

transcript. And part of the record only being produced, was not sufficient evidence to support the action in this case.

JUDGMENT REVERSED, AND PROCEDENDO AWARDED.

1810.

Patterson
vs.
Maryland Insur-
ance Company

PATTERSON VS. MARYLAND INSURANCE COMPANY.

JUNE.

APPEAL from *Baltimore* County Court. An action on the case was brought by the appellant, (the assured,) against the appellees, (the assurers,) on a policy of insurance, dated the 23d of October 1795, whereby the assured caused himself to be insured, lost or not lost, at and from *Baltimore* to the coast of *Africa*, with liberty of trading on the said coast, and at and from thence back to *Baltimore* again, upon the body, tackle, apparel, and other furniture of the schooner called *The Industry*. The declaration contained four counts—The first on a *Barratry* by the master and marines, whereby the vessel was wholly lost to the assured. The second on a *Barratry* by the master on the 1st January 1796, &c. The third for a capture by pirates, &c. The fourth for a capture by persons unknown, &c. Plea, the general issue. At the trial the plaintiff, (now appellant,) read in evidence to the jury the policy of insurance, dated the 23d of October 1795. He also gave in evidence, that at the time of making the policy, he was and still is a citizen of the *United States*, and then was the sole owner of the schooner *The Industry*, mentioned in the policy, an *American* vessel, regularly documented as such; and that the said schooner sailed from the port of *Baltimore* in good safety, on the voyage mentioned and described in the policy, on or about the 23d of October 1795, with *Nathaniel A. Ogden* on board as master, and *Thomas Buckner* as mate, for the said voyage, and a certain *Charles Leonard Le Baron* as supercargo for the said voyage. That on the 23d of May 1796, the schooner *The Industry* returned to *Baltimore*, and was reported and entered at the custom-house there, by the plaintiff, as coming from *Saint Bartholomew's* in the *West Indies*. That the said master, mate and supercargo, arrived in the said schooner at the port of *Baltimore*, together with one *Henry*

A voluntary affidavit makes an equal grade with hearsay testimony in the scale of evidence, and in no case is received where better testimony can, from the nature of the case, be had.

In an action on a policy of insurance, in order to prove the several matters alleged in the declaration, the plaintiff offered to read in evidence a protest made by the captain, & others, of the vessel, on her return, before a notary public in *Baltimore*—*Held*, that the protest was merely a voluntary affidavit, and a notary public, except in those cases where a protest by *lex mercatoria*, or by statute, is authorized, has no authority to take a protest.

The point of view in which the authority of a notary public is to be considered generally, relates to those commercial transactions occurring in one country which are to be proved in another, or in which foreigners are interested, and the office derives its existence from the courtesy of one nation to another. And where he is to do certain acts by statute, the authority is limited to its designated object.

The protest of the captain is not the best evidence the nature of the transaction admits of. It is not to be considered as a deposition *de bene esse*; and it cannot be used as *prima facie* evidence only, which is equally as objectionable as if used as positive proof; for it would throw the *onus probandi* on the opposite party.