1846 January 30

Claims of Indemnification for Losses sustained by the Charterers of the Brig Isabella of Dundee arising from the injudicious conduct disobedience orders and neglect of duty on the part of Mr James master and part owner of said Brig Isabella

Mrs Ann Gall or Bower and Catherine Gall having agreed to Charter the Brig Isabella of Dundee whereof Mr Thomas Coupar is managing owner it was represented by said Mr Cooper that the Isabella was available for carrying large Cargoes and showing a Book representing her to have discharged 519 Tons Coals at a very inclement season of the year at same time stating that he had no doubt on his part but that she would carry from 450 to 500 Tons Guano. On the faith of the Statement the Isabella was Chartered by the above parties being led to expect that the Isabella would discharge 170 or 180 Tons and that the master and officers would use every diligence in Sailing the Vessel and in procuring Cargo how far the Contract has been fulfilled is now Submitted to your Consideration.

1st. The Isabella having sailed from Port Glasgow on 7th day of Sept 1844 arrived at the Island of Ichabo on 27th November making a passage of 71 days. After several preliminaries in procuring Stage Ice on the morning of the 3rd Day of December the Supercargo went on shore with one boy to fill bags of Guano leaving with Capt James his Ships Company to move ship to a loading berth. Instead of Capt J doing so he went on board of the Brig Harry Bell with a boats crew and assisted her down thro’ the fleet and out to Sea (the Harry Bell being at same time in want of no assistance or in distress having a clear passage thro’ the fleet) by such unwarrantable conduct on the master of a twice Chartered ship we hold that we have lost one day at £200 per month amounts to £3.11. 6 besides the loss of one days time finding Guano while it was plentiful.

2nd. In the morning of Thursday 19th December got Coal of a French Barque called the Bellochaunt of Nantes (Capt James having previously given said Barque a foul Berth) and got one long Boat stove thro the negligence of the Watch on Deck, the Supercargo seeing that Capt James did not in pursuance of his duty endeavour to procure or borrow a Boat and at sametime procured the Carpenter of the Brig Jeminie to assist in repairing the Isabella. We therefore charge £3. 0. 0 for the use of Cargo Boat and Three days loss of time amounting in all to £22.14. 6. The boat procured being only half of the burthern of the Isabella. It may here be remarked that Capt James conduct was not that of a man endeavouring to procure cargo because so soon as his ship was Clear he went to Bed being 9 o’clock morning instead of endeavouring to procure a boat to load. H could not complain of fatigue any more than the Supercargo being both on Deck immediately after the affair occurred so that it must appear that Capt James conduct had no tendency towards obtaining cargo but to obtain all the ease he could.

We may now proceed to give a general outline of Capt James Conduct at Ichabo. Capt J. did not moor his ship in a situation to procure cargo at Ichabo altho such berth was pointed out to him by the Supercargo and also by 2d Officer he having requested them to observe in their passage to and from the Ship what Berths were vacant. That the Isabella after leaving his first Anchorage was not during all the time of his lying at Ichabo moved to a clear Berth he having brought the ship up close to a sunken rock and foul of other vessels the consequence of which was that the ships Company were frequently obliged be on board all day to prevent damage and often during great part of the night they were up for that purpose and consequently incapacitated from working during the day but in no instance did Capt James disturb himself his anchor having been brought to the (*illegible*) time after time and he in Bed.

That Capt. James usual time of getting out of Bed while laying at Ichabo and on the passage being from 11 to 12 o’clock A.M. is a gross dereliction of duty in a Ship Master whether on a tied Chartered Ship or on his owners account and he farther giving orders that his Ships Company should have breakfast before they went on Shore and in consequence not reaching the Island until 8 or 9 o’clock A.M. in order that he might it have to get out of bed to look after the Ship while the Cook and Boys were taking the breakfast on shore is one of the great causes of the Isabella not procuring Cargo at Ichabo.

That Capt. James did not at any time give his ships company any encouragement either by word or deed to procure Cargo inn fact it was seldom that he saw them unless during the days that they were totally on board.

That the Supercargo having been on Shore some days with a portion of the Ships Company filling Guano informer Capt. James that it would be necessary for him to send his mate on shore with his people received for answer that he (Capt. James) did not care a dam for him, that he was not his master neither was his name in the Charter party but that if Mr Bower would give him a letter off his hand that he would not take a swift order from him which was evidently setting at defiance the authorised Agent of the Charterers and the only practical person on board belonging to the Charterers and exhibiting a determination to be under no Control but to follow the bent of his own inclination and when his mate did come on Shore he told the Supercargo in plain language “that he would be dammed if he was going to make Common labourer of himself for any man” at same time he remarked that the Supercargo who never ordered him to put his hand to anything he then as the leading man the ship in Combination against the Supercargo who had cautiously studied not to give any offence to them or to any one on board for in reply to the ungentlemanly Conduct of Capt. James the Supercargo merely stated that it would be a long time before he would make use of such words to Capt. James.

The Supercargo stated that he kept his eyes shut to the conduct of Capt. James until such times as he was obliged to open them by the remarks of the Shipmaster and would have continued that way for the sake of peace, if they had not told him that he was accessory to the ruin of the charters if he allowed Capt. J. to act as he did. The supercargo therefore determined that his conduct should be laid before the Charterers and owners of the Ship and he as a practical man now states that no man eve went out to the Isabella of Ichabo or any other Island for a cargo of Guano expecting to get on by such Conduct exhibiting nothing but Carelessness, sloth, indolence and want of honor, principal in the discharge of the duties incumbent on him in the executing of a legal Contract. And the Capts own words is strong presumptive evidence of the Statement vizt: “that if the Ship had been in the Owners account he (Capt. James) would have kept double the quantity into her. We do not doubt it, if the ship had been in the Owners account there would have been no lying in Bed until noon, no Combination against the Supercargo and the vessel would have had double the quantity into her at the time of leaving Ichabo we could have managed the remainder. Anyone examining the Charter will be able to decern whether or not Capt. James was equally entitled or bound to exert himself as if the Ship had been on the Owners account. We can see nothing in it binding the Supercargo to fill Guano, carry it on his back, load a Boat or take charge of one when loaded or to anything relative to the loading the Ship any further than giving Capt. James directions but all these things the Supercargo did do repeatedly and on several instances he brought onboard his Boatload of Guano in a morning before Capt. James got out of bed. It has been advanced that the Supercargo ordered Capt. James off the Island, the Supercargo repels the charge as a falsehood but admits that on 2d day December 1844 having sent on board for a plank and Capt; James came on Shore with the Boat and sent the hands off the Island to dinner (other masters it may be remarked here were known to Cook the Dinner and scull it on shore Capt. J. could not allow it to come on the same boat with him,, the Supercargo declined going on board; the Captain’s boat crew commenced filling Bags under his Superintendence, Supercargo carrying Bags from another place. Capt. James ordering that all the feathers might be picked out causing a depletion in filling of the Bags, the Supercargo seeing this merely said in these words or words to that effect “if we are to be so particular as that Captain we may drop it, we will not get a cargo by this means let us fill it as it cones it is going in the Bottom of her at any rate”; if such conversation amounts to an order for Capt. James to go off the Island it remains for you to decide.

The Captains personal Spite or animosity at Supercargo is no ground of excuse for his Conduct towards us the Supercargo from gave him no advice tending to bring loss or damage upon the owners of the Ship or hardship upon himself or Ships Company therefore we hold that Captain James should have used all the exertions within the Compass of his power, the Charter of the Isabella drawn up upon principles of the protest honestly and fairly the Charterers taking all the rest upon themselves as regarding finding Guano Deposits and entailing no loss upon the owners in the event of Cargo not being obtained and showing not backdoor of escape to them. according to Common Law the Master of a Ship is bound to conduce himself with all good faith, diligence and competent naval skill and likewise according to the laws of equity and justice we hold that Capt. James has done none of these things, if his exertions had been on an average with the Shipmasters at Ichabo a Cargo would have been obtained then how much loss the Charterers have sustained by not getting Cargo remains for you to decide.

The Supercargo seeing by what had passed and judging from the Quantity of Guano on the Island that a very small portion more could have been obtained and being aware that Guano existed to the Southward and seeing farther that active steps were decidedly incumbent on the part of every one connected with the Charter to prevent loss to the Charterers and Capt. James having particularly refused to proceed to the Northward in search of Guano deposited was under the necessity of forming the resolution of going to the Cape of Goodhope and in pursuance of his resolution did on the morning of Monday 14th Current Capt. James having previously stated that his vessel could be ready for Sea on that day) The Isabella being ready for Sea on Thursday 16th said month and the wind being from the Northward and other Vessels having sailed (the Brig Hector of Dundee for instance to the Cape) the Isabella being unmoored and lying at Single anchor Captain James instead of getting underweigh did leave the Ship in Company with another Ship master and did without any just cause or caution allow his vessel to remain at anchor and delayed sailing until Saturday 18th said month by which conduct he brought a lengthend passage of Twenty one days upon the Charterers and the Cargo to a falling market whereas the Hale sailed from Ichabo the 16th said month and reached the Cape in eleven days. The Isabella could have done the same and if she had arrived in the Cape the week sooner than she did her Cargo would have brought Five pounds pr Ton. Consequently the loss arising to the Charterers in time itself is Twelve days which is £6.11. 6 pr day amounting to £78.18. 0 and considering as we do that Capt. James did not Conduct himself with fidelity and Vigilance as in law bound in not sailing from Ichabo on the day which his instructions from Supercargo order which order no officer to be part and parcel of the Vessels Charter and equally binding do if the day of sailing had been mentioned in that Charter consequently we must insist in law and equity not only in the act of disobedience in itself but also in the consequences of that act. The determination of value of Cargo between the time that the Isabella arrived and the time that she ought to have arrived if no act of disobedience had been committed the Cargo having been illegally disposed of at Two pounds Ten shillings per Ton instead of Five pounds & therefore the difference was One hundred and Forty tons Guano vizt £2.110.. 0, £350. 0. 0.

The Cargo was sold at Cape of Good Hope in order to procure Licence to load at Salanda Bay and sold at a ruinous sacrifice. Capt J. was required to send it home and consign it to his owners as paying freight and sustenance and all other incidental expenses and arriving here in the month of May would have been ample security for his bonding his vessel to procure Licence and left a large profit to us besides a saving of time but altho’ the seventy or Eighty sail of vessels some on time Charter and some otherwise did do so Capt. James would not insisting that the had no right in the face of all these precedents to do so; now we hold that if the Ship had been there on the owners account he would have done it and in order to save his owners from loss it was his duty in this case to do it for if the Isabella had arrived here without a cargo of Guano while Guano existed on the West Coast of Africa the owners would have been entitled to no freight or only a proportional rate of freight pr Ton for quantity delivered: our cargo was therefore thrown away to save the owners from loss and accordingly in law it was his duty to procure Licence as will be seen from the following quotation.

“It is very clearly settled that the master when abroad and in the absence of the Owner may hypothecate the ship to raise money for the Completion of the objects of the voyage”.

The Isabella sailed from Table Bay Cape of Goodhope on Saturday 1st day of March 1846 and arrived at Saldando Bay on Sunday 2d day of March and being abreast of Malaga Island at 3 o’clock afternoon and there being at the Island Thirteen vessels large and small plenty of room and good anchorage and the weather being very fine Capt. James did not as in duty bound bring his Ship to an anchor at said Island but did proceed to Hoetyes Bay a distance of from 2 to 4 miles from said Island which he remained at anchor until Wednesday 6th day of March on which day he got under weigh and turned up to said Island by which conduct on his part Three days were lost to Charterers amounts to £19.14. 6. It may be remarked that the anchorage at Malaga Island was perfectly safe and during the whole of the Isabella’s stay there was only one instance of a vessel (*word illegible*) during had on examination it was found that she drove thro’ insufficiency to her ground tackling..

The Isabella being moored at Malaga Island on Wednesday 5th March and sufficient room to load at Hayes and Capt. James having previously disposed of ships long Boat at Cape Good Hope the Isabella did lie at said Island until the 9th day March without any Boat belonging to her Capable of loading Cargo; in the meantime loaded Fifty Five Tons with boat belonging to Charterers for which we charge at same rate as Cape Boats allowing Nine Tons as a load for a Cape Bat viz Six Cape Boat loads at Twelve Shillings pr Load amounts to £3.12. 0. Again if the Ships Boat had been in use along with the Charterers Boat double the quantity could have been loaded, it must thence arise that half the time was lost to the Charterers of the Ship amounting to £46. 0. 6.

Whereas it being incumbent on Masters of vessels whose vessels are Chartered to perform certain duties at a given sum pr day, week or month to keep the full Complement of their Crews in a state of efficiency for work by a loading port and in the event of any of the Ships Company being sick or troubled from work to employ labourers in their place (provided always that such labourers can be obtained) and several of the Isabella’s Ships Company being off duty from time to time the Supercargo having intimated as above to Capt. James such intimation was treated with contempt loss as under James Wighton discharged 19th July and no one in his place until 1st March following, 9 days.

Alexander Rollo Carpenter lame 30 days

James Munro sick 1 day

Jno. Francis sick 1 day

James Bell sick 9 days

Jno. Robertson sick 14 days

In all equal to 4½ Days Ship amounts to £26. 6. 0

This falls immediately within the line of dismissal because if a Ship has so many days to load and his Ships Company falls sick it is then incumbent on the master to employ labourers in order that the Vessel may be loaded before the days are up.

That on 6th day of May 1845 Capt. James did without consulting Supercargo pronounce the Isabella a loaded ship; on the morning of the 7th the Mate Mr Playton commenced moving out and had the Isabella partly unmoored when Capt. James came on Deck ½ past 10 o’clock and ordered him to leave mooring and wash Decks, afternoon moored Ship afresh by which Conduct one day was lost £6.11. 6, it may here be remarked that the Isabella was not a loaded ship and it was said by a very Competent judge of shipping that on arrival in the English Channel she would be recognised more as a Cotton loaded Ship and on arrival in the channel her light appearance was the cause of our having to go into Falmouth. Fox’s people never for one moment imagining that she was the Isabella a Guano loaded Ship or they would have come out to us.

That the Isabella being unmoored and out at single anchor on the 8th day of May said month and Clear of the Shipping and the wind being from SSW Capt James did without any plausible reason remain at anchor there being a Smart working Breeze altho’ the May of Sport drawing 18 feet water and the Garland of Greenwich sailed and got out well and clear of every thing by 2 o’clock pm which was certainly a great loss as ship pr day she had to sail with the wind at North and that wait two days £6.11. 6 one day.

That the Isabella having no long boat and the Charters Cargo Boat having taken for all the uses and purposes of the Ships long Boat at Malaga Island and during the passage or charge for the accommodation taken £2. 0. 0

That Capt. James conduct at the Island of Malaga when plenty of Guano was before him is decidedly a farther consideration of his carelessness and indifference regarding the loading of his own Ship and for the sake of Mr Watson we shall mention a few things which we consider of a ruinous tendency to us and possibly illegal in themselves, usual time of Capt. James getting out of bed same as Ichabo and on some occasions later and which other Vessels instead of sending the Cook on shore to Cook the victuals on the Island he kept two or three spare hands on board they all but idle for this reason there was no one to send them to work and if the Supercargo told them to mend a Bag or wash Bags he was told by them that they had no business with the Bags, they (the Boys) did not belong to the Ship that for a period 16 days or so the Ships Company had no liquor and consequently the work did not progress rapidly that Capt. James left his Ship frequently and went on board of other vessels taking a hand with him and assisted them to moor and unmoor and upon one particular occasion he left his own Ship taking a hand along with him and assisted another vessel to moor while there were only three hands to discharge and start a Boatload of Guano into the Hull. In fact it almost it almost appears to us as if he had gone there for the purpose of assisting others instead of loading his own Ship and farther that on the 6th day of April a smart Breeze of wind came away from the northward causing the Isabella to swing one way and a barge called the Majestic to swerve the opposite way by which occurrence the Majestic's Topsail was brought nearly under the Isabella’s Bowsprint, this occurred at or near noon Capt. James being in Bed. The Cook and two hands on board had to stow sails and let out both cables to prevent the Gibboom taken out of the Isabella and during all these occurrences we do not find that Capt. James ever so much as looked up the Companion to see what was going on . We do not impeach Capt. James sobriety but we can hardly imagine that such things can occur on board of a Ship and a person on board of her not hear it. Capt. James own worth goes to support in a strong measure a great part of the foregoing statement for one of the Ships Company having told him something regarding the Pits on shore he was heard to remark in the words or something near akin to them “I’m dammed if I care, the more months the more money”. An expression portraying in better Colours than we can find an exact expressions of his own Conduct during the voyage and certainly giving strong indication of Carelessness and want of interest in performance of Contact to the last.

That Capt. James Conduct at Sea was of a piece with all the foregoing assertions and in order that the arbitrars in this Case may be able to form a correct idea of the tendency of such conduct we shall make a few remarks.

Sunday 11 May 1846 Closed Reefed Topsail Captain in Bed

13 Maintopsail lowered on Cap to repair 3 hours and Topsail 7 hours Wind at SW

16 5 of AM Double reefed Topsail Capt. in Bed

17 Fore Topsail in Cap repairing 7 Hours

23 Capt too late getting out of Bed to take observations Sun Meridian altitude

24 Capt. Too late getting out of Bed to take observations Sun Meridian Altitude

1st June remained too at Midnight expressly to make St Alebua at Day light. Capt remained in Bed until noon while the ship was standing to the Westward. The first instance we should say of a person *standing?* too at night to look for Land and never thinking of looking for it until morning

19 Fore Topsail on the Cap repairing 8 hours Wind NE to NNE light steady Breeze

20 Got hold of NE Trade wind and on coming across them the Winds prevailed from ENE to E by South and no shedding Sails were set; now we hold that that this was tending to lengthen the passage as it is almost a general rule for all Ships to carry Shedding Sail in these trades even if the wind in the NE Trades at East on an average and NO Shedding Sails set. This is fair sketch of the general attention at Sea.

The system of Shipping sails as practiced on board of the Isabella is also farther proof that those in authority on board of her did not care how long the passage and displayed along with the other proofs adduced a Strong want of good faith, diligence or any thing like a wish to deal justly; the plan produced generally was first to send a Topsail down on deck then get the other one to be bent from below then expend an hour or two in overhauling it then bend it; During this process the Ship is in a manner hove to, shifting a Topsail being the work of four hands, ½ hour should do it.

That Capt. James has therefore lengthened his passage by gross neglect is not to be doubted. After leaving the NE trades we fund him keeping his vessel as close to the wind as possible until he finds himself down the Coast of Spain *nunierled*? in Calay and in to a current setting SE. thirty miles pr day. we find him again in the latitude of the English Channel with a stray bringe of wind at NW and a heavy Sea setting from that quarter but he hangs out for Cork altho’ other vessels bear up for Falmouth and at this time he is to the easterly of the Meridian of Cork and when he receives instructions from the Supercargo couched in the most respectful language requesting him to bear up for Falmouth he threatens to throw the missive in messengers face evidently chagrined that any one should step in and shorten his passage one day that the Isabella is an average sailing vessel and with the wind that she had in passage home and in the hands of a smart, active and diligent man might have made the passage in her instead of being nearly Three months arrived in Dundee after a passage of Eighty eight days she by the negligence or incompetence of those in charge of her got aground at the entrance of (*word missing*) Harbour and in order to lightened her a quantity of Guano is put into a (*word missing*) and in so doing no doubt some portion is lost and (*line missing*) then it has to be transported from one warehouse to another by which a further loss ensues besides expence we commence discharging and are interrupted by the owners getting out masts &c. by which a loss of time falls upon us; the vessel by the Charter party being on our hands until such time as the Cargo is discharged and when she is discharged we find that instead of 470 or 480 she has only 420 and 9¾ Dunnage of little value and we may remark that the Dunnage was found by the Charterers or by their time, whereas we hold it to have been the duty of the owners to have dunnaged the Ship. We therefore find a deficiency of 65 Tons when compared by other vessels taking new measure for new measure as understood (*line missing*)

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | Tons  A.N | Tons  Deadweight | Isabella  New M | Results |
| The Progress | 199 | 287 | 667 Discharge | 485 Ton |
| The Jesamine | 284 | 226 | 337 | 538 |
| The Helen | 256 | 351 | 337 | 462 |
|  |  |  |  | 3/1485 |
|  |  |  |  | 495 |
| Isabella 337 AN Discharged |  |  |  | 430 |
|  |  |  | Deficiency | 65 Tons |

It is therefore evident that the Isabella us deficient in Cargo to the amount of 65 tons when Compared with other Vessels and we shew that her qualities as a Sea Boat is equal if not superior to some of these if the Isabella’s Cargo has inleaked after being taken on board the Helen and Progress we must have inleaked at the same ratio and if it is still held that the Isabella has discharged a full and complete Cargo if Guano in terms of the Charter we must say that we have been overreached in the bargain by the representatives of the owner at the time the agreement was made for this reason when we were informed that the vessel had discharged 519 tons Coals we were not too Sanguine on anticipating that she would discharge 470 to 480 Guano and if it had been told us before the Charter was effected that she would not carry more than 430 Tons Deadweight we certainly must say that we certainly would not have Chartered her at £200 pr month. Therefore hold that we are losers of 65 Tons Guano at £7. 0. 0 per ton £455.

We have now shown you the loss that we have sustained by this Cargo not being obtained at Ichabo and the loss sustained by an Act and disobedience on the part of the Master in line with deteriorating Cargo at Cape of Good Hope by the general (*part word* missing)pness of the Captain of the Ship at Malaga Island and by (*one and a half lines missing*) in the Cargo; you have seen by the Charter that the risk was at all events that the principals and intentions of it were decidedly honest and ought to have called out all the energy of those entrusted with the performance of the Contract which has not been the Case that loss has been sustained to a large amount is quite clear and the amount of that loss is now submitted for your Consideration.

Amount of Claims contained in this and the Eleven preceding pages (*several words missing*) £1000.13. 6.

Dundee 30th January 1846

Produced by me in terms my Oath of yesterday in the Case Sutherland & Murdoch agt Galls Trustees.

James Gall

Dundee 12th February 1846

Referred to in my Deposition of this date on the above case.

James Gall

And. Willison Comr.