M.R.O. 1—32,400—29-11-80.

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 357 Press ~~Mis.~~

Dated 9. 9. 18 88

Not to be folded or roughly handled

Fort Saint George, Marine Consultation, 14th September 1858.

No. 6. From J. J. FRANKLIN, Esq., Superintendent of Marine; to T. PYCROFT, Esq., Chief Secretary to Government, Fort Saint George, dated 21st August 1858, No. 3263.

SIR,

I have the honor to forward, for the instructions of Government, the accompanying papers relative to a collision which took place on the 27th February 1857, between the Barque "Nonpareil" laden with Government Stores from Madras to the Straits, and the Bremen Brig "Teutonia" whereby the loss of an Anchor and certain damages were sustained by the former Vessel, whose Agent's Messrs: Gahan, Eaton and Co. now claim for general average.

Protest.
Average Statement.
3 Bills for contribution in the Stores shipped.

2. On the question as to whether it is a case for general average, I respectfully abstain from offering an opinion, but as regards the actual circumstances of the collision, I have to observe that the statement declared to in the Protest shews that, had it not been for the Commander putting his helm to Port instead of to Starboard, the Vessels would in all probability have gone clear of each other. The "Nonpareil" was standing S. E. $\frac{3}{4}$S. with a free wind: a Vessel was suddenly seen on the lee bow standing on the Starboard tack, which with the wind at N. E. would be about N. N. W. Had the "Nonpareil's" helm been put to Starboard, or even left alone, they would probably have passed each other without damage, but being put the other way the collision was inevitable.

3. The rule of the road certainly is that on two Ships meeting with a risk of collision, each Vessel is to Port her helm; but this is provided their positions are such as manifestly to require it.

Statement of claim for General and Particular Average per "Nonpareil" on a Voyage from Madras to Singapore.
Sailed 27th January 1857, on 27th February, hazy and thick weather, at 4 A. M. suddenly saw a Ship ahead of them, put the helm hard a port, but the Vessels almost immediately came in collision.
Every exertion was made to get the Vessels clear of each other, but this was not done until 5-45 A. M. The best bower anchor was obliged to be cut away, and fell over Board with the Chain Shackle, and they were also obliged to cut away the Jib and flying Jib, Topgallant and Royal stays and other ropes.

		At Singapore.				General.		Ship ½.		Ship.		Owners.	
159	37	Campbell and Co.											
		For 1 Anchor				159	37						
351	53	D. Lyon.											
		For repairing cutwater				.....		351	53				
11	27	Sundry repairs				.....		11	27				
18		Jibboom and spritsail yard			18								
			Less ⅓		6	12		.....		.....		6	
124	05	G. J. Dare and Co.											
		For new Jib			63								
		2 Coils coir rope			32	36							
		1 Coil pine apple rope			28	69							
					124	05							
			Less ⅓		41	35	82	70	.....		.....	41	35
16		W. J. Shepherd.											
		For Survey on cutwater				.....		.....		16			
6		A. Logan.											
		For nothing protest				6							
20	25	Extending				20	25						
706	47			Total $		280	32	362	80	16		47	35
			Deduct ½			.....		120	93	241	87	124	93
										$	257	87	168	28
1,695	8	5	Exchange at Rupees 240 per 100 $ is		Rupees	672	12	5	Rupees	618	14	0	403	14	0
183	13	8	@ 2s. 2d. is		Stg £.	72	17	8		£	67	0	11	43	15	1
										not 3 per Cent on £ 3,000.					
			Postage			0	10	0							
			Statement			2	2	0							
					£.	75	9	8							

and General Average divided.

Ship	30,000	will pay	13	8	4	
Freight nett	12,500	„	5	11	11	
Cargo	122,252	„	56	9	5	
Rupees	168,752		£ 75	9	8	

Cargo.

Gunpowder	70,597	will pay	31	11	7	
Military Stores	46,581	„	20	16	8	
Commissariat	4,561	„	2	0	10	
Clothing	3,740	„	1	13	5	
Stationary	773	„	0	6	11	
Rupees	126,252		£ 56	9	5	
Policies	£ 2,000	Lloyds will pay	8	18	11	or 9 per Cent.
	1,050	Royal „	4	9	5	
	£ 3,000		£ 13	8	4	

2, Cowper's Court, 10*th February* 1857.
(Signed) W. HARRISON.

(True Copy.)
(Signed) GAHAN, EATON AND Co.

Referred for the opinion of the Advocate General.

FORT SAINT GEORGE,
21*st August* 1858.

(Singed.) T. PYCROFT,
Chief Secretary.

Consultation 14th September 1858.

Fort Saint George, Marin

No. 7. From J. R. BOYSON, Esq., Honorable Company's Solicitor; to the Chief Secretary to Government, dated 27th August 1858, No. 450.

SIR,

Order made on letter from the Superintendent of Marine to Government, dated 21st August 1858, No. 3263.

1. I have the honor to acknowledge the order of Government, noted in the margin and its accompaniments.

2. I submitted them for the consideration of the Advocate General and have since conferred with him on the subject to which they relate and

3. I now forward for the information of Government a copy of his opinion.

4. I return the order and enclosures above noted, &c.

COPY OPINION.

I am much disposed to concur with Mr. Franklin, that the putting the "Nonpareil's" helm to Port was the proximate cause of the collision; and that if her helm had been put to Starboard, or even left alone, the two Vessels would probably have passed each other without damage. The rule of the road is as Mr. Franklin states it, *viz.* that on two Ships approaching with a risk of collision, each is to Port her helm (as the Nonpareil did hers) and he is also correct in saying that this rule must be understood with the qualification "provided their positions are such as mani-"festly to require it."

The rule is in fact similar, or rather analogous to that on shore. Carriages approaching are each to keep to the left, but this rule will not protect a driver, who, having ample space to pass elsewhere without injury to himself or others, wantonly insists on keeping to the left and thereby comes in collision with another vehicle, which, either accidentally, or from ignorance, or want of space, happened to be on its wrong side.

I cannot however see any ground in the present case for supposing that Mr. Daly in ordering the helm to be put hard-a-Port acted otherwise than with perfect *bonâ fides*, and the best intentions. When on the quarter deck sounding the Well he heard a sudden cry of Ship ahead, and o oking up saw one "close on board;" and, naturally enough, seeing there was so little time for consideration, the first order that occurred to his mind was the Starboard one "Port your helm." It is also to be borne in mind, that though I argue with Mr. Franklin that an order to put the helm to Starboard would *probably* have prevented a collision, yet, that the E. I. Company would have to prove in the event of an Action against them, would be that putting the helm to Starboard would *certainly* have prevented it and that the positions of the Vessels rendered it manifestly improper and unsafe for the "Nonpareil" to Port her helm.

Now this evidence could *only* be obtained from the Officers or Crew of the "Nonpareil," against their own interest; and I confess, I do not think it probable it would be obtained at all.

I am disposed to suspect, from the language of the protest, that when at a quarter to 4 A. M. "the watch were set to pump the Ship," the "look out stationed on the fore castle" left the look out to work the pumps, and that in fact there was then *no look out at all*, and that this—which, *if* the case, was clearly gross negligence such as would exempt the Honorable Company from contributing to the claim now made by the owners of the "Nonpareil."

It is *not* however *absolutely inconsistent* with the protest that there *may* have been a look out kept the whole time; and the protest does state the weather to have been "thick and cloudy," and this, and the darkness of the hour, nearly two hours or more before sunrise—*may* have caused the collision notwithstanding a good look out being kept. Now, as I before remarked, the Honorable Company have no means of ascertaining the real facts except through the parties interested in representing those facts in the way most favorable to themselves; and it only requires that they should state, in addition to the contents of the protest, that which I have suggested *may* have been the case, (*viz.* that a good look out *was* kept, and that the collision was caused by the thickness of the weather and darkness of the night, and that putting the helm to Starboard would not have prevented a collision) to ensure a verdict in their favor.

Under these circumstances, I see no reason to expect evidence such as would support a defence in the event of an action being brought against the Honorable Company consequent on their refusal to pay. I therefore think Government had better pay.

(Signed) THOMAS SYDNEY SMYTH,
Advocate General.

25th August 1858.

(True Copy.)

(Signed) J. R. BOYSON,
Honorable Company's Solicitor.

No. 8. ORDER THEREON, No. 354; dated 9th September 1858.

The Governor in Council sanctions the payments of Messrs: Gahan, Eaton and Co's Bills amounting, in the aggregate, to Rupees (502-6-9) five hundred and two, annas six and pice nine, being the proportion of General Average on Government Stores charged in consequence of the losses and injury sustained by the "*Nonpareil*," in February 1857, on her coming in collision with the Brig *Teutonia*.

(Signed) T. PYCROFT,
Chief Secretary.

Exd. J. A. Wilson.

By this Public Instrument of Declaration and Protest - Be it Known and made manifest unto all people that on the Thirteenth day of April in the year of our Lord, One thousand eight hundred and fifty seven, personally came and appeared before me Abraham Logan, Notary Public, duly authorized, admitted and sworn, residing and practising at Singapore, in the Straits of Malacca, in the East Indies, Ashley Savage Boord, Commander of the Barque or vessel "Nonpareil" belonging to Madras Henry Bowes Daly Chief Officer, Appadoo Topman and Seventeen Seamen, of the said vessel during the voyage hereinafter mentioned, who did severally, duly and solemnly declare and state as follows, that is to say; that on the twenty seventh day of January last these Appearers and the rest of the Officers and crew of the said vessel set sail in her from Madras bound on a voyage to Singapore via Masulipatam laden with a cargo of Government Stores, the said vessel being then tight, staunch and strong, well manned, victualled and found, and in every respect fit to perform

her

her said intended voyage.

On Friday the 27th February at A.M. had light wind from the N.E. ship steering S.E. 3/4 South about 2 knots an hour, the horizon around being hazy and the weather thick and cloudy, at 2 A.M. the breeze freshened set the port studding sails. And the said Henry Bowes Daly declares that at this time he was in charge of the watch. that there was a look out stationed on the fore-castle who was challenged every half hour when the bell was struck being also challenged at before intervals by the look out aft. that about a quarter to 4 A.M. the watch were set to pump out the ships. that about 5 minutes to 4 the appearer went down on the quarter deck and was sounding the well, when one of the men at the pumps suddenly called out that there was a ship ahead. that this appearer on looking up, saw a vessel on the lee bow on the starboard tack close on board. that he called out to the steersman to put the helm hard a-port. that the helm was put hard a-port accordingly, but the vessels almost immediately came into collision, scarcely a minute

elapsing

this appearer saw the strange vessel to the time elapsing from the time of the collision. That on the collision taking place, this appearer noticed that the strange vessel was a brig. that she was on the starboard tack and that her sails were all quite full: And the said Appoodoo declares that about 4 A.M. on the 27th February he was on duty on the quarter deck attending the pumps, that he looked up and saw a vessel a little on the lee bow, close on board, told the Chief Officer of this who immediately gave the order to put the helm up. that this appearer went forward on the forecastle and as he got there the collision took place. that the strange vessel was a brig on the starboard tack, that she was all full forward and had her head sheets hauled aft. And the said Yellah declares that at the time above mentioned he was on duty at the helm. That he heard the Chief Officer call out to put the helm hard up and did so immediately, that before the vessel had payed off one point she came in collision with a strange vessel. not more than thirty seconds after the order to put the helm up had been given. that the strange

vessel

vessel was on the starboard tack, ——"
her sails full with her head sheets aft.
And these Appearers declare that every exer-
tion was immediately used to get the vessels
clear of each other, but this was not done
until about 5. 45. A.M. that the best bower
Anchor was obliged to be cut away and fell
over board with the chain shackle. Also
obliged to cut away the jib and fly-jib,
top gallant and royal stays and sundry
other ropes. On communicating with the
strange vessel found she was the Brewen
brig "Teutonia" and that she had sustained
very little injury. Immediately after the
collision sounded the pumps, but found
the vessel was not making more water
than usual. On examining the ship
found that the stem was badly split
and the cut water started from the stem,
also that the head had been carried away
and other injury done to the ship and rig-
ging. And these Appearers do protest,
and I, the said Notary, do also protest,
against the aforesaid Collision, and all loss
or damage occasioned thereby.
We, Ashley Savage Board, Henry Bowes
Daly, Appadoo and Gelliah, do solemnly
and

and sincerely declare that the foregoing state-
ment is correct, and contains a true account
of the facts and circumstances, and we
make this solemn declaration conscientiously
believing the same to be true and by virtue
of the provisions of an Act made and passed
in the Sixth year of the reign of his late Majesty
King William the Fourth, intituled "An Act
to repeal an Act of the present Session of the
Parliament, intituled an Act for the more effectual
abolition of Oaths and Affirmations taken
and made in various departments of the state
and to substitute declarations in lieu thereof,
and for the more entire suppression of volun-
tary and extra judicial oaths and affidavits,
and to make other provisions for the abolition
of unnecessary oaths."

(Signed) Ashley Savage Board
Commander.
" H.B. Daly. Chief Officer.
Gelliah + Mark
Appadoo + Mark.

Thus declared and protested in
due form of law, at the office of me the said
Notary, at Singapore, the day and year first
before written.

(Signed) A Logan
Not. Pub.

Marine Department

No 3514

Extract from the Minutes of Consultation
Dated 9th September 1858.

Read the following letters:-

From the Superintendent of Marine
(Here enter 21st Sept/58 No 3265)

From the Harbour Commrs Collector.
(Here enter 9th Sept/58 No 450.)

The Governor in Council
sanctions the payment of Messrs
Graham Eaton & Co's Bills amounting
in the aggregate, to Rupees (302-6-9)
Five hundred & two Annas Six and
Pice nine, being the proportion
of General average on Govern-
-ment stores charged in conse-
-quence of the Loses and injury
sustained by the Monpareil, in
February 1857, on her coming in
collision with the brig Centonia.

Copy to Superr of Marine with 2 Bills and a Packet
" Accountant General
" Civil Auditor.
" Sub Treasurer

Dept 17th

M. P. C. Encl. 5 to Nos
No 1 of 1858 Para 9

Dy to Govt Mar Dept
Marine 1858 Despatch

No 354

Extract Mins: of Coun.

3/9th September/58.

Sanction the payment of Messrs Gahan Eaton and Co's Bills amounting in the aggregate to Rs 502-6-9 being the proportion of Genl average on Govt stores charged in Consequence of the losses & injury sustained by the "Nouparel" in Febry 1857.