

Judge makes ruling on late abortions

A TEST case on abortion law ended yesterday in defeat for a couple in their medical negligence damages claim over the failure of doctors to diagnose spina bifida in their unborn baby.

The claim by Lorna Rance and her husband Reginald, both solicitors, of East Grinstead, West Sussex, raised for the first time in the English courts a question of interpretation of the legislation on late terminations.

At the High Court in London, Mr Justice Brooke rejected their claim against Mid Downs Health Authority and Bernard Storr, a retired consultant radiologist, over the birth of their handi-

capped son John, at Cuckfield Hospital, Haywards Heath, West Sussex, in 1983. Mrs Rance said she would have had an abortion if spina bifida had been diagnosed. The Rances sought damages for their shock, pain and trauma in having a handicapped child.

The defendants denied negligence and said that, in any event, her pregnancy was too far advanced for a lawful termination.

Mr Justice Brooke said John, now six, was a friendly boy of above average intelligence and was a normal child above the waist, but was without sensation in his lower limbs.

The judge, dealing for the first

time with the meaning of the words "capable of being born alive" in the Infant Life Preservation Act 1929, said an abortion was lawful under the 1967 Abortion Act up to 28 weeks unless it involved destruction of a child capable of being born alive.

He ruled that the words "capable of being born alive" meant that a child could breathe and exist independently of its mother — even if only for a short time.

He said the court was "concerned with the sanctity of human life". He was satisfied that John was a baby capable of being born alive at 27 weeks — the hypothetical date for an abortion in Mrs

Rance's case. If an abortion had been carried out, it would have been unlawful, he said.

There were no grounds on which John could lawfully have been deprived of the chance to live, he said, although he pointed out that there would have been competent surgeons prepared to carry out a termination before the end of the 28th week in the "bona fide belief that it was lawful".

Phyllis Bowman, national director of the Society for the Protection of Unborn Children, said the judge's decision on the wording of the Infant Life Preservation Act had always been the society's interpretation.

Judge rejects abortion at 27 weeks

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was a baby capable of being born alive at 27 weeks — the hypothetical date for an abortion in Mrs Rance's case. If an abortion had been carried out, it would have been unlawful, he said.

Mrs Phyllis Bowman, national director of the Society for the Protection of Unborn Children, said the decision on the Act's wording had always been the society's interpretation.

The decision was also welcomed by anti-abortion campaigners, including Miss Ann Widdecombe, Conservative MP for Maidstone, and Mr Teddy Taylor, Conservative MP for Southend East, who said: "It looks like a major advance in case law."

● Thomas Fowler, of Chipping Sodbury, Avon, who developed cerebral palsy through an emergency delivery more than an hour after the birth of his twin in 1982, was awarded £480,000 agreed damages in the High Court yesterday against Huddersfield Health Authority. His mother, Marilyn, won £5,000 agreed damages for suffering.

● Mrs Pamela Burton, 47, of East Church, Sheerness, Kent, almost wheelchair-bound with multiple sclerosis, won £355,000 agreed damages against Mr Lance Errington, of Minster, Isle of Sheppey, with whose car she was in collision in 1983.