

citare, because he was convened for the fault of his father, *ex mora conventionali*, and they intended to the contrary, *ex mora legali*.

Fol. Dic. v. 1. p. 590. Kerse, MS. fol. 146.

No 44.

1633. February 20. LENOX against M^rMORAN.

IN a reduction of a feu *ob non solutum canonem*, upon the act of Parl. 1597, cap. 250, the defence *minor non tenetur* was repelled, though there was no conventional irritancy.

No 45.

* * This case is No 38. p. 6435, *voce* IMPLIED DISCHARGE and RENUNCIATION.

* * See Inchaffray against Mitchell, *supra*, in which case the defence was repelled where there was a conventional irritancy, but the Court were of opinion, it ought to be sustained where the *mora* was *ex lege*.

Fol. Dic. v. 1. p. 590. Durie. Auchinleck.

1675. July 27. ROBERTSON against STUART.

ROBERTSON of Inver pursues a molestation against Gilbert Stuart, for molesting him in the possession of a piece of land, called the boat-bank and boat-brae, and of the free passage of a ferry-boat there. In which summons of molestation there is also a declarator of right. The defender *alleged* no process, because he is minor, *et non tenetur placitare super hæreditate paterna. 2do*, No process till the superior be called.

THE LORDS found that the declarator could not proceed against the minor, and as to the molestation, they found that if the pursuer was in recent possession, the defence was not relevant against the possessory judgment to continue the possession, and to exclude molestation, and that there was no necessity to call the superior as to that part.

Stair, v. 2. p. 362.

No 46.

The exception, *minor non tenetur placitare*, was found relevant against a declarator of property raised against the minor's father, but not sustained against a molestation, if the pursuer were in recent possession.

1676. July 8. YEAMAN against CHILDREN of OLIPHANT.

THE LORDS found that *minor tenetur placitare*, if the heritage was questioned by a pursuit intended against his predecessor.

Fol. Dic. v. 1. p. 590. Gosford.

No 47.

* * This case is No 15. p. 9068.