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was himself the cause of the riot, by the murder which he committed, and is therefore barred, *personali exceptione*, from insisting for damages. The act of Geo. I. has always received a strict interpretation; Reid against Clark, 7th February 1798, Durnford's Reports, v. 7.; and there is a limitation of the period of 12 kalendar months for insisting in any action. It was intended to prevent injury to persons of peaceable deportment, who were not in any degree the cause of the riot by their own conduct.

With respect to the plea of *non valens agere*, it is enough that the statute of Geo. I. is of strict interpretation, and in all its provisions penal. The limitation in the act does not therefore stand on the same footing as the ordinary prescription. And, at all events, supposing the pursuer were entitled to deduct the period of his imprisonment, a year elapsed between the date of his pardon and the commencement of his action of damages.

THE COURT sustained the defences.

Lord Ordinary, *Bannatyne*. Act, *Erskine, Moncrieff*. Agent, *R. Young*.
 Alt. Lord Advocate *Hope, Corbet*. Agent, *H. Corrie, W. S.* Clerk, *Gordon*.

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Fac. Col. No 121. p. 268.

S E C T. III.

Whether a woman under coverture is to be considered as *non valens agere*.—The effect where there is a *medium impedimentum* to bar pursuit.

1665. July.

MACKIE against STEWART.

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During the time a woman is married prescription runs not against her, forbearing to pursue for implement of her contract of marriage, because during that space she is hardly *valens agere*.

By contract of marriage betwixt umquhile William Stewart brother to James Stewart of Burray, and Agnes Shaw his spouse on the one and other parts; the said William as principal, and his said brother as cautioner for him, is obliged to employ 5500 merks upon security, for the liferent right of the said Agnes; whereupon James Mackie, as assignee constituted by her, pursues William Stewart of Maynes as heir to the said umquhile James his goodsir, for employing of the said sum: The contract is dated *in anno 1615*. It was *alleged*, That the contract and this action fell under prescription by the act of Parliament. It was *answered*, That prescription runs not *contra non valentem agere, ita est*, the wife *stante matrimonio* could not pursue, and is in the condition of a minor against whom prescription sleeps during minority; and so it could not run against her, who could not by herself pursue her own husband, and though she could, yet she was not obliged to do it. It was *replied*, William Shaw her father was

party contractor, and taking burden for her, who in her name might have pursued for implement. *Answered*, That it was not provided by the contract that execution should be used at his instance; and though it had been so provided, the father's negligence cannot prejudice her. Likeas, the provision in her favours was not to take effect as to the payment of the annual rent till after the husband's death, so that from that time the prescription should only run, and he died but *in anno* 1652.

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THE LORDS found, that the prescription runs only from the husband's death, albeit the act of Parliament has no exception of this nature in it.

Being further *alleged*, That, by the contract, the sum is only to be employed conditionally, the tocher being first paid. *Answered*, Though the contract carry such a provision, yet her father, and not she, being obliged to pay the tocher, it is not her fault that her father paid it not. Likeas, if he were pursued, he would say, that the obligation as to the tocher is prescribed.

Which the LORDS found accordingly.

Fol. Dic. v. 2. p. 124. Gilmour, No 159. p. 112.

* * * Stair reports this case :

1665. July 5.—JAMES MACKIE, as assignee by Agnes Schaw, convenes Stewart of Mains as representing his father, who was cautioner for employing a sum of money to her in liferent. It was *answered*, *imo*, The contract is prescribed; *2do*, It bears these words that the tocher being paid, the principal and cautioner obliged them to employ it upon security, so that the obligation is conditional; and if it be not instructed that the tocher was paid, the defender is not liable. The pursuer *answered* to the *first, contra non valentem agere non currit præscriptio*; she being a wife clad with a husband, her not pursuing her own husband, or his cautioner, cannot prescribe her right; To the *second*, The prescription is run against the husband, and his cautioner, who were free to have pursued for the tocher, and did not; and after 40 years she cannot be put to instruct that the tocher was paid, albeit she had been debtor therefor herself, much more when another is debtor.

“ THE LORDS found both these replies relevant.”

Stair, v. 1. p. 295.

* * * A similar decision was pronounced 26th February 1622, Hamilton against Sinclair, No 27. p. 10717.

1666. February 28. EARL OF LAUDERDALE against VISCOUNT OF OXFORD.

It was objected against a defender pleading upon the positive prescription, that for some time during the 40 years, there was a liferent of the subject in

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