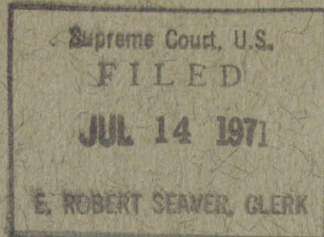


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No. 51, Original

In the Supreme Court of the United States

OCTOBER TERM, 1971

FOUNDING CHURCH OF SCIENTOLOGY, PLAINTIFF

v.

HIS EXCELLENCY LORD CROMER AND

MR. BRIAN L. CROWE, DEFENDANTS

MEMORANDUM FOR THE UNITED STATES SUGGESTING
IMMUNITY

ERWIN N. GRISWOLD,

*Solicitor General,
Department of Justice,
Washington, D.C. 20530.*

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HIS EXCELLENCY LORD CROMER AND
MR. BRIAN L. CROWE, DEFENDANTS

MEMORANDUM FOR THE UNITED STATES SUGGESTING IMMUNITY

The United States, on behalf of the defendants Lord Cromer (the British Ambassador to the United States) and Mr. Crowe (the First Secretary of the British Embassy in Washington, D.C.), respectfully suggests that this Court should deny leave to file the original complaint in this case because the defendants, as official diplomatic representatives of the United Kingdom of Great Britain and Northern Ireland, are immune from suit under 22 U.S.C. 252.

1. The Founding Church of Scientology filed a motion in this Court on April 7, 1971, seeking leave to file an original complaint¹ against Lord Cromer

¹ Article III, section 2 of the Constitution grants this Court original jurisdiction "[i]n all cases affecting Ambassadors, other public Ministers and Consuls * * *. 28 U.S.C. 1251(a)(2) provides that the Court shall have original jurisdiction of "[a]ll actions or proceedings against ambassadors or other public ministers of foreign states * * * not inconsistent with the law of nations."

and Mr. Crowe, alleging that they uttered untrue defamatory statements regarding the Church and seeking \$2,200,000 in compensatory and punitive damages. A copy of the motion and complaint were left at the door of the British Embassy in Washington by a person or persons unknown on April 7, 1971. On April 18, 1971, plaintiff's attorneys mailed a notice of suit and appearance forms to the Embassy.

At the direction of the Court, the Clerk wrote Lord Cromer on June 15, 1971, requesting him to file a response to the motion by July 15, 1971. On June 22, 1971, the British Embassy, by diplomatic note to the Department of State, requested the United States to "draw the attention of the Clerk to the Supreme Court to the immunity from legal process in [the] United States Courts of Her Britannic Majesty's Ambassador and of Mr. Crowe."²

2. It is settled that ambassadors and public ministers are immune from suit. 22 U.S.C. 252. That statute, which was first enacted in this country in 1790 and is consistent with generally accepted principles of international law and practice,³ provides:

Whenever any writ or process is sued out or prosecuted by any person in any court of the

² A copy of this note is reproduced *infra* as Appendix A to this memorandum.

³ The provision was first enacted on April 30, 1790, 1 Stat. 117, and was derived in turn from the statute 7 Anne, C. 12. See *In Re Baiz*, 135 U.S. 403, 420; 6 Whiteman, *Digest of International Law* 403-412. The most recent international expression of the principle of diplomatic immunity is the Vienna Convention on Diplomatic Intercourse and Immunities, Articles 22, 29-32. See 55 Am. J. Intl. L. 1062. The United States has signed this convention although it has not yet ratified it. Approximately 90 other nations have ratified the convention.

United States, or of a State, or by any judge or justice, whereby the person of any ambassador or public minister of any foreign prince or State, authorized and received as such by the President * * * is arrested or imprisoned, or his goods or chattels are distrained, seized or attached, such writ or process shall be deemed void.

The immunity provided by Section 252 is not limited "to those actions which have as a direct objective the distraint, seizure or attachment of goods or chattels." *Carrera v. Carrera*, 174 F. 2d 496, 498 (C.A.D.C.). Diplomatic immunity traditionally has extended to all legal process and has protected not only the ambassador, but his subordinates, family, and servants as well. *Ibid.* See *Hellenic Lines v. Moore*, 345 F. 2d 978 (C.A.D.C.); *Mongillo v. Vogel*, 84 F. Supp. 1007 (E.D. Pa.). This broad and absolute immunity has been applied in a full variety of circumstances, including alleged libel and defamation. *In Re Baiz*, 135 U.S. 403; *Arcaya v. Paez*, 145 F. Supp. 464 (S.D.N.Y.), affirmed, 244 F. 2d 958 (C.A. 2). See, also, *Note, The Original Jurisdiction of the United States Supreme Court*, 11 Stan. L. Rev. 665, 667-668.

3. Lord Cromer was received by the President as Ambassador on February 8, 1971, and continues to be accepted in that capacity. The Department of State was notified on October 4, 1968, that Mr. Crowe is the duly accredited First Secretary of the British Embassy. He continues to be accepted by the United States in that capacity.⁴ There is thus no question

⁴ Certifications, by the Chief of Protocol of the United States, of the diplomatic status of Lord Cromer and Mr. Crowe are reproduced *infra* as Appendices B and C to this memorandum.

that both defendants are fully accredited diplomatic representatives and therefore entitled to immunity from suit.

It is true, of course, that the government of a diplomatic representative can waive his immunity. See *United States v. Arizti*, 229 F. Supp. 53 (S.D.N.Y.); 6 Whiteman, *supra*, 421-436. In this case, however, the government of the United Kingdom has indicated, by its note to the Department of State, that it does not waive immunity. Accordingly, the attempted service of process⁵ should be deemed void and this Court should deny leave to file the complaint.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

JULY 1971.

⁵ The method by which the attempt to serve process evidently was made in this case—by leaving the motion and complaint at the front door of the Embassy—did not, in any event, comply with Rule 33 of the Rules of this Court. 22 U.S.C. 253 provides that “[w]henever any writ of process is sued out in violation of section 252 * * * every person by whom the same is obtained or prosecuted, whether as [a] party or as attorney or solicitor, and every officer concerned in executing it, shall be deemed a violator of the laws of nations * * * and shall be imprisoned for not more than three years, and fined at the discretion of the court.”

APPENDIX A

Her Britannic Majesty's Embassy present their compliments to the State Department and have the honour to draw their attention to the following matter.

In April 1971, Her Britannic Majesty's Embassy received from John Joseph Matonis, Attorney, for the Founding Church of Scientology, a copy of a Motion for Leave to File Complaint and Complaint in the Supreme Court of the United States, naming as defendants Her Majesty's Ambassador and Mr. Brian L. Crowe, First Secretary of the Embassy, and seeking compensating and punitive damages from them in respect of alleged utterances together with injunctions against further such utterances. The Embassy were advised at the time, in discussion with legal officers of the State Department, to make no response to this or to any other communications from the same source.

Her Britannic Majesty's Embassy have now received from the Clerk of the Supreme Court, a letter dated 15 June, 1971, a copy of which is attached, requesting that a response to the Motion be filed by 15 July, 1971. Her Britannic Majesty's Embassy request that the State Department draw the attention of the Clerk to the Supreme Court to the immunity from legal process in United States Courts of Her Britannic Majesty's Ambassador and of Mr. Crowe and confirm that it is unnecessary for Her Majesty's Embassy to take action on the letter of 15 June.

Her Britannic Majesty's Embassy avail themselves of this opportunity to renew to the State Department the assurances of their highest consideration.

BRITISH EMBASSY,
Washington D.C., June 22, 1971.

APPENDIX B

THE CHIEF OF PROTOCOL

DEPARTMENT OF STATE, WASHINGTON

This is to certify that His Excellency, the Right Honorable, the Earl of Cromer, according to the records of the Office of the Chief of Protocol, was received by the President of the United States as the Ambassador of the United Kingdom of Great Britain and Northern Ireland on February 8, 1971, and has to this date continued to be accepted by the United States in that capacity.

/s/ EMIL MOSBACHER, JR.,

June 29, 1971.

APPENDIX C

THE CHIEF OF PROTOCOL

DEPARTMENT OF STATE, WASHINGTON

This is to certify that Mr. Brian L. Crowe, according to the records of the Office of the Chief of Protocol, was notified to the Department of State as a duly accredited First Secretary of the British Embassy on October 4, 1968, and has to this date continued to be accepted by the United States in that capacity.

/s/ EMIL MOSBACHER, JR.,

June 29, 1971.

(7)

