

[Dietrich v. Inhabitants of Northampton \[Brief\] \(1884\)](#) ^[1]

By: Heathcotte, Brock Keywords: [Fetus](#) ^[2] [Bioethics](#) ^[3]

Court: Supreme Court of Massachusetts

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

Status as current law: No longer good law

Value as precedent: None

Case significance:

This influential opinion by famed jurist [Oliver Wendell Holmes](#) ^[5], Jr. was copied by courts throughout the United States. For over sixty years, courts refused to recognize a cause of action on behalf of a child who died before or after birth as a result of injuries suffered in the [womb](#) ^[6] because the [fetus](#) ^[7] was considered legally a part of its mother and thus did not possess [personhood](#) ^[8]. This policy changed after the decision in *Bonbrest v. Kotz* in 1946.

Case Summary:

- Facts—The pregnant mother slipped on a defect in a highway of Northampton, Massachusetts, and fell. At the time, she was between four and five months along in [pregnancy](#) ^[9]. Her fall caused a [miscarriage](#) ^[10] and the child, “although not directly injured, unless by a communication of the shock to the mother,” was too little advanced in fetal life to survive premature birth. There was testimony, however, based upon observing motion in its limbs, that it did live for ten or fifteen minutes.
- Law—Peter Dietrich, administrator of the estate of the dead child, brought this action upon the Public Statutes c. 52, § 17 claiming compensatory damages from the town for the benefit of the mother as next of kin.
- Ruling—No claim could be made because the child was part of its mother while in the [womb](#) ^[6] and did not possess the separate existence necessary to stand as a plaintiff in court. Case dismissed.

Quotes:

“[N]o case, so far as we know, has ever decided that, if the infant survived, it could maintain an action for injuries received by it while in its mother’s [womb](#) ^[6]. Yet that is the test of the principle relied on by the plaintiff, who can hardly avoid contending that a pretty large field of litigation has been left unexplored until the present moment.” 138 Mass. 15-16

“If it should be argued that an action could be maintained in the case supposed, and that, on general principles, an injury transmitted from the actor to a person through his own organic substance, or through his mother, before he became a person, stands on the same footing as an injury transmitted to an existing person through other intervening substances outside him, the argument in this general form is not helped, but hindered, by the analogy drawn from Lord Coke’s statement of the criminal law. For, apart from the question of remoteness, the argument would not be affected by the degree of maturity reached by the embryo at the moment of the organic lesion or wrongful act. Whereas Lord Coke’s rule requires that the woman be quick with child, which, as this court has decided, means more than pregnant, and requires that the child shall have reached some degree of quasi independent life at the moment of the act.” 138 Mass. 16

“Taking all the foregoing considerations into account, and further, that, as the [unborn child](#) ^[11] was a part of the mother at the time of the injury, any damage to it which was not too remote to be recovered for at all was recoverable by her, we think it clear that the statute sued upon does not embrace the plaintiff’s intestate within its meaning.” 138 Mass. 17

This case cites to these authorities:

Commonwealth v. Parker, 50 Mass. 263 (1845)

It must be proved a woman was quick with child in order for [abortion](#) ^[12] prohibitions to have any effect.

This case was cited in:

Bonbrest v. Kotz, 65 F.Supp. 138 (D.D.C. 1946)

A lawsuit may be maintained for injuries caused to a [viable](#) ^[13] [fetus](#) ^[7] that was later [born alive](#) ^[14].

Summerfield v. Superior Court, 144 Ariz. 467, 698 P.2d 712 (1985)

The word “person” in Arizona’s [wrongful death](#) ^[15] statute includes a [viable](#) ^[13] [fetus](#) ^[7].