

Commonwealth v. Luceba Parker [Brief] (1845) ^[1]

By: Heathcotte, Brock Keywords: Abortion ^[2]

Court: Supreme Court of Massachusetts

Citation: 9 Metcalf, 263, 50 Mass. 263

Status as current law: Questionable

Value as precedent: None

Case significance:

The Court settled the question left open from the case of Commonwealth v. Bangs that it must be proved a woman was "quick with child" in order for [abortion](#) ^[3] prohibitions to have any effect in Massachusetts.

Case Summary:

- Facts: Luceba Parker was charged with three counts of [abortion](#) ^[3]. In the first count it was alleged Parker did "force and thrust a sharp metallic instrument into the [womb](#) ^[4] and body of a married woman" who was pregnant with the intent and effect of causing a [miscarriage](#) ^[5]. In the second count it was alleged Parker did the same to a different woman. In the third count it was alleged Parker did the same to a third woman who was identified as being "quick and pregnant." All three women consented to the abortions. Parker was convicted on counts one and three and acquitted on count two. Parker argued on appeal that count one should be dismissed because there was no allegation the woman was quick with child, and that count three should be remanded for a new trial because there was no evidence establishing the woman was quick with child.
- Law: The Court stated the issue as, "whether it is an indictable offence, at common law, to administer a drug, or perform an operation upon a pregnant woman, with her consent, with the intention and for the purpose of causing an [abortion](#) ^[3] and premature birth of the foetus of which she is pregnant, by means of which an [abortion](#) ^[3] is in fact caused, without averring and proving that, at the time of the administration of such drug, or the performance of such operation, such woman was quick with child." 50 Mass. 264-5.
- Ruling: The state may not prosecute anyone for attempts to procure [abortion](#) ^[3] with the consent of the mother, until she is quick with child.

Quotes:

"It was only considered by the ancient common law that the child had a separate and independent existence, when the embryo had advanced to that degree of maturity designated by the terms "quick with child," although, to many purposes, in reference to civil rights, an infant *in ventre sa mère* is regarded as a person in being. And the ancient authorities, which speak of this crime as an offence at common law, speak of a case where the woman is quick with child." 50 Mass. 266.

"In the case of *Rex v. Phillips*, 3 Campb. 73, which was an indictment on this statute, it was

held by that learned judge, Mr. Justice Lawrence, that, in the construction of this statute, the words "quick with child" must be taken to be according to the common understanding, which was proved to be this; that a woman is not considered to be quick with child, till she has herself felt the child alive and quick within her." 50 Mass. 266-67.

This case cites to these authorities:

Commonwealth v. Bangs, 9 Mass. 387 (1812)

This case was cited in:

Evans v. People, 49 N.Y. 86 (1872)

Dietrich v. Inhabitants of Northampton, 138 Mass. 14 (1884)

Technology and the Legal Discourse of Fetal Autonomy. *UCLA Women's Law Journal* 8 (1997): 47, 97.

Prenatal Tort Law and the Personhood of the Unborn Child: A Separate Legal Existence. *St. Thomas Law Review* 16 (2003): 207,286+.

The Court settled the question left open from the case of *Commonwealth v. Bangs* that it must be proved a woman was "quick with child" in order for abortion prohibitions to have any effect in Massachusetts.

Subject

Abortion ^[6]

Topic

Legal ^[7] Reproduction ^[8]

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