

1810.

Patterson
vs
Maryland Insu-
rance Company.

tests be noted or made within a reasonable time after arrival. And thereupon the plaintiff, to prove the several matters contained in his declaration in this cause alleged, produced a *protest* made in the port of *Baltimore* on the 26th of *May* 1796, by *Ogden, Buckner, Hains* and *Mannel*, by *Thomas Donaldson* before mentioned, and by him duly certified under his notarial seal, and recorded in his office, and offered to read the said protest to the jury, for the purposes aforesaid, as the protest of the said master and mate. He also, for the purposes aforesaid, produced a *protest* made in the island of *Saint Bartholomew's*, in the *West Indies*, on the 26th day of *March* 1796, by *Ogden, Buckner, Hains*, and one *John Cockeny*, then a seaman on board of the schooner, before a notary public there, and duly certified by him under his notarial seal, and offered to read the last mentioned protest in evidence, for the purposes as aforesaid, as the protest of the master and mate. The defendants offered in evidence, that *Ogden* and *Buckner*, from the time of their arrival at the port of *Baltimore*, resided there for several years, and that the defendants had no knowledge of the protest of the 26th of *May* 1796, or of the matters therein contained, until and after the institution of this suit, and that the plaintiff, from the making of the policy of insurance, until the present day, hath constantly resided at *Baltimore*. The defendants objected to the reading of the protest of the 26th of *May* 1796, to the jury. And the court, (*Nicholson*, Ch. J. and *Hollingsworth*, A. J) sustained the objection. The plaintiff excepted; and the verdict and judgment being against him, he appealed to this court.

The cause was argued at the last term before *CHASE*, Ch. J. *GANTT*, and *EARLE*, J.

Martin and *Harper*, for the Appellant, contended, that as the master and mate were both dead, the protests made by them, and the seamen, ought to have been received in evidence upon common law principles, as the seamen were transient characters, and it was not known where they were to be found. They cited *Peake's Evid.* 14, 15; and *Bryden vs. Taylor*, 2 *Harr. & Johns.* 396.

W. Dorsey, for the Appellees. The protest of a captain can only be read in evidence to invalidate his testimony;