

July 1676 *Case contra Edgar*. There lies also a natural Obligation upon the
 Son and Kindred descending from one common Stock, to take the Tutelage and Guardian-
 ship of any of that Race while under Pupillarity; to which the Person next
 Degree in that Family, is intitled by Law, if the Pupils Father died, without
 in his charge that Office: as he would have Right to the Pupils Estate, in case
 his dying without Issue
 Parents and Children according to the Nature of Relatives, may be divided in
 same Way into lawful and unlawful.

Sect. i.

Of lawful Parents and Children

Lawful Children, are either born in Wedlock, or legitimated. For the civil Law
 Adoption, which makes Persons Children by Authority of a Magistrate, with
 some of the natural and lawful Parents, and of the Children themselves, *l. ult. de adopt.*
 is not received in Scotland *Stat. lib. 3. tit. 4. §. 34.* Nor yet in England
Council inst. par. anglie. tit. de adopt. Norm. France Equiv. Bar. ad tit. inst. de adopt. Baquet. du droit d'aub. ch. 3. n. 8. Or in Holland *Greenweg. de leg. abrog. tit. 3. de adopt. n. 8.* But in Germany there is a Sort of Adoption called
 into prolium whereby Children of different Marriages, are by Consent of Husband
 and Wife Relations and Friends declared before the Magistrate, united and put in
 the same State, as if they had been all born in the same Marriage, *Stat. lib. 2. tit. 125.*
Harprecht ad §. 12. instit. de adopt. n. 15 & 16. 3. bo. st. comm. d. tit. de adopt. n. 8.
 Children born in Wedlock are considered by the Law, both while they are in the
 Mothers Belly and after they are born. Law takes Notice of Children in the Belly
 in so far as they are supposed to be born, if that Allowance will be to their Advantage
 after they are born. *l. 7. c. 26. ff. de statu hom. l. 231. ff. de verb. sig. l. 1.*
 tho till they are born they cannot be reckoned in the Number of Children, not
 to procure to the Father the Rights and Advantages which accrue to Parents by
 the Number of Children *l. 2. §. 6. ff. de accusat.* yet the Hopes that they will
 be born alive, makes them be considered in whatever concerns themselves as if
 they were already born. Thus a Woman having a great Belly at the Husbans
 Death, was put by the Roman Praetor in Possession of his Estate, *ventris nomine*
 and a Curator ventri to the big Belly appointed to maintain her and manage the
 Estate, till either the Child were brought forth or she miscarried, or till her not
 being pregnant were certainly known *l. i. pr. §. 17. 19. & 27. ff. de ventre in partu.*
 No Doubt the Lords of Session being clothed with a pretorian Power,
 would in like Manner, where a Man having no Children born at his Death
 leaves his Wife with Child, sequester the Estate of the deceased in the Hands of
 a Curator bonis datus, and appoint the said Curator to manage the same, and ad-
 vance the pregnant Widow in the Intersim, till she were delivered, because
 any Entertainment given to her is given to the Child, who is then *pars viscerum*
matris *l. i. §. i. ff. de inspic. ventre.* Those Children who are born after the Death
 of their Father are called posthumous Children from the Latin *post hunc*
 because

because brought forth after the Father is laid in the ground. Killing a
 Life infant in the Mothers Belly is punishable with Death *Law. 21. 23. c. 38. §. 5.*
l. 39. ff. de poenis constit. crim. l. 5. Ant. Matth. de crim. ab. 77. lit. 5.
 If a Woman who is convicted and the judgment given against her for a capital
 Crime, is found to be pregnant, her Execution is delayed till she bring forth the Child,
 least the poor innocent should suffer for the Crime of the Mother. A liberative Suc-
 cesor by a Disposition from a Father posterior to the Conception of his posthumous
 Child, was ~~mentioned~~ to alintment that Child till he was Major or ~~less than an~~ *imp. ment,*
 whereby he might subsist 10. Novemb. 1671 *Kastie and Ker contra Kastie* that being a
 Debt the Father was liable to pure nature. In England, where any Estate is limited
 in Remainder to, or to the Use of the first or other Son or Sons of the Body of
 any Person lawfully begotten, with any Remainders over to, or to the Use of
 any other Persons, or in Remainder to, or to the Use of a Daughter or Daughters
 lawfully begotten, with Remainders; any Sons or Daughters of such Persons
 lawfully begotten or to be begotten, as shall be born after their Fathers De-
 cease, may by Virtue of such Settlement, take such Estate so limited to the first
 or other Sons, or to the Daughter or Daughters, in the same Manner as if born
 in the Lifetime of their Father, altho there should be no Estate limited to
 Trustees after the Decease of the Father, to preserve the contingent Remain-
 der to such after born Children, untill they come in else or are born to take
 the same 10 & 11. W. 3. cap. 16. But then on the other Hand, an Infant in
 the Womb is not supposed in Law to be born, where that Allowance would be to
 his Prejudice. Thus the Year of Deliberation allowed to Heirs before they can be
 obliged to enter, is not reckoned from the Ancestors Death, if his apparent Heir
 was then in the Womb, but from the Birth of the posthumous Child.

The Roman Law hath made careful Provision against supposititious Births.
 For the Woman, who supposes herself to be with Child, must intimate it twice in
 every Month to those who are nearest concerned, that they may send 5 Women
 to inspect her: and she must do the like for the Space of a Month before she
 expects to be delivered, that they may send some Persons to be there at that
 Time. The judge may appoint in what House she shall dwell, and the Room
 wherein she lies must be searched; and if there is more than one Door, it must
 be nailed up. Three Men and as many Women are to be set to watch her, as often
 as she comes into the Chamber, who are also to search all Persons who come
 into the House and Chamber. When she is in Labour, 5 Women sent by the
 Party next concerned must be Witnesses to the Birth, of which they must
 have Notice before hand; and there must be no more in the Chamber at that
 Time but 10 Women, 2 Midwives and 6 Servants, of which none must be
 with Child; and therefore may be searched before they go in; there must be 3
 Lights in the Room; the Child when born must be shown to those who are con-
 cerned; the judge must appoint who shall keep it, unless the Father hath other
 wife