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THE ALL ENGLAND LAW REPORTS 2000

Volume 3

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London
BUTTERWORTHS

Arthur J S Hall & Co (a firm) v Simons
Barratt v Ansell and others (trading as Woolf Seddon (a firm))
Harris v Scholfield Roberts & Hill (a firm) and another

HOUSE OF LORDS
LORD STEYN, LORD BROWNE-WILKINSON, LORD HOFFMANN, LORD HOPE OF CRAIGHEAD, LORD HUTTON, LORD HOBHOUSE OF WOODBOROUGH AND LORD MILLETT
27–30 MARCH, 20 JULY 2000

Counsel – Negligence – Immunity – Whether advocates still entitled to immunity from suit in respect of their conduct of proceedings.

In three separate cases, clients brought claims for negligence against their former solicitors. In each case, the solicitors relied on the immunity of advocates from suits for negligence, and the claims were initially struck out as unsustainable. However, the Court of Appeal subsequently held that the claims fell outside the scope of the immunity and that accordingly they should not have been struck out. On the solicitors' appeals to the House of Lords, their Lordships considered whether the immunity should be abolished or whether it could still be justified on public policy grounds, particularly the public interest in preventing collateral attacks on court decisions and in ensuring that advocates respected their overriding duty to the court.

Held – Advocates no longer enjoyed immunity from suit in respect of their conduct of civil and (Lord Hope, Lord Hutton and Lord Hobhouse dissenting) criminal proceedings. Such an immunity was not needed to deal with collateral attacks on criminal and civil decisions. Rather, the public interest was satisfactorily protected by independent principles and powers of the court. A collateral civil challenge to a subsisting criminal conviction would ordinarily be struck out as an abuse of process, but the public policy against such a challenge would no longer bar an action in negligence by a client who had succeeded in having his conviction set aside. Similarly, the principles of res judicata, issue estoppel and abuse of process as understood in private law should be adequate to cope with the risk of collateral challenges to civil decisions. Nor was the immunity needed to ensure that advocates would respect their duty to the court. In that respect, a comparison with other professionals was important. Doctors, for example, were sometimes faced with a tension between their duties to their patients and their duties to an ethical code, but nobody argued that they should have an immunity from suits in negligence. Furthermore, experience in other jurisdictions, particularly Canada, tended to demonstrate that it was unduly pessimistic to fear that the possibility of actions in negligence would undermine the public interest in advocates respecting their duty to the court. Moreover, benefits would be