

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 Bon-
“ nar,” &c.

A witness having stated that a person had informed him that Mr Bonar had heard the report,

Cockburn.—This is not evidence.

LORD CHIEF COMMISSIONER.—It is not evidence of the words, but it may shew that Mr Bonar acted upon the information.

Jeffrey.—The pursuer was anxious to bring only the person with whom this report originated. He traced it up to the defenders, who each stated, that he had it from the other.

Cockburn for Reid, and *Forsyth* for Fleming, stated, The pursuer is not entitled to damages for any silly expression, even though damages followed. The pursuer has not proved his case.

LORD CHIEF COMMISSIONER.—There are disadvantages in allowing actions of this sort, where there is no accusation of a crime, or allegation of specific damage. By the law of Scotland, however, any thing defamatory is the foundation of an action.

In all cases, it is most material to inquire, 1st, Whether the matter in the Issue is

AITKIN
v.
REID, &c.

In damages for defamation, proof of a report competent to shew that a person acted upon it, but not competent in proof of the words reported.

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proved? and 2d, Whether any, and what damage is proved?

It appears from the Issue, that the accusation was, of having entered into a collusive agreement; but the nature of the agreement is not stated.

Whatever the statement was, it appears to have originated with Fleming. Three witnesses speak to the words. The first says, they *could*, or *would*, which does not amount to proof of the Issue, which is, whether they *had* entered into a collusive agreement. You must consider whether the statement was made; and if it was, then the law infers damages; but I think in this case the amount will be very small, as Fleming regretted having mentioned the story, which takes away the malice, except such as law presumes.

As to Reid, if he propagated the slander, he is equally liable with the other. As to what he said at a subsequent period, it is not in the express terms of the Issue; but you are to say whether he intended to impress his hearers with the belief that the pursuer had entered into a *collusive agreement*.

There is no specific damage proved; and you will, I have no doubt, treat the case with

that moderation which is the best way of doing justice.

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Verdict—"For the pursuer, L.30 damages against Reid, and L.20 damages against Fleming."

Jeffrey for the Pursuer.

Forsyth for Fleming.

Cockburn for Reid.

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PRESENT,

LORD CHIEF COMMISSIONER.
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BEATSON v. DRYSDALE.

1819.
July 8.

AN action of damages for assault and battery.

Damages for assault and battery.

DEFENCE.—A denial of the assault charged.

ISSUE.

"Whether, upon the 18th day of August 1818, or about that time, the defender did, at or near the harbour of Burntisland, vio-