Evans v. People of the State of New York [Brief] (1872) [1]

By: Heathcotte, Brock Keywords: Abortion [2]

Court: Court of Appeals of New York
Citation: 49 N.Y. 86 (1872)
Status as current law: Questionable
Value as precedent: None

Case significance:

Attempts by the New York legislature to make abortion [4] a crime regardless of the stage of gestation [5] were permanently frustrated because the court decided that manslaughter cannot occur until the law recognizes a living being in gestation [5] and that only happens after quickening.

Case Summary:

- Facts: Thomas Lookup Evans, who claimed to be a physician trained in England, supplied Ann O'Neill with medicines she took in an effort to procure a miscarriage [6]. Evans also "applied instruments to her person for the avowed purpose of procuring a miscarriage [6]." About three months later, O'Neill gave birth to twins, both of whom died within a week. No evidence was submitted to establish the fetuses were "quick" at the time Evans administered medicines and applied instruments to O'Neill's body.
- Law: Evans was indicted for manslaughter under chapter 631 of the Laws of 1869 entitled "An act relating to the procurement of abortions, and other like offences." Under the statute, it was a felony to cause an abortion [4] at any stage of pregnancy [7] and a misdemeanor to attempt and fail to cause an abortion [4] at any stage of pregnancy [7].
- Ruling: It was error to charge that the death of a child could be caused before it had given evidence of life, that is, before it had become "quick." Conviction reversed.

Quotes:

"There was no evidence given upon the trial as to the commencement of life in the child or the character or degree of vitality at the different periods of gestation [5]. But it may be assumed that the claim of the physiologist is true, that life exists from the first moment of conception [8]. And it has been well settled, from a very early period, that certain civil rights attach to the child from the first, and that legal consequences result from pregnancy [7] before actual quickening. But it is life in embryo, and recognized in the interests of humanity in some cases, and in others in the interest of the child thereafter to be born, and in respect to succession of estates. But until the period of quickening there is no evidence of life; and whatever may be said of the foetus, the law has fixed upon this period of gestation [5] as the time when the child is endowed with life, and for the reason that the foetal movements are the first clearly marked and well defined evidences of life. Although there may be life before quickening, all the authorities agree that a child is not 'quick' until the mother has felt the child alive within her. 'Quick' is synonymous with 'living,' and both are the opposite of 'dead.' The woman is not pregnant with a living child until the child has become quick. If the child is a living child from the instant of conception [8], then all the authorities, medical and legal, are sadly at fault in their attempts to distinguish between mere pregnancy [7] and pregnancy [7] with a quick child, and legislators have been laboring under the same hallucination in legislating upon the subject, for all the acts passed in reference to abortion [4] in this country and in England recognize the fact that the child does 'quicken,' that is, become endowed with life, at a certain period, longer or shorter, after conception [8], and that there is a period during gestation [5] when, although there may be embryo life in the foetus, there is no living child. Death is the opposite of life; it is the termination of life, and death cannot be caused when there is no life." 49 N.Y. 89–90.

This case cites to these authorities:

Commonwealth v. Parker, 9 Metcalf, 263 (1845)

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

State v. Cooper, 2 Zabriskie, 52 (1849)

Dean's Medical Jurisprudence, 129

This case was cited in:

Foster v. State, 196 N.W. 233, 182 Wis. 298 (1923)

The Law of New York Concerning Abortion and the Status of the Foetus, 1664-1968: A Case of Cessation of Constitutionality. New York Law Forum 14 (1968): 411.

The “Born Alive” Rule: A Proposed Change to the New York Law Based on Modern Medical Technology. New York Law School Review 13 (1991): 609.

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

Metaphorical Imagination: The Moral and Legal Status of Fetuses and Embryos. DePaul Journal of Health Care Law 2 (199): 703.

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