

The American Mail Line, Limited, Owners of the Steamship  
"President Jefferson" - - - - - *Appellants*

*v.*

Motor Vessel "Afrika" - - - - - *Respondent*

FROM

THE SUPREME COURT OF HONG KONG  
(ADMIRALTY JURISDICTION)

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF  
THE PRIVY COUNCIL, DELIVERED THE 19TH MARCH, 1937.

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*Present at the Hearing :*

LORD RUSSELL OF KILLOWEN.

LORD MACMILLAN.

SIR LANCELOT SANDERSON.

LORD NORMAND.

*Nautical Assessors :*

CAPTAIN LAYTON.

CAPTAIN CHAPLIN.

[*Delivered by* LORD NORMAND.]

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The owners of the *President Jefferson* appeal from the unanimous judgment of the Supreme Court of Hong Kong finding the *President Jefferson* alone to blame for a collision in which she was involved with the motor vessel *Afrika* in Hong Kong harbour on 14th December 1934. The trial judge, the Chief Justice of Hong Kong, held that both vessels were to blame for the collision, and he divided the liability in the proportion seventy per cent. against the *President Jefferson* and thirty per cent. against the *Afrika*. From his judgment an appeal and cross appeal were taken to the Full Court, of which the Chief Justice was himself a member, and the judgment of the Full Court proceeded on the facts which the Chief Justice had found. The Chief Justice concurred with the conclusion reached by the Full Court varying his judgment because of the advice given to the Court by the nautical assessors. In the present appeal the appellants contended that the *Afrika* was alone to blame, and alternatively that, if both vessels were to blame, the larger share of liability rested with her. The respondents maintained that the judgment appealed against was well founded and, alternatively that, if both vessels were to blame, the judgment of the trial judge should be restored.

The *President Jefferson* is a steel twin screw steamship, of 14,174 tons gross register, 516.5 feet in length and 72 feet in beam. On the morning of 14th December 1934 she was entering Hong Kong harbour in charge of a licensed pilot

in the course of a voyage from Shanghai to Hong Kong with a full cargo. She was drawing 27 feet 5 inches forward and 25 feet 5 inches aft. The *Afrika* is a twin steel screw motor vessel of 8,597 tons gross register, 446 feet in length and 60 feet in beam. On the same morning she was entering Hong Kong harbour, also in charge of a licensed pilot, in the course of a voyage from Manila to Hong Kong. She was drawing 30 feet 8 inches forward and 31 feet 5 inches aft. Both vessels had approached Hong Kong harbour by the Lye Mun Pass; the *Afrika* had been at first ahead of the *President Jefferson*, but at or near the inward end of the Lye Mun Pass the *President Jefferson* had overtaken the *Afrika*, passed her and gone clear of her soon after 11 a.m. From that time onwards until the collision the *Afrika* was never less than two points abaft the beam of the *President Jefferson*. At about 11.31 a.m. the *President Jefferson*, which was then proceeding on a westerly course intending to berth at a wharf on the west side of the Kowloon Peninsula, was approaching the waters south of Kowloon Point. Here she observed a Y signal with her house flag hoisted on the godown signal mast of the Kowloon Wharf Company, and the signal meant that no berth was available for her at that time. At 11.34 a.m., when she was almost south of Kowloon Point, the berthing master came alongside in a tug and informed her that it would be necessary for her to anchor for about three-quarters of an hour till a berth became available. At that time (11.34 a.m.) the *Afrika* was about 6 or 8 ships' lengths astern of the *President Jefferson*. The weather was fine and clear, there was no appreciable wind and one-and-a-half knot flood tide was making from east-south-east to west-north-west. The *President Jefferson* at about 11.34 a.m. or very shortly afterwards changed direction to starboard and for about four minutes followed the same course as she would have followed had she been proceeding, as originally intended, to her berth. Her speed had been reduced to about two or three knots over the ground. The position which confronted her requires some detailed explanation. The usual anchoring waters for a vessel awaiting a berth are some 1,400 feet westward of Pier No. 4 on the west side of Kowloon Peninsula. But on 14th December 1934 dredging was being carried out in these waters. A pile dolphin to mark the western limit of the dredging operations had been erected at a point about 1,000 feet northward of the line of buoys which delineate the northern edge of the "Central Fairway". The nearest of this line of buoys to the dolphin is buoy A 7, which was a little more than 1,000 feet south west of the dolphin, and about 1,300 feet in an easterly direction from buoy A 7 there was another buoy A 6. The s.s. *Everett* having junks on either side of her was lying moored at buoy A 7 with her stern some 500 feet west-north-west of the buoy itself. Those in charge of the *President Jefferson* decided to anchor between the pile dolphin and the s.s. *Everett*, and accordingly at about 11.38 a.m. commenced a gradual turn to port.

This alteration took place in full view of the *Afrika*, but no whistle signal was given indicating that the *President Jefferson* was taking a course to port. She continued on this new course until she reached at 11.43 a.m. some point north of the line between buoy A 6 and buoy A 7. At this point she let go her port anchor with 20 fathoms of cable at the windlass or 15 fathoms in the water. If the manoeuvre for anchoring had been completed without mishap she would have swung round to port and dropped down channel with the tide and with the port anchor dragging. As she swung it would be necessary to have regard to the presence of the dolphin and to manoeuvre so that her stern should clear it. The position which she selected for anchoring was therefore one which demanded careful navigation, but there was no fault in anchoring at this position if those in charge of the ship had no duty to have regard to other vessels under way.

It will now be convenient to attend to the action taken up to this point (11.43 a.m.) by the *Afrika*. Her intention was to moor at buoy A 4, one of the line of buoys marking the southern limit of the "Central Fairway", and situated approximately at a distance of four and a half cables west by south from buoy A 7. The captain of the *Afrika* decided to approach buoy A 4 by passing between buoys A 6 and A 7, keeping A 6 on his starboard side and A 7 on his port side, and then to port and fetch up at the buoy A 4. Though the manoeuvre required that the *Afrika* should navigate outside the "Central Fairway", no fault is to be found with it, provided that it was executed with due regard to the safety of other vessels. The alterations of the *Afrika's* speed and course, the times of which are adjusted to correspond with the times given for the manoeuvres of the *President Jefferson*, were as follows. The *Afrika* had been proceeding at a speed of about 5 or 6 knots over the ground, but at 11.33 a.m. she stopped her engines, as she approached Kowloon Point, for about 4 minutes, and at 11.37 a.m. her engines were put slow ahead. Off Kowloon Point her course was altered to approximately west-north-west and nearly parallel to the course on which the *President Jefferson* then was. As she came up to buoy A 6 her course was altered again slightly to the northward. She was then making about five knots over the ground and overtaking the *President Jefferson*. She had not noticed the *President Jefferson's* alteration to port at 11.38 a.m., but at 11.43 a.m., when the *President Jefferson* was two cables distant from her, she observed the *President Jefferson* swing to port. The *Afrika* then sounded two blasts, put her rudder hard aport and stopped her engines. The *President Jefferson* very shortly afterwards let go her anchor and blew three blasts. She did not, however, actually reverse her engines at that moment because it was necessary for her to maintain forward way till her stern swung clear of the dolphin. She accordingly proceeded first at slow ahead, and then at half ahead on her starboard engine from 11.44 a.m. to 11.46 a.m. In so doing she dragged her anchor and her movement, though mainly

westerly, carried her slightly to the southward thus narrowing the distance between herself and buoy A 7. The *Afrika's* alteration of course meantime was not sufficient to enable her to pass south of buoy A 7 though she kept her rudder hard aport. She repeated her two blasts signal and at 11.46 a.m. the *President Jefferson* replied with three blasts, and put her engines full speed astern having then cleared the dolphin. A minute later the stem of the *President Jefferson* came into contact with the starboard side of the *Afrika* abreast of No. 2 hatch at an angle of 75 degrees leading forward. At the time of the collision the *President Jefferson* appears to have had no forward way and the actual impact seems to have been caused by the *Afrika's* turning movement aided, it may be, by the tide.

On these facts the trial judge held that the *President Jefferson* was in fault (a) in failing to signal by whistle when she altered her course at 11.38 a.m., and (b) in failing when she sounded her first signal of three short blasts to put her engines astern. He held that the *Afrika* was to blame for having failed to keep a sufficient look-out and for having failed to observe the *President Jefferson's* alteration of course to port in sufficient time to enable her to take a course to the south of buoy A 7 and the s.s. *Everett*.

The Full Court held the *Afrika* to blame in four respects, (1) in failing to keep a proper look-out and so failing to see the Y signal, (2) in increasing speed from 11.37 a.m. to 11.43 a.m. and in following the *President Jefferson* too closely before definitely ascertaining her intention, (3) in altering to a more northerly course near buoy A 6, and (4) in failing to observe the *President Jefferson's* porting manoeuvre sooner than she did. They also held the *President Jefferson* in fault (1) in failing to signal her alteration to port at 11.38 a.m., (2) in letting go her anchor in the manner and at the point she did, having regard to the nature of her anchoring manoeuvre and to the position, course and speed of the *Afrika*, and (3) in sounding a signal of three short blasts in answer to the *Afrika's* two short blasts and failing thereupon to put her engines full speed astern. But this three blast signal was held not to be in any degree a cause of the collision for the reason that it could not have misled the *Afrika*. The failure to put the engines of the *President Jefferson* full speed astern at that time was not expressly dealt with by the Full Court, but it is evident that the Court considered that it was impracticable to reverse the engines having regard to the position and proximity of the dolphin. The view of the Full Court on the facts is thus summarised,

" On the one hand if the *Afrika*, as the overtaking vessel, had kept a proper look-out, reduced her speed, and held back from the *President Jefferson*, as she should have done, there would have been no collision. On the other hand, if the *President Jefferson* had not let go her port anchor in the manner and at the point she did, there would have been no collision."

Nevertheless the Full Court held that the negligence of the *President Jefferson* in letting go her anchor when she did was subsequent to and severable from the negligence of the

*Afrika* and that the *President Jefferson's* negligence was the proximate cause of the collision for which she must bear the whole responsibility. In support of this conclusion the following passage from the speech of Lord Birkenhead L.C. in the *Admiralty Commissioners v. s.s. Volute* [1922] 1 A.C. 129 at 136 is cited,

"In all cases of damage by collision on land or sea, there are three ways in which the question of contributory negligence may arise. A is suing for damage thereby received. He was negligent, but his negligence has brought about a state of things in which there would have been no damage if B had not been subsequently and severably negligent. A recovers in full.

"At the other end of the chain, A's negligence makes collision so threatening that though by the appropriate measure B could avoid it, B has not really time to think and by mistake takes the wrong measure. B is not held to be guilty of negligence and A wholly fails.

"In between these two termini come the cases where the negligence is deemed contributory, and the plaintiff in common law recovers nothing, while in Admiralty damages are divided in some proportion or other."

The learned judges therefore held that the case falls within the principle formulated in the first of the cited paragraphs.

The first question to be determined is whether the *President Jefferson* was in fault. The first act of negligence in point of time with which she is charged is failure to sound two blasts at 11.38 a.m. when she altered her course to port. Their Lordships are of opinion that two blasts should have been given, for they are unable to accept the argument put forward by the appellants that article 28 did not apply in the circumstances in which the *President Jefferson* found herself. As an overtaken vessel entering harbour and proceeding to anchor she was properly navigated when she altered her helm, and by the alteration she was taking a course authorised by the regulations and in particular by article 21. Her failure to signal was therefore a breach of article 28. That breach occurred nine minutes before the collision and in these nine minutes, during which the *President Jefferson* proceeded at a slow speed, there was ample opportunity for those navigating the *Afrika* not only to observe the alteration but to judge of its extent. The concurrent finding of the Court below is that the *Afrika* ought to have observed the alteration when she was so far south of buoy A 6 that it would have been possible for her to pass safely south of buoy A 7 and the *Everett*. In these circumstances it is clear that the failure to signal the alteration did not in fact contribute to the collision. Their Lordships are further of opinion, in agreement with the judgment of the Full Court, that the faults alleged to have been committed by the *President Jefferson* when she gave the first of her three blast signals are not established against her as faults contributing to the collision.

The remaining fault with which the *President Jefferson* is charged is that she failed to keep her course and speed and that she improperly let go her anchor when the *Afrika* was

too near and so brought about the collision. Counsel for the appellants accepted the position that the *President Jefferson* was, as an overtaken vessel, under a duty to keep her course and speed ; but he maintained that the duty to keep course and speed was performed if the overtaken vessel kept that course and speed which, according to the rules of good seamanship, were the right course and speed for the performance of the manoeuvre in which she was at the time engaged and which was obvious and visible to the overtaking vessel. In the present case, it was argued, the *Afrika* saw or, if she had been keeping a proper look-out, ought to have seen that the *President Jefferson* was engaged in the manoeuvre of coming to anchor, and the completion of the manoeuvre was not in breach of article 21 of the Regulations but in compliance with it. If, according to this argument, the *President Jefferson* had abandoned her intention of coming to anchor in the neighbourhood of the dolphin and had proceeded past it and past buoy A 7 till she reached more open water, she might have been acting in a misleading fashion and might have left the *Afrika* in doubt about the course she should follow at a later stage when the *President Jefferson* again manoeuvred to come to anchor. The principle which is thus invoked on behalf of the appellants is, in the opinion of their Lordships well recognised (*The Roanoke* (1908), [1908] P. 231. *The Taunton*, 31 Lloyd's List 119). Nevertheless the principle is subject to certain inherent qualifications of which the chief is that the manoeuvre must be carried out in accordance with the rules of good seamanship and with due regard to the immediate circumstances. If, for example, it is manifest that the vessel, whose duty it is to keep out of the way, has failed to appreciate that the other vessel is engaged in the manoeuvre of coming to anchor and has approached her so closely and at such a speed that the further execution of the manoeuvre will bring about a collision, it becomes the duty of that other vessel to depart from the purpose of coming to anchor and so to manoeuvre as to avoid the danger which the situation presents. The fundamental negligence of which the *President Jefferson* was guilty in the present case was failure to keep a proper look-out. Her captain in his evidence says that when he was about to anchor, the *Afrika* was a considerable distance away and "wasn't in the picture", and he adds that if the *Afrika* had been within 1,200 feet he probably would not have anchored. On this evidence the dropping of the anchor stands condemned ; it was done in culpable ignorance of the whereabouts of the *Afrika*, which had been unwarrantably dismissed from consideration and in effect ignored. Once this conclusion is reached it can scarcely be questioned that the negligence contributed to the collision. But there remains a question whether there was negligence on the part of the *Afrika* which also contributed.

Counsel for the appellants, however, submitted an argument that the *Afrika* might have avoided the collision by reversing her engines, at 11.43 a.m. when she stopped her

engines, and that her failure to do so was negligence and was the proximate and sole effective cause of the collision. This contention was at once challenged by Counsel for the respondents on the ground that it was excluded by the conduct of parties and the course of proceedings in the Courts below. The facts are as follows. The captain of the *Afrika* in his examination-in-chief deponed that it would have been risky to have put her engines full speed astern because that might have caused her stern to swing to starboard and to put her broadside to the tide with the result that she might have collided both with the *President Jefferson* and with the *Everett*. This evidence was not challenged in cross-examination. Counsel for the appellants admitted before the Full Court that when she stopped her engines the *Afrika* could have done nothing other than what she did to avoid the collision, and this proposition is affirmed by concurrent findings. In these circumstances their Lordships are of opinion that the appellants are precluded from maintaining as a ground of fault against the *Afrika* that she should have reversed instead of stopping her engines. The appellants next maintained that the findings of negligence against the *Afrika* by the Full Court were fully established. The respondents did not maintain that these findings were unsupported by the evidence. They argued, it is true, that there was no duty laid on those on board the *Afrika* to take note of the Y signal, which was not addressed to her but to the *President Jefferson*. In the opinion of their Lordships the failure to observe the Y signal is not material in the present case, because there were other and subsequent circumstances which certainly ought to have been observed by the *Afrika* and which, if observed, would have sufficiently warned her that the *President Jefferson* was not making to the wharf but was making to anchor, but their Lordships do not countenance the view that when two vessels are proceeding together into harbour either is entitled to ignore shore signals to the other which may give information about her future action and so be useful for the guidance of the vessel to which the signal is not addressed. The subsequent circumstances which ought to have been observed by the *Afrika* were the putting out of the tug to speak to the *President Jefferson*, her slow speed which the *Afrika* was well able to gauge as she was overtaking the *President Jefferson*, and her turn to port off the course which she would have followed if she had been going to berth. These circumstances, if they had been seen and appreciated, would have been a certain indication that the *President Jefferson* would shortly come to anchor. The exact position which she would choose might not be known to the *Afrika*, but clearly it was her duty to avoid taking any action which would hamper or embarrass the *President Jefferson* in the manoeuvre which she was in process of executing. The *Afrika*, as the overtaking vessel, was bound under article 24 of the Regulations to keep out of the way, and in the circumstances of the present case their Lordships hold that her duty as a matter of good seamanship was to avoid overhauling the

*President Jefferson* till the intention of the latter vessel was fully disclosed. That she failed in this duty is attributable to faulty look-out whereby she failed to observe timeously the *President Jefferson's* alteration of course, or to appreciate its meaning or the meaning of her slow speed. The defective look-out is probably to be explained by the strangely inverted idea entertained by the master of the *Afrika* that his ship was not the overtaking but the overtaken vessel, which led him to navigate her throughout on the basis that the *President Jefferson* was the keep-out-of-the-way ship. It was a consequence of this faulty look-out that the *Afrika* increased speed and altered course and followed the *President Jefferson* into the narrow waters between buoy A 7 and the *Everett* on the one hand and buoy A 6 on the other, though it should have been obvious that if she persisted in this course and if the *President Jefferson* anchored in that neighbourhood a position of immediate danger was certain to emerge. That was in fact precisely what happened, with the result that when the *President Jefferson* let go her anchor the *Afrika* was by her negligence so committed that it was impossible for her to deflect her course to the southward of the *Everett* and buoy A 7 or to stop before she arrived at the point of collision. If the *President Jefferson* was negligent in dropping her anchor, because of the near approach of the *Afrika*, the negligence of the *Afrika* cannot be treated as a severable negligence which had ceased to operate and did not contribute to the collision. It may be that the *Afrika* awoke to the situation and sounded her two blasts before the *President Jefferson's* anchor was let go, but there cannot have been more than a few seconds between the two events. The Lord Chancellor in the *Volute* (*supra*) pointed out that when two vessels are guilty of negligent navigation and a collision results both may be held responsible though the negligence is not synchronous, and he cited cases in which both vessels were held to blame though the negligence was in sequence and though there would have been no collision but for the final act of negligence of one of the vessels. It has to be considered not merely whether one vessel has been subsequently negligent, but whether it has also been severably negligent. Where the acts of negligence, though successive, are close together in time and interact with each other they fall to be considered not as severable but as co-operating factors in the final catastrophe. The Lord Chancellor (at page 144) sums up the matter thus :—

“ Upon the whole I think that the question of contributory negligence must be dealt with somewhat broadly and upon common-sense principles as a jury would probably deal with it. And while no doubt, where a clear line can be drawn, the subsequent negligence is the only one to look to, there are cases in which the two acts come so closely together, and the second act of negligence is so much mixed up with the state of things brought about by the first act, that the party secondly negligent, while not free from blame under the *Bywell Castle* rule, might, on the other hand, invoke the prior negligence as being part of the cause of the collision so as to make it a case of contribution.”



Their Lordships are of opinion that the negligence of the *Afrika* was operative after she stopped her engines, in the sense that it was her previous inattentiveness to the movements of the *President Jefferson* that brought her into a position which embarrassed that vessel in the manoeuvre in which she was engaged and disabled the *Afrika* herself from taking measures which would have avoided the danger, the possibility of which she should have foreseen in time to prevent it from arising; and that though there was a subsequent act of negligence by the *President Jefferson* but for which the collision would have been avoided both vessels must be held to blame. Their Lordships concur in the view expressed by Mossop J. that it is beyond all doubt that each of the two vessels was navigated with a deplorable disregard of the movements of the other. Each is equally blameworthy and there is no sufficient ground for differentiating between them in distributing the responsibility for the collision. In reaching this conclusion their Lordships have had the advantage of considering the advice of the nautical assessors upon the technical aspects of the case.

Their Lordships will humbly advise His Majesty that the appeal should be allowed, that the order of the Supreme Court of Hong Kong which is appealed against and the order of the Trial Court should be set aside, and that the *President Jefferson* and the *Afrika* should be held both to blame and that in equal proportions for the collision between them, that neither party should be entitled to the costs of the proceedings in the Courts in Hong Kong, and any costs paid under either of the orders of the Courts below ought to be repaid. The respondents must pay one half of the costs of this appeal.

In the Privy Council

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THE AMERICAN MAIL LINE, LIMITED,  
OWNERS OF THE STEAMSHIP  
"PRESIDENT JEFFERSON"

*v.*

MOTOR VESSEL "AFRIKA"

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DELIVERED BY LORD NORMAND

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