

**Declassified to Public  
06 September 2012**

D99/3/18

2 Q.B.

QUEEN'S BENCH DIVISION

229

A thing if the tribunal concerned with such cases felt able from time to time to take a reviewing look at rules of practice which it has, perhaps under the persuasion of practitioners, evolved when assessing compensation—with an eye to considering whether they conform to the intentions of the legislature to provide proper compensation. I would allow the appeal.

C. A.  
1967

West  
Midland  
Baptist  
(Trust)  
Association  
(Inc.)  
v.  
Birmingham  
Corporation

B

*Appeal allowed with costs of hearing before tribunal and on appeal.*

*Leave to appeal on condition that order for costs be not disturbed in any event.*

C

Solicitors: *Ellis & Fairbairn; Town Clerk, Birmingham.*

N. P.

D

[COURT OF APPEAL]

ALLEN v. SIR ALFRED McALPINE & SONS LTD.  
AND ANOTHER

C. A.

1967  
Dec. 13, 14,  
15, 18;  
1968  
Jan. 11

E

BOSTIC v. BERMONDSEY & SOUTHWARK  
GROUP HOSPITAL MANAGEMENT COMMITTEE

STERNBERG AND ANOTHER v. HAMMOND AND OTHERS

LORD  
DENNING  
M.R.,  
DIPLOCK  
and  
SALMON L.JJ.

F

*Practice—Dismissal of action for want of prosecution—Long delay—Fault of legal advisers—"Inexcusable delay" in conduct of suit—Duty of parties' advisers—Whether action to be dismissed for want of prosecution—Principles applicable—Discretion of court. Solicitor—Negligence—Laches—"Inexcusable delay" in prosecution of claim—Action dismissed for want of prosecution—Whether claim for damages lies—Solicitor—Duty—Business of courts to be conducted with expedition.*

G

Three actions, in two cases six and the other seven years after the issue of the writs, were dismissed for want of prosecution. In each case the fault had not been with the party concerned but with the legal advisers. In the first case a widow, whose husband had been killed at his work nearly nine years before, had a good claim for compensation against his employers. In the second

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| <p>C. A.<br/>1967</p> <hr/> <p>Allen<br/>v.<br/>Sir Alfred<br/>McAlpine<br/>&amp; Sons<br/>Ltd.</p> <hr/> <p>DIPLOCK L.J.</p> | <p>over their heads a moment longer than was necessary. I agree.<br/>If such damaging charges are to be made, justice particularly<br/>requires that they should be disposed of with the minimum of<br/>delay.</p> <p>As regards the personal hardship to the plaintiffs, there is<br/>nothing to suggest that if, in truth, they have a genuine claim<br/>against either of the defendants which has been lost by their<br/>solicitors' negligence, they will not have an effective remedy<br/>against them.</p> <p>In this case I see no grounds for interfering with the judge's<br/>discretion. I would dismiss this appeal.</p> <p>It would not be right to end without one further general<br/>observation. The fact that these three appeals have been heard<br/>together and this court invited to lay down some general guidance<br/>as to the principles on which the discretion to dismiss an action<br/>for want of prosecution should be exercised, may perhaps lead<br/>to the impression that it is common for solicitors to be dilatory<br/>in the conduct of litigation for their clients. This would be a<br/>wholly unjustifiable slur upon a profession which, though under-<br/>manned and often today working under great pressure, provides<br/>save in the rarest cases a conscientious, skilled and diligent public<br/>service to litigants in the courts of justice. For my part I would<br/>not like to leave the unhappy topic of these three appeals without<br/>recording a tribute to the way in which the overwhelming majority<br/>of the profession conduct litigation in our courts. They fulfil an<br/>onerous and essential function in the administration of justice.<br/>And they do it well.</p> <p>SALMON L.J.: The seven parties to these three appeals have<br/>been most ably represented by all the counsel appearing on their<br/>behalf. There were 13 of them. Apparently, however, for fear<br/>lest we might be in need of still further help from the Bar in doing<br/>justice between the parties, the Law Society has thoughtfully pro-<br/>vided us with the services of an amicus curiae. I had always<br/>understood that the role of an amicus curiae was to help the court<br/>by expounding the law impartially, or if one of the parties were<br/>unrepresented, by advancing the legal arguments on his behalf.<br/>As I listened to Mr. Wilmer's cogent and forceful argument,<br/>I gained the impression—although no doubt it was an illusion—<br/>that in reality he held a watching or indeed a speaking brief on<br/>behalf of hardly impartial third parties who feared that their<br/>interests or rather those of their members might be prejudiced</p> | <p>A</p> <p>B</p> <p>C</p> <p>D</p> <p>E</p> <p>F</p> <p>G</p> |
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