

amenable on the ground that the *locus solutionis* of the contract concurred with personal citation within the territory. There was no doubt that as regarded this Court that was a good ground of jurisdiction. If a contract fell to be performed in this country, and the foreigner bound in performance was cited here, there was undoubted jurisdiction to enforce the contract. But was that ground equally applicable to Sheriff Courts? Now, it fell to be asked, first, whether, supposing the defender here to be a Scotchman, domiciled in a different sheriffdom, the concurrence of these two elements, *locus solutionis* and personal citation, would suffice to subject that domiciled Scotchman to this Sheriff Court in any cause. Now, though there was no direct authority, there was no doubt that that was a good ground of jurisdiction. That was assumed in the case of Logan, decided in the Judiciary Court in 1859 (3 Irv. 323). The next question was, did that apply equally in the case of a foreign defender. There was no difficulty in so applying it, especially looking to the statutes. Foreigners were those "furth of the country." It was true that the Supreme Court was generally spoken of as the *commune forum* of all foreigners, but "foreigners," as a class, mean foreigners out of the country, as to whom the general rule, no doubt, was that you could only cite them edictally to this Court. But there were many exceptions. A foreigner might, in some cases, be cited on a forty days' residence within the jurisdiction of the Sheriff, and there was therefore nothing in the character of a foreigner making him less amenable to local than to supreme jurisdiction. Here the defender was found in the place where, and at the time when, he was bound to perform the contract, and jurisdiction was well founded.

The other Judges concurred, and the interlocutors of the Sheriffs were therefore altered, and the jurisdiction sustained.

Agent for Advocators—James Webster, S.S.C.

Agents for Respondents—Cheyne & Stuart, W.S.

Thursday, Feb. 21.

FIRST DIVISION.

GOUROCK ROPEWORK COMPANY v. FLEMING.

Issues—Marine Insurance Policy—Deviation. Issues to try a right to recover under a policy of Marine Insurance, the defence being that the ship had deviated, and the answer to that defence that the defender knew of the deviation when he entered into the contract.

The pursuers of this action sue the defender, who is a merchant in London, for £300, being the extent to which a policy of marine insurance over a cargo of hemp, shipped to the pursuers on board the steamer Cronstadt, was underwritten by him. The steamer sailed from Cronstadt on 19th November 1864, but foundered at sea and was lost, with all its hands and cargo, on 30th November. The defence was, that the defender was liberated from his obligation under the policy, in consequence of the Cronstadt having deviated from her course and towed into Revel Roads a ship called the Agincourt, which was loaded with Government supplies for the Amoor. It was admitted that the owners of the Cronstadt had received £2000 for salvage services in saving the Agincourt. The defender averred that the average voyage from Cronstadt to Leith was six days, and that had there been no deviation the

steamer would have reached Leith five days before she was lost. The pursuers' reply to this defence was that the fact that the Cronstadt had gone to Revel was known to the defender when he entered into the policy, but this the defender denied.

The following issues were to-day adjusted for the trial of the cause, viz. :—

"It being admitted that the defender granted the policy of insurance, No. 7 of process :

"Whether, in or subsequent to November 1864, during the currency of the said policy, goods belonging to the pursuers, on board of the steamer Cronstadt, mentioned in the said policy, were lost by the perils of the sea insured against; and whether the defender is, under the said policy, resting-owing to the pursuers in the sum of £300, or any part thereof, with interest thereon at the rate of £5 per centum per annum, from 2d January 1865 till payment?"

Counter Issue for Defender.

"Whether the steamer Cronstadt deviated from the voyage set forth in the said policy of insurance?"

Additional Issue for Pursuers.

"Whether the defender undertook the obligation contained in the said policy in the knowledge that the steamer Cronstadt had deviated from the voyage set forth in the said policy?"

Counsel for Pursuers—Mr Clark and Mr Shand. Agents—Duncan & Dewar, W.S.

Counsel for Defender—Dean of Faculty and Mr Hunter. Agents—Morton, Whitehead, & Greig, W.S.

CARSTAIRS AND OTHERS v. KILMARNOCK POLICE COMMISSIONERS.

Statute—Construction. Terms of a local statute which held to authorise the magistrates of a burgh to compel proprietors of buildings in a street to form a footpavement in front thereof.

By the Kilmarnock Police Act, 10 and 11 Vict., cap. 207, sec. 33, it is enacted "That the owners and proprietors of all houses and buildings, or of gardens or grounds adjoining to or fronting any street, square, or public place, or lane or passage already formed or to be formed within the limits of the said burgh, shall, at his, her, or their expense, and in proportion to the extent of the fronts of their respective properties, or of the rents of their houses as aftermentioned, cause the whole of the said streets, squares, or other public places, lanes, and footpaths, and passages, to be well and sufficiently paved, causewayed, or macadamised with whin or other material, of such breadth and in such manner and form as the commissioners, after visiting the grounds and hearing the parties, shall direct and appoint, and shall thereafter, from time to time as occasion may require, repair and uphold and maintain in repair the said streets, squares, public places, lanes, and passages." The next section of the Act (section 34) provides for the mode of enforcing the obligation upon owners and proprietors, and for the recovery by the commissioners of any expense they might incur in paving or repairing streets, in case of the owner's failure to do so.

By section 124 of the said Act it is enacted—"And whereas the personal performance of statute service has not been required for many years in the county of Ayr, a reasonable composition in money in lieu thereof having been found more useful and expedient, and it will farther be more conve-