

*Judgment of the Lords of the Judicial Committee  
of the Privy Council on the Appeal of  
The Owners of the "Vivid" v. The Owners  
of the "Wild Rose" ("The Wild Rose"),  
from the Vice Admiralty Court of the  
Cape of Good Hope; delivered July 9th,  
1874.*

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Present:

SIR JAMES W. COLVILE.  
JUDGE OF THE ADMIRALTY COURT.  
SIR BARNES PEACOCK.  
SIR MONTAGUE E. SMITH.  
SIR ROBERT P. COLLIER.

THIS is an Appeal from a judgment delivered by the judge of the Vice Admiralty Court of the Cape of Good Hope in a cause of damage. The collision took place in Table Bay, and the vessels which came in contact were the "Vivid," a Norwegian barque of 225 tons burden, and "The Wild Rose," a brig of 295 tons burden. It took place on the morning of the 18th of June 1872; and the learned judge of the Court below, after going through and considering all the evidence, delivered an elaborate judgment, in which he came to the conclusion that both vessels were to blame, and that being of that opinion he ought not to pronounce for damages, and he dismissed the petition.

Now their Lordships think it proper to observe here that if that conclusion of the learned judge on the facts had been correct, the law applicable to them was wrongly laid down by him, because the court in which he administered justice was

a Vice Admiralty Court of the High Court of Admiralty of England, and the law which he was bound to administer was the English law of the High Court of Admiralty, by which, if his judgment on the facts was correct, he ought to have pronounced for a moiety of the damages on behalf of the Appellants. But their Lordships are not of opinion that in this case the learned judge came to a right conclusion upon the facts. The learned judge was of opinion with regard to the "Vivid," the vessel which was at anchor and which was run into by the "Wild Rose," that she was to blame, on the ground that she ought to have slipped her port anchor and paid out more chain on her starboard anchor. This was a question on which their Lordships were naturally anxious to hear the opinion of the nautical assessors who assist the Court, and after a full conference with their nautical assessors they have arrived at the conclusion that the learned judge was wrong in the inferences he drew, that it was not the duty of the "Vivid" in this case to have slipped her port anchor or paid out more chain on her starboard anchor, and therefore that she was in no way to blame for this collision. Her share in the blame must therefore be considered as dismissed from our consideration.

Now the learned judge found the "Wild Rose" to blame on the ground that she ought to have paid out when the wind rose, which was early in the morning, soon after two o'clock, more of her port anchor cable, so far as could be done with safety. She was riding with only 50 fathoms on her port anchor when the wind began to rise; she had 55 fathoms still on board, and she was 100 fathoms ahead of the "Vivid" according to her account, and yet she did not pay out. After conference with their nautical assessors, their Lordships are of opinion

that the learned judge was right in his finding upon this matter, and that it was the duty of the "Wild Rose" to have veered out more fathoms than she did, certainly to the extent of 70 or 80 fathoms, she having veered out only 50 fathoms.

The learned judge also found that the "Wild Rose" was not to blame on the ground of having originally given the "Vivid" a foul berth. Upon that finding their Lordships are compelled to disagree with the learned judge, and after conference with their nautical assessors they are of opinion that the "Wild Rose" did give the "Vivid" a foul berth; that 75 fathoms, which we think is the utmost at which the distance from ship to ship could be put according to a fair examination of the evidence, was not sufficient in the circumstances, and amounted to giving the other vessel a foul berth. Their Lordships must also here observe that this wrong doing on the part of the "Wild Rose" in the beginning necessarily interfered with and hampered her in the exercise of the proper manœuvres which she ought to have taken at a later stage in the history of this case.

Their Lordships are also of opinion upon the evidence that the tackle of the "Wild Rose" was insufficient, and the cable was defective, inasmuch as it ought to have been a cable measuring  $1\frac{1}{2}$  inches, whereas it was only  $\frac{1}{8}$ ths of an inch, that is,  $\frac{1}{6}$ ths less than it ought to have been. Their Lordships agree with the opinion of their nautical assessors that in this respect also the "Wild Rose" was to blame, and they differ from the finding of the learned judge on this point as well.

Before their Lordships dismiss this case, they are anxious to express their regret that the Vice Admiralty Court should not have adopted the forms of pleading which their Lordships

have reason to believe were furnished to the Court at the Cape of Good Hope as to other Vice Admiralty Courts ; that there was no preliminary act in this case, but that still the cumbrous and abandoned form of act on petition should be observed. They hope for the future that what their Lordships think necessary to say in this case will be attended to, and that the more simple and better rules of pleading with which the Court has been furnished will be adopted in future cases.

Upon the whole their Lordships think that it will be their duty to humbly advise Her Majesty that the sentence of the learned judge of the Court below should be reversed, and that the damage sued for by the "Vivid" should be pronounced for with costs both here and in the Court below.