

DICKSON
v.
PRINGLE.



PRESENT,

LORDS CHIEF COMMISSIONER AND PITMILLY.

1819.
June 24.



Specification
of the papers
called for, ne-
cessary to en-
title a party to
a diligence.

Russel, Form
of Pro. pp. 33
and 97.

DICKSON v. PRINGLE.

Cockburn moves for a diligence to recover all tacks, &c. in the possession of the defender, relative to the subject in dispute, and states:— This is not a diligence to fish for information before the action is brought, but to procure evidence to prove our case. The only difficulty is, whether this Court has power to grant it. It was understood to have it, and the power has been exercised.

Baird.—I do not object on the want of authority, but that the writings are not specified. A diligence is not always granted in the Court of Session—*Lady L. Crawford v. Lord Crawford*, 8th August 1783.

LORD PITMILLY.—As the party does not object, it is unnecessary to say any thing as to our power; but I think a wrong inference is drawn from § 5. Act of Sederunt, 9th July 1817, in page 97 of Mr Russel's book. It

is the first section, pages 93, 94, which applies here.

DICKSON
v.
PRINGLE.



It is not competent to grant a general diligence to search a charter chest, but the party must specify the paper he wants. But when the demand is for a diligence to recover other writings in evidence of a fact, the case is totally different. The Court, however, will not grant a general diligence, but only to recover writings relative to the subject of dispute; and these to be produced in presence of a person who is capable of judging of them. There may be private entries in books, or the haver may refuse to produce the document; and the Court will then hear the objection, and the Act of Sederunt would apply.

The motion yesterday was not sufficient, from want of specification; to-day it is.

LORD CHIEF COMMISSIONER.—Yesterday when I sat alone, I thought there was difficulty on both points; but now I am satisfied, from the whole purview of the Act of Sederunt, and the nature of the Court, that the Court has power to grant the diligence. I thought the notice yesterday too general, and that it was an attempt to get a diligence to recover papers of which a list had not been

DICKSON
v.
PRINGLE.

given. My brother is of the same opinion. There is now a sufficient specification of the nature of the papers, and a general reference to the dates. We shall therefore grant the order, in terms of the amended motion.

PRESENT,

LORDS CHIEF COMMISSIONER AND PITMILLY.

1819.
July 5.

Damages for
defamation.

AITKIN v. REID and FLEMING.

AN action of damages, for defamation, against the defenders, *or either* of them.

DEFENCE.—The action, as laid, is not relevant; but if relevant, the statements are denied.

In this case, the Issue was, Whether on or about, &c. the defenders, or one or other of them, did falsely, &c. state to, &c. “ that
“ the pursuer had entered into a collusive
“ agreement with Duncan Weir, for the
“ purpose of defrauding Mr Alexander Bonar,” &c.