

STEVEN and COMPANY *against* DOUGLAS.

AN advertisement was published in the Belfast newspapers, 23d November 1770, in the following words:—"For Greenock—The Belfast Trader, John Haughton, master, now at the quay, taking in goods,—will certainly sail the 25th instant."

In consequence of which Mr Stuart at Belfast, agent for Steven and Company at Greenock, put aboard that vessel a quantity of hides—of which he advised his constituents, and got a bill of lading from the master on the 27th. On the 8th of December the vessel took out a clearance from the Custom House at Belfast, as bound for Greenock, and without mentioning any other port.

It appeared, however, that some goods had been put aboard the vessel to be delivered at Stranraer.

The vessel set sail 11th December, and that same night, betwixt the 11th and 12th, was wrecked near Girvan, and the whole crew perished.

The same day, about noon, insurance was made on this vessel at Glasgow, with Douglas, who underwrote a policy upon her for L.80. The terms of the policy were, beginning this adventure at and from Belfast, to continue and endure until the said Belfast Trader, with the said goods and merchandize, shall arrive at Greenock or Port-Glasgow, and be there safely unloaded.

After the loss of the ship, Douglas disputed the payment of the sum insured. He insisted that any deviation, which totally altered the risk, liberated the insurer: That though in this case there was not, nor could not be, a direct proof of the deviation, the crew being all lost, yet, from facts and circumstances, there was proof sufficient to show that the ship did intend to go to Lochryan, to land the goods she had on board at Stranraer, and that the loss actually happened in the course of deviation; the wreck being found quite out of the ordinary course between Belfast and Greenock.

On the other hand, it was denied that there was any proof of deviation; and further, that no deviation whatever, made by the shipmaster, without the knowledge of the insured, provided the insured was not an owner of the ship, could vacate the insurance.

The Lords found the deviation proved, and assolyied the insurers.

Another case occurred,

1776. *January 23.* WILSON and COMPANY, Merchants in Glasgow, *against* ELLIOT and OTHERS.

Wilson and Company, intending to send some tobacco from Carron to Hull, sent the tobacco to Carron; and a few days after, their broker, by their order, presented a policy to be underwrote by Elliot and others, to insure the tobacco from Carron to Hull, with liberty to the ships to call as usual. Upon the remonstrance of Elliot, &c. that this liberty was too general, some communing passed betwixt them and the broker; and it was filled up, with liberty to call at Leith, but without authority from Wilson and Company.

By this time the vessel was sailed; but instead of calling at Leith, by direction of her owners, she called at Morison's Haven, without the knowledge of the insurer or insured, or the broker; and after staying four or five days, and taking in a cargo of victual, she sailed for Hull, and was next day, after regaining the line of course from Carron to Hull, lost in a storm of snow, near to Holy-island.

In three several pursuits before the Judge-Admiral, at the instance of Wilson and Company against the Underwriters, the Broker, and the Carron Company, owners of the vessel; the proceedings against the two last having been staid, Wilson and Company went on against the underwriters. But the Judge found, That, in all cases of insurance of goods on shipboard, belonging to others than the owners and master of the ship, it is a general rule in law and practice, that the insurance is effectual, although the loss may have happened in a deviation from the voyage upon which the insurance is made, the insured not knowing of nor consenting to such deviation; therefore, he found the underwriters liable, and decerned accordingly. And in a suspension, the Lords, 23d January 1776, though they did not adopt his *ratio decidendi*, yet having considered the policy of insurance, and whole circumstances of the case, they found the letters orderly proceeded, and decerned.

Had the loss happened in the act of deviation, it is probable the Lords would have followed the precedent, in the case *Steven and Company* against *Douglas*. But in this case the ship had regained the course from Carron to Hull, and was lost in that course. The difference between calling at Leith and calling at Morison's Haven appeared minute and inconsiderable: the ship was no longer detained at the one place than she would have been at the other; and if every trifling alteration of a voyage was to be considered as a deviation, all insurance at sea would be at an end.

Cases and opinions of lawyers and Judges in England were quoted on both sides. The question was not without difficulty.

The Lords, upon advising a reclaiming petition and answers, adhered.

This cause was appealed; and the decree was reversed by the House of Lords, 25th November 1776. The Underwriters were found not liable for the sums insured, but only to repeat the premium.

Lord Mansfield, it is said, considered it as a clear deviation,—and that the question came simply to this, was Leith Morison's Haven? An allowance was given to call at Leith, but none to call at Morison's Haven. He instanced a policy on a ship to sail from the Downs with convoy, but the convoy having sailed, she followed and came up with it at Portsmouth, the underwriters were liberated. The terms of policies of insurance must be strictly adhered to, otherways all insurances would be at an end.

1765. August 7. M'NAIR against GRAHAM, &c.

ROBERT M'Nair, merchant in Glasgow, had a ship at Virginia, loading with lumber for Barbadoes, under the care of his son James, who wrote to his father, of the 7th and 22d May 1750, that he was loading the ship for Barbadoes, with