

would get no credit ; for having nothing wherewithal to pay, but the fruit of their bodily labour, if once released on this act of grace, they would remain free, as it scarce ever happens, that among such people, any material alteration of their circumstances could be alleged. And as to the decision *Law contra White*, in 1709, No 117. p. 11803., it is a single one, and not observed in the collections of President Dalrymple and Lord Fountainhall during that period.

No 130.

The Court at first found it irregular in Brodie to commit Abercromby to prison upon the same caption a second time, *sine causæ cognitione* ; but, upon a review of the case, the interlocutor was altered. It was *observed* on the Bench, That although a liberation on the act 1696 does not legally discharge the diligence, or restrain the creditor from again putting it in execution ; yet if he commit a moral wrong, by using that diligence in an oppressive manner, he is censurable in equity, and the debtor may obtain relief by suspension.

“ THE LORDS found, that Brodie was at liberty to put his diligence in execution against Abercromby a second time, and to incarcerate him thereupon, notwithstanding of his former liberation upon the act of Parliament 1696, for the aliment of poor prisoners ; and therefore assoilzied from the process of wrongous imprisonment, found the letters orderly proceeded, and decerned ; but found no expenses due.”

For Brodie, *Geo. Wallace.*Clerk, *Kirkpatrick.*

D. R.

Fol. Dic. v. 4. p. 141. Fac. Col. No 186. p. 332.

1768. February 24.

WILLIAM WRIGHT, MARY GRAHAM, and JAMES TOWER, Procurator-Fiscal,
against KATHARINE TAYLOR.

No 131.

A YOUNG woman having been guilty of an atrocious battery, was found liable by the Sheriff in a fine, damages, and expenses ; and by a warrant in the sentence was committed to prison till payment. The Magistrates having refused her the benefit of the act of grace ; the question was brought before the Court of Session, and the sentence of the Magistrates affirmed, it being the opinion of the Court that this was not a civil debt or cause to entitle it to the benefit of the statute.

Fol. Dic. v. 4. p. 140. Sel. Dec. No 261. p. 334.

* * * This case is reported in the Faculty Collection :

THE pursuers obtained a decret against the defender for certain sums as a fine, damages, and expenses, upon account of an assault upon the person of Mary Graham. The sentence contained a warrant to imprison till payment ; in virtue of which the defender was committed to the prison of Stirling, and

No 131. having been denied the benefit of the act of grace by the Magistrates, she preferred a bill of advocation.

Pleaded for the defender; The benefit of the act is given to those who are imprisoned for civil debts, but denied to prisoners for criminal causes. The defender's case falls under the rule, not the exception. By prisoners for criminal causes are meant those who are committed for trial, or in *modum pœnæ*; neither of which is the case with the defender: She is imprisoned till payment of a liquid sum, which, from whatever source it may have arisen, falls now to be considered as a civil debt.

If the nature of the action were to be considered, that against the defender was civil, at least so far as related to damages and expenses. Criminal actions are defined in the civil law to be *quibus de severitate publicæ disciplinæ agitur*; civil ones, *quibus de rebus ad singulorum patrimonium pertinentibus disceptatur*. The conclusion for damages and expenses clearly falls under the latter description. In the civil law, the actions competent in this case would have been *actio utilis de L. Aquilia*, or *civilis ex L. Cornelia de injuriis*; neither of which was properly criminal.

Answered for the pursuers; It is not probable the legislature had any eye to the subtle distinctions of lawyers in the division of actions. The distinction meant was a great and solid one, founded in reason and sound policy, viz. between debtors and delinquents, those who from misfortune are unable to discharge the contractions incurred in the usual and necessary affairs of life, and those who, by their crimes, whether more or less atrocious, have subjected themselves either to punishment or reparation. The words of the statute import this distinction, and no other. Civil debts are those which arise from contracts, or other transactions in civil life. Those are prisoners for criminal causes, whose imprisonment is caused or occasioned by their crimes. In this view, there is no difference between a fine and damages and expenses. If they arise *ex delicto*, they alike fall under the exception, not the rule, of the statute.

This is the construction that has been invariably put upon the statute, both by the writers on our law, and by the Court; Bankton, v. 3. p. 18, 19, 20; Erskine, b. 4. tit. 3. § 28.; M'Lesly, 23d November 1738, No 128. p. 11810.; Will *contra* Urquhart, 5th January 1754, No 129. p. 11810.

There is a great affinity between the privilege given by this act and that of a *cessio bonorum*, in which the same distinction obtains that is contended for by the pursuers; 17th July 1750, Walker, (See APPENDIX.); 19th November 1751, Malloch, No 99. p. 11774.; Voet, *De cessio bonorum*, § 5.

“ THE LORDS refused this bill ”

For Taylor, *Alex. Murray*.

Alt. *Rolland*.

A. R.

Fac. Col. No 74. p. 129.