being so, I express no opinion at present about them.

It is submitted that all Lord Sumner's observations on *Humble v. Hunter* and *Formby v. Formby* amount to is that those cases were clearly distinguishable from the case before him, and that therefore he expressed no opinion upon them, and that they lend no support to the view of Scott L.J. at all. Scott L.J. could have found more support in the judgment of Lord Shaw of Dunfermline than in that of Lord Sumner. Ranged against *Humble v. Hunter,* therefore, are merely two *obiter dicta,* one by a judge at first instance which was later disapproved and one which seems to be based on a mistaken reading of Lord Sumner's judgment, and some rather severe reservations by Lord Shaw of Dunfermline. On the side of *Humble v. Hunter,* itself a decision of three judges of the Court of Queen's Bench, are the express approval of the Court of Appeal and Viscount Haldane, and the fact that it has also been followed, expressly or impliedly, on two occasions at first instance. It is submitted, therefore, that while it is still open to the House of Lords or the High Court of Australia to overrule *Humble v. Hunter,* it remains good law until they do so.

Secondly: Evidence that a person who signed a contract did so as an agent for an undisclosed principal is not inadmissible merely because the agent signed as "owner" or as "proprietor". Evidence of agency is only inadmissible when a full consideration of the whole contract makes it clear that it was a term of the contract that the agent should contract as "owner" or "proprietor", and that these words were not used merely as words of description, as they were in *Murphy v. Rae.* It is true that in *Humble v. Hunter* itself all three judges laid great stress on the fact that the son had signed as "owner", upon which fact the decision seems to be based; but even in that case Patteson J. said that the question turned on the form of the contract, and in subsequent cases judges have made it clear that the question of the admissibility or inadmissibility of evidence of agency turns upon the interpretation of the contract as a whole. In *Formby v.*

Formby Vaughan Williams L.J. made this clear when he said:—[23]

> In my opinion, upon looking at this contract it is clear that it was intended by both parties that Rimmer should be the contracting party. It is perfectly plain upon the face of the contract that it was intended that Rimmer should be the sole contractor.

These words, it is submitted, make it clear that Vaughan Williams L.J. arrived at his decision on the basis of the intention of the parties after considering the contract as a whole, and in the same case Kennedy L.J. said:—[24] "The question in each case depends, of course, upon the language of the document in the particular case."

Again in *Rederiaktiebolaget Argonaut v. Hani* Rowlatt J. indicated that the question of the admissibility or in admissibility of evidence of agency turns upon the interpretation of the contract as a whole when he said:—[25]

> It seems to me that in these cases it is always necessary to look at the document as a whole in order to ascertain whether such words as 'as charterers' appearing after a person's name are merely words of description of the parties to the contract, in the same way as the words 'of the first part' or 'of the second part', or are used for the purpose of describing an essential part to be performed by the party in the transaction which the contract is dealing with.

Some support for the view that evidence of agency is not admissible merely because the agent signed as 'owner' or 'proprietor' may seem to be found in the passage from the judgment of Viscount Haldane in *Fred. Drughorn Ltd. v. Rederiaktiebolaget Trans-Atlantic* quoted above, especially when he said:—"That is not a question of agency—that is a question of property." But a closer examination of the judgment will show that this is not the case, for Viscount Haldane said:—[26] ". . . where you have the description of a person as the owner of property, *and it is a term of the contract that he should contract as owner of that property*, you cannot show that another person is the real owner." Lord Sumner also indicated that the principle in *Humble v. Hunter*—always assuming, of course, that *Humble v. Hunter* was correctly decided—is that the admissibility or inadmissibility of evidence of agency turns upon the interpretation of the contract as a whole when he said:—[27]

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[23] (1910) 102 L.T. 116, at 117.
[24] Ibid. at 118.
[25] [1918] 2 K.B. 247, at 249.
[26] [1919] A.C. 203, at 207. Italics added by writer.
[27] Ibid. at 210.

> There is a clear distinction between words in a contract which can be construed as saying 'AB, who prior to this contract was and who under it is and will be the single owner', and words which can only mean 'AB who by this contract becomes liable to the obligations and entitled to the rights, which this contract allots to the charterer.'

It seems clear from this passage that in Lord Sumner's view the true test is not "what words were used" but "what is the true construction to be placed on the words after reading the contract as a whole." In view of these judgments, therefore, it is submitted that evidence of agency will only be inadmissible if a full consideration of the contract as a whole shows that it was a term of the contract that the agent should contract as principal, and that if a full consideration of the contract as a whole does not lead to such a conclusion then evidence of agency will be admitted, notwithstanding that the agent signed the contract as 'owner' or as 'proprietor'. It follows, therefore, from this conclusion that *Murphy v. Rae* was, on the facts, correctly decided.

Thirdly: The rule in *Humble v. Hunter* is not restricted to cases where the agent signs as 'owner' or 'proprietor', and evidence of agency will be excluded in all cases where it is clear from an examination of the contract as a whole that it was a term of the contract that the agent should contract as principal. In *Murphy v. Rae* Moller J., in attempting so to restrict the principle, laid great stress on the passage from the judgment of Viscount Haldane already quoted. It is true that Viscount Haldane spoke of a case where a person was described as an owner of property *and* where it was a term of the contract that he should contract as owner, but it is submitted that all Viscount Haldane was saying was that it is necessary to show that it was a term of the contract that a person should contract as owner in order to exclude evidence of agency, and that to say that Viscount Haldane was laying down that in order to exclude evidence of agency it is necessary that the agent should have signed as 'owner' would be to read too much into the passage and would be contrary to a previous passage in Viscount Haldane's judgment when, speaking of *Humble v. Hunter,* and *Formby v. Formby* he said:—[28] "These are authorities for the proposition that evidence of authority of an outside principal is not admissible, if to give such evidence would be to contradict some term in the contract itself."

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[28] Ibid. at 206.

The principle in *Humble v. Hunter,* says Viscount Haldane, is that evidence of agency is inadmissible if it would be contrary to the express terms of the contract: not a word about the necessity for the agent to contract as 'owner' or as 'proprietor'. Moreover, to place such a restriction on the rule in *Humble v. Hunter* would be to run contrary to the other cases decided on the point. In *Formby v. Formby* Vaughan Williams L.J., in a passage already quoted, spoke only of the intention of the parties and said not a word about the agent signing as 'proprietor', while in *Rederiaktiebolaget Argonaut v. Hani* Rowlatt J. held that evidence of agency was not admissible when the agent had signed 'as charterers'. It is true that *Rederiaktiebolaget Argonaut v. Hani* was a case at first instance, and that in *Fred. Drughorn Ltd. v. Rederiaktiebolaget Trans-Atlantic* the House of Lords reach an opposite conclusion on similar facts. However the two cases can be distinguished on the grounds that in *Rederiaktiebolaget Argonaut v. Hani* the plaintiffs specifically contracted "as charterers" while in *Fred. Drughorn Ltd. v. Rederiaktiebolaget Trans-Atlantic* the agent was merely described as charterer, and it was on these grounds that Lord Sumner did in fact distinguish the two cases.[29] On principle, moreover, it is submitted that there is no reason why evidence of agency should not be held to be inadmissible in cases where it is clear that it was a term of the contract that the agent should contract as principal, even although he did not contract as 'owner' or 'proprietor'. Support for this proposition may be found in the judgment of Lord Parmoor in *Dunlop v. Selfridge,*[30] and in the judgments of Luxmoore J. and Lord Hanworth M.R. in *Collins v. Associated Greyhound Racecourses, Ltd.*[31] In *Dunlop v. Selfridge,* Lord Parmoor said:—[32]

> There is no question that parol evidence is admissible to prove that the plaintiff in an action is the real principal to a contract; but it is also well established law that a person cannot claim to be a principal to a contract if this would be inconsistent with the terms of the contract itself.

In *Collins v. Associated Greyhound Racecourses, Ltd.* Luxmoore J. said:—[33]

> The rights, I think, are accurately stated in Sir F. Pollock's Principles of Contract, 9th ed., p. 108. He says: "When a party

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29 Ibid. at 209.
30 [1915] A.C. 847.
31 [1930] 1 Ch. 1.
32 [1915] A.C. 847, at 864.
33 [1930] 1 Ch. 1, at 18.

> contracts with an agent whom he does not know to be an agent, the undisclosed principal is generally bound by the contract and entitled to enforce it as well as the agent with whom the contract is made in the first instance." But there are important limitations to this rule . . . the rule does not apply where the agent for an undisclosed principal contracts in such terms as import that he is the real and only principal.

And Lord Hanworth M.R. said:—[34]

> . . . the rule stated in Sir Frederick Pollock's Principles of Contract, 8th ed., p. 106 applied: "When a party contracts with an agent whom he does not know to be an agent, the undisclosed principal is generally bound by the contract and entitled to enforce it as well as the agent with whom the contract is made in the first instance." But that does not apply where an agent for an undisclosed principal contracts; in such terms as import that he is the real and only principal.

It is submitted that it can be deduced from these judgments that evidence of agency is inadmissible in all cases where it is clear from a consideration of the contract as a whole that it was a term of the contract that the agent should contract as principal, and while it may be unlikely in practice that this should be the case in cases where the agent has contracted otherwise than as 'owner' or 'proprietor', there is no reason in principle why this should not be so.

In conclusion, it is submitted that *Humble v. Hunter* is still good law, but that the principle in that case only applies if it is clear from a consideration of the contract as a whole that it was a term of the contract that the agent should contract as principal and provided this is so it makes no difference whether or not the agent contracted as 'owner' or 'proprietor'.

W. E. D. DAVIES*

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34 Ibid. at 32.

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NOTES ON STATUTES

THE SCIENTOLOGY ACT, 1968

The organization and system of belief known as scientology appears to be one of those bodies of organized belief which make their major appeal to men and women who suffer from some personality defect making them unsure of themselves and unable to come to terms with the society they live in.[1] The proliferation of such bodies reflects on society's inability to provide the care and concern for these people necessary to integrate them with itself; unfortunately, society and its rulers seem little inclined to respond to this implied criticism by positive steps, but are more inclined to react against the excesses which occur from time to time when a group of social misfits begins to gather impetus and make its presence felt in society. In a number of places in the English-speaking world there have been reactions against scientology. In the United States, where its teachings first saw the light of day, the Food and Drug Administration began proceedings, towards the end of 1963, against the organization on the footing that unfounded and illegal claims were being made that the E-meter (an instrument fundamental to scientology techniques and a prime object of veneration) could be used to treat illnesses.[2] In the United Kingdom, the Government has withdrawn the recognition of the Hubbard College of Scientology at East Grinstead as an educational establishment for the purposes of admission of aliens to study,[3] and, more recently, the so-called Chapel at East Grinstead has been

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1 It seems that the organization is likely to attract some who are even more deeply disturbed, and that this creates some at least of the problems it faces. The Report of the Board of Inquiry into Scientology, set up by the Victorian Government in 1963 (hereafter referred to as the ANDERSON REPORT) (Government Printer, Melbourne, 1965) says of the founder of scientology, L. Ron Hubbard: 'These qualities which are apparent in Hubbard's writings and on his tapes, and the whole disorder and fragmentation of thought which permeates all his pronouncements, constitute an imposing aggregate of symptoms which, in psychiatric circles, are strongly indicative of a condition of paranoid schizophrenia with delusions of grandeur . . .' (p. 47). Cf. the case of Miss Henslow, raised in the House of Commons on the adjournment, 6.3.1967 (1966-67) 742 PARLIAMENTARY DEBATES (COMMONS) 1216-8.

2 ANDERSON REPORT, p. 97.

3 See reply of Mr K. Robinson, Minister of Health (U.K.) 25.7.1968, (1968-69) 769 PARLIAMENTARY DEBATES (COMMONS) 189-191.