

1953

Present : Rose C.J.

G. G. APPUHAMY, Appellant, and J. A. GREGORY, Respondent

*S. C. 158—C. R. Colombo, 35,008**International Law—Diplomatic immunity from judicial process—Scope.*

Under the rules of international comity, diplomatic immunity from judicial process is extended not only to a Minister or Ambassador but also to his family, suite and servants. An assistant to a military or naval attaché, if he in fact works in an Embassy, is covered by the immunity.

APPEAL from a judgment of the Court of Requests, Colombo..

A. C. Nadarajah, for the plaintiff appellant.

E. B. Vannitamby, for the defendant respondent.

October 8, 1953. ROSE C.J.—

In this case the appellant sues the respondent for the recovery of a sum of Rs. 300 in respect of wages which he alleges were due to him for services rendered as personal boy. The respondent at the trial raised the issue that he is a member of the staff of the American Embassy in Ceylon and is therefore immune from the jurisdiction of the Court of Requests. The test which appears to have been applied in the English cases and which I agree with the learned Commissioner would seem to be applicable to the position now existing in Ceylon is that immunity from judicial process is extended not only to the person of the Minister or Ambassador but to his family, suite and servants. That was stated by McCardie J. in the case of *Assurantie Compagnie Excelsior v. Smith*¹. On appeal Scrutton L.J. in the same case said, "The Court must observe the rules of international comity which gave diplomatic immunity from judicial process and must hold that the defendant was entitled to the immunity which he claimed on the ground that he was on the official staff of the Embassy carrying out official duties".

Mr. Nadarajah contends that there would seem to be logical reasons for holding that a military or naval attaché should not be covered by this rule in that he is not one of the Ambassador's staff. That matter, however, appears to be decided by authority and in the case of *Hemeleers-Shenley v. The Amazone*, *Re the Amazone*², Slessor L.J. held that an assistant military attaché to the Belgian Embassy was entitled to the same immunity as a member of the Ambassador's staff, the test apparently being whether the attaché in question was performing duties in the Embassy to assist the Ambassador. If, therefore, in principle a military or

¹ (1923) 40 *Times L. R.* 105.

² (1940) 1 *A. E. R.* 269.

naval attaché can be regarded as covered by the immunity, it seems to me that the same rule should apply to an assistant to an attaché provided that he in fact works in the Embassy.

Now, the respondent, Mr. James Ashley Gregory, gave evidence, and there was no evidence called by the appellant in the lower court to the contrary, that he is a clerk and assistant to the Naval Attaché in the American Embassy, Colombo. He stated that he is an American citizen on the staff of the American Embassy. In cross-examination he said "I came to Ceylon on the 6th of November, 1950, and since then I have been attached to the American Embassy. I am a clerk and also assistant to the Naval Attaché in the U. S. Embassy. I am paid by the U. S. Navy." It seems to me that the fact that an attaché, or an assistant attaché or a clerk to an attaché, is not paid by the Embassy but is paid in fact by the United States Navy in whose employ he is does not remove him from the immunity, if in fact he is doing work on behalf of the Ambassador and is working in the Embassy.

The learned Commissioner accepts the evidence of Mr. Gregory and comes to the conclusion that having regard to his position in the Embassy he is immune from civil process. I agree with that view. That being so, the appeal is dismissed with costs.

Appeal dismissed.
