

*(Ex debito naturali.)*

to the next term after the defunct's death, after which this posthume was born, especially seeing the defender's disposition was long before; and albeit he be unwarrantably served heir, the tutor disclaims it, and will reduce it.—It was *replied*, That beside the ordinary allowance of relicts, the extraordinary expence of the birth of a posthume, was a debt for which the father was liable, whom the defender represents as lucrative successor, by the disposition posterior to the conception of this child, *nam in beneficiis qui in utero est pro jam nato habetur*.

No 53.

THE LORDS sustained the libel, and modified in respect of the reply and disposition.

The defender further *alleged* the libel was noways relevant, as to any aliment for the posthume; for though parents be obliged to aliment their children, yet there is neither law nor custom obliging a brother to aliment his brothers, especially where the brother doth not represent the father.—It was *answered*, The libel was not founded upon the brother's obligation, but upon the father's obligation, whom the brother represents by the foresaid disposition, which the Lords had in several cases allowed, especially in the case of the Children of Netherlie against their Brother, No 50.; and there can be no case more favourable than a posthume, whom the father did not neglect or pass by, he being gotten but shortly before his death.—The defender *answered*, That the father's obligation to aliment his children is personal, *et non transit ad heredes*; and as to the practice, that it was collusion between the heir's tutor and the bairns.

THE LORDS found the defender, as representing his father by the disposition of his goods, liable to aliment this posthume child during his minority, at least so long of his minority as he was without calling or means to aliment himself; but would not extend it after his majority.

*Fol. Dic. v. 1. p. 32. Stair, v. 2. p. 1.*

1676. July 5. CHIEFLY against EDGAR of Wadderlie.

EDGAR of Wadderlie being charged upon an indenture betwixt him and Samuel Chiesly chirurgeon, for payment of the sum therein contained, for his brother's prentice-fee, and entertainment during his prenticeship; and having suspended the said bond, and intented a reduction thereof upon minority and lesion; the LORDS found, That the second brother having no other means nor provision, his eldest brother, who was heir to his father, and had the estate, ought to entertain him, and to put him to a calling; and did not sustain the reason of lesion.\*

No 54.  
An elder brother found obliged to pay his younger brother's prentice-fee.

Reporter, *Forret.*

Clerk, *Gibson.*

*Fol. Dic. v. 1. p. 32. Dirleton, No 369. p. 181.*

\* Lord Kames is under a mistake in supposing this case is reported by Lord Newbyth; there is no such case in that MS. collection.