

vants or assigns,) to sue, labour and travel, for, in and about the defence, safeguard and recovery of the said goods or merchandizes, or any part thereof, without prejudice to this insurance, to the charges whereof we the assurers will contribute according to the rate and quantity of the sum herein insured; and so we the assurers are contented, and do hereby bind *The Maryland Insurance Company* to the assured, their executors, administrators and assigns, for the true performance of the premises, confessing ourselves paid the consideration due unto us for the assurance by the said assured, or their assigns, after the rate of five per cent. on cargo by said boat insured against all risks. And in case of loss, the assured is to abate two per cent. and such loss to be paid in ninety days after proof and adjustment thereof, the amount of the note given for the premium, unpaid, being first deducted. And it is mutually agreed, that if any disputes shall arise relating to a loss on this policy, it shall be referred to two persons, one to be chosen by the assured, the other by *The Maryland Insurance Company*, which two persons shall have power to adjust the same; but in case they cannot agree, then those two persons shall choose a third, and any two of them agreeing, their determination shall be obligatory on both parties. In witness whereof *The Maryland Insurance Company* have, by the president, subscribed the sum insured, and caused their common seal to be annexed to these presents in *Baltimore*, the twenty-fourth day of September one thousand eight hundred and two." The general issue was pleaded. Verdict and judgment for the plaintiff, from which the defendants appealed to this court.

The cause was argued before CHASE, Ch. J. BUCHANAN, GANTT, and EARLE, J.

Martin, for the Appellants. This action is founded upon a policy of insurance executed by an *incorporated company*, under their common seal, which therefore is considered a *specialty*, and the action must be covenant or debt. No person can sue upon the policy but he who can be considered a *party to the specialty*. The policy cannot, as to the assurers, be considered a *specialty*, and as to the assured a simple contract. An agent cannot seal an instrument for another, so as to be obligatory. This

1810.

Maryland Insurance Company
vs
Graham