

1810.  
 Patterson  
 vs  
 Maryland Insu-  
 rance Company.

court. It is evidence to impeach the credit of the captain, and those who have signed it, when examined in relation to the facts and circumstances detailed in it, without laying any foundation for introducing it, in the same manner that a deposition is evidence to impeach the credit of a witness when examined in court, by showing he is inconsistent, or has contradicted himself. The credit, the protest is entitled to, must be determined by the jury under all circumstances and the evidence in the case.

A deposition legally taken is not evidence *per se*, and cannot be admitted without showing the death of the deponent, or his not being amenable to the process of the court. This case is not distinguishable on principle from the ordinary case of receiving depositions in evidence; for the protest is taken by a public officer authorised to take it, and whose office and authority are recognized by the courtesy of nations.

The usage of trade and general utility, from necessity, require the admission of this kind of testimony, subject to the restrictions already mentioned.

It would be to little purpose to allow of protests, in commercial transactions, to be made on oath before a notary public, and to be by him recorded, if copies of such protests cannot legally be received as evidence in those cases in which the persons who made the protests are dead, or not amenable to the process of the court.

Although the evidence of seafaring persons, and others, may be perpetuated in the manner the acts of assembly have prescribed, those provisions do not exclude this kind of testimony, but must be considered as supplying additional means of proof.

The office of notary is an office of public notoriety; and acting under the solemnity of an oath, his acts are recognized by the courtesy of nations, and considered as records, with the view of furnishing evidence in those cases to which his acts refer.

In this case it is admitted by the counsel, that the protest was made in convenient time, and it appears to have been made at the proper place—the port of destination, and where the parties concerned in interest resided at the time.

It is proved in the case, that the captain and mate, whose testimony was objected to, were dead at the time.