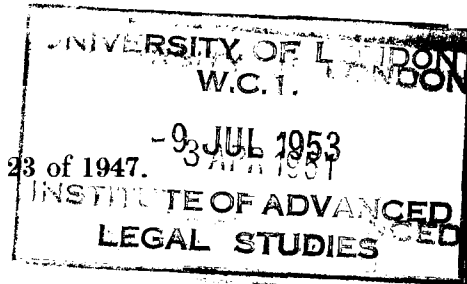


Appeal No. 23 of 1947.

-9 JUL 1953  
3 APR 1951

In the Privy Council.

ON APPEAL

FROM THE SUPREME COURT OF CANADA

A BETWEEN

OLIVIND LORENTZEN, as Director of Shipping  
and Curator of the Royal Norwegian Govern-  
ment

*Appellant*  
(Plaintiff)

B

— and —

THE SHIP "ALCOA RAMBLER" (Alcoa Steam-  
ship Company Inc. Owners)

*Respondent*  
(Defendant)

Case on behalf of the Appellant.

C 1. This is an Appeal from a decision of the Supreme Court of  
Canada (The Honourable the Chief Justice of Canada, the Honourable  
Mr. Justice Kerwin, the Honourable Mr. Justice Taschereau, the Honour-  
able Mr. Justice Rand and the Honourable Mr. Justice Kellock) dated  
D 11th April, 1946, reversing the decision of the Exchequer Court of Canada,  
Nova Scotia, Admiralty District (The Honourable Mr. Justice Carroll)  
dated the 27th October, 1944, who decided that the "Alcoa Rambler"  
was three-fourths to blame and the "Norefjord" one-fourth to blame for  
a collision which occurred between the said vessels on the 20th August,  
1942, in Bedford Basin in the Province of Nova Scotia, the Supreme  
E Court of Canada held that the "Norefjord" was alone to blame for the  
said collision.

2. The main question in this Appeal is whether the "Alcoa Ram-  
bler" was under a duty within the meaning of Article 19 of the Regula-  
tions for Preventing Collisions at Sea to keep out of the way of the

## RECORD

“Norefjord” which was at all material times on the starboard hand of the “Alcoa Rambler” and on a course crossing that of the “Alcoa Rambler” from starboard to port.

3. Mr. Justice Carroll held that the “Alcoa Rambler” was under a duty within the meaning of Article 19 to keep out of the way of the “Norefjord” and found the “Alcoa Rambler” to blame for not taking the appropriate steps to keep clear in due time and the Appellant contends that this finding was correct. Mr. Justice Carroll found the “Norefjord” in part to blame for sounding a signal of one short blast and the Appellant contends that this finding was wrong.

4. The “Norefjord” is a Steamship belonging to the Port of Oslo and at the material time was requisitioned by the Norwegian Government. Her net tonnage was 1917·88 tons, her length 331·7 feet and her beam 46·7 feet, she was fitted with triple expansion engines of horse power nominal and was laden with a cargo of 4653 tons of sulphur. At the material time the “Norefjord” was proceeding from an anchorage on the Western side of Bedford Basin to the degaussing range on the Eastern side of the Basin with a duly licensed Pilot on board. Her crew consisted of 31 hands all told. Her speed when the “Alcoa Rambler” was first seen was about 5 to 6 knots through the water and she was heading in an Easterly direction and was swinging slightly to port under easy port wheel.

5. The “Alcoa Rambler” is a United States Steamship of 3,381 tons net register, 417 feet in length and 54 feet in beam fitted with Turbine Engines of 3,000 horse power indicated and she was laden with general supplies for the U.S. Army and 1,500 tons of bombs. At the material time the “Alcoa Rambler” in charge of a duly licensed Pilot was proceeding to sea from an anchorage in the Upper end of Bedford Basin for gun practice. Her speed when the “Norefjord” was first sighted was about 6 knots through the water and her speed approximately South-East. According to the evidence of her Pilot her speed at the time of sighting the “Norefjord” was about 3 knots and her course about South-South-East magnetic.

6. According to the Respondent’s evidence the masts of the “Norefjord” were first observed by those on board the “Alcoa Rambler” at a distance of about 1,800 to 2,000 feet and bearing about one or two points forward of the starboard beam of the “Alcoa Rambler.” The engines of the “Alcoa Rambler,” which were working at slow speed ahead, were then stopped. Very shortly afterwards the hull of the “Norefjord” came into view, clear of an anchored ship, and it was seen that she was heading towards the Degaussing Range and swinging slightly to port. The distance between the vessels was then still about 1,800 to 2,000 feet.

- Before the hull of the "Norefjord" came into view a signal of one short blast was heard from the "Norefjord." The Pilot of the "Alcoa Rambler" who gave his evidence before the Court said that as soon as the hull of the "Norefjord" came into view, he rang the engines of the "Alcoa Rambler" full speed astern. The Master of the "Alcoa Rambler" who did not give his evidence in Court gave the distance at sighting the "Norefjord" as about four ships' lengths (1,668 feet), and said that the engines of the "Alcoa Rambler" were put full speed astern when the vessels were only  $2\frac{1}{2}$  lengths apart (1,042 feet). He repeated the order on the telegraph. The Master also said that the times of engine movements recorded by the third officer on slips of paper were not accurate and were corrected to accord with the engineroom record. The engineroom record shows that the engines were stopped at 9.15 and put full speed astern at 9.16 $\frac{1}{2}$ , thus indicating that there was, in fact, an interval of  $1\frac{1}{2}$  minutes between the two orders. A signal of three short blasts is said to have been sounded when the engines of the "Alcoa Rambler" were put full speed astern. After an interval during which the distance between the vessels had decreased by about 1,200 or 1,400 feet the signal "K," (one long, one short and one long blast), meaning "You should stop your vessel instantly," is alleged to have been sounded by the "Alcoa Rambler." The Master says that he ordered the starboard anchor of the "Alcoa Rambler" to be dropped and that this was done when the vessels were only about 50 feet apart. The Chief Officer who also did not give evidence in Court agreed with the Master, but the Pilot said that he gave the order to let go the anchor and that a distance of about 100 feet then separated the vessels. The Pilot also said that the anchor had very little if any effect on the vessel's headway and that it was dropped only 15 to 20 seconds after the "K" signal had been sounded. The collision took place on the Eastern side of the Bedford Basin at 9.18 a.m. between the stem of the "Alcoa Rambler" and the port side of the "Norefjord" about amidships. The angle of the blow is variously described by the witnesses as a right angle and leading slightly forward and slightly aft on the "Norefjord." Both vessels were swinging slightly to starboard just before the collision. The "Alcoa Rambler" had very little headway at the time of the collision and the "Norefjord" was then proceeding at about  $1\frac{1}{2}$  to 2 knots. The weather was fine and clear, there was practically no wind at the time and no appreciable tide.

7. The "Alcoa Rambler" was being escorted by a small Naval launch manned by three Naval ratings two of whom gave their evidence before the Court. According to their evidence this launch had a mast about 5 feet in height and three flags were hoisted on the cross trees about 6 inches below the top of the mast. Two of these flags were the International code letters "I" and "C" meaning "You should keep clear of me, I am loaded with dangerous cargo," and the third flag the International code letter "B," meaning "I am taking in (or discharging)

p. 235, L28  
 p. 235, L47  
 p. 221, L26  
 p. 277, L7, 18,  
 21  
 p. 235, L35,  
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 p. 236, L9  
 p. 243, L41  
 p. 244, L39  
 p. 235, L43  
 p. 221, L34  
 p. 232, L10  
 p. 143, L38  
 p. 148, L4, 5  
 II (11)  
 p. 147, L6, 8  
 p. 155, L40  
 p. 157, L35-41  
 II (5)  
 p. 221, L36  
 p. 236, L7-11  
 p. 258, L2-5  
 p. 259, L15-27  
 p. 145, L11-16  
 p. 158, L17,  
 18  
 p. 164, L31  
 p. 165, L10  
 p. 224, L13,  
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 p. 258, L24-  
 27, 41  
 II (19, 21, 22)  
 p. 154, L39  
 p. 228, L1  
 p. 241, L33, 43  
 p. 242, L16-18  
 p. 262, L15-22  
 p. 145, L30  
 p. 223, L15  
 p. 227, L30  
 p. 238, L6  
 p. 259, L3  
 p. 197, L38  
 p. 203, L37  
 p. 208, L13  
 p. 255, L27  
 p. 227, L30,  
 32, 33  
 p. 216, L3,  
 p. 7  
 p. 147, L41

p. 246, L41,  
 43, 44

p. 246, L32

p. 246, L36

## RECORD

p. 141, L34-44 explosives." According to the evidence of the Respondents two flags were hoisted on board the "Alcoa Rambler." One of these flags was the International code letter "B" and the other the International code letter "H," meaning "I have a Pilot on board." The Pilot of the "Norefjord" who gave evidence in Court was unable to distinguish any of these flags as, owing to the lack of wind, they were hanging down. A

pp. 21, 22 8. According to the Appellant's evidence the "Norefjord," which had been lying on the Western side of Bedford Basin waiting to proceed to the Degaussing Range on the East side of the Basin had weighed anchor and was then assisted on to an Easterly heading by the tug "Bansurf." The engines of the "Norefjord" were then put full speed ahead and she proceeded for a short time on her course across the Basin. A tug with a barge in tow was then observed on the starboard hand shaping to cross ahead of the "Norefjord" from starboard to port and the wheel of the "Norefjord" was starboarded easy to allow the tug and tow to pass clear and a signal of one short blast was sounded on her whistle. When the tug and tow had passed clear on to the port hand of the "Norefjord" her wheel was ported easy to bring her back on to her heading towards the Degaussing Range. Shortly after the "Norefjord" had begun to swing to port under her easy port wheel the masts of the "Alcoa Rambler" were seen, over an anchored vessel, about 2,000 feet distant and bearing about 4 points on the port bow of the "Norefjord." The speed of the "Norefjord" at this time was about 5 to 6 knots through the water. When the "Alcoa Rambler" came into view clear of the anchored vessel and it was seen that she was coming down the Basin on a course crossing that of the "Norefjord" from port to starboard the wheel of the "Norefjord" was put hard-a-starboard so as to overcome her port swing and a signal of one short blast was sounded on her whistle. Immediately afterwards a signal of three short blasts was heard in reply from the "Alcoa Rambler." The "Alcoa Rambler," however, came on without reducing and apparently increasing her speed, and when a distance of about 75 yards separated the vessels, the engines of the "Norefjord" were put full speed astern and a signal of three short blasts was sounded on her whistle. The engines of the "Norefjord" were put ahead and astern again, and stopped before the collision which occurred at about 9.18 a.m. on the Eastern side of the Basin. The witnesses were uncertain about the engine movements made at the last because they followed each other in such quick succession that there was no time to enter them all on the blackboard in the engineroom and such entries as were made were washed off the blackboard by water which entered the engineroom as a result of the collision. No record of these movements was made on the bridge. After the three short blast signal had been sounded by the "Norefjord" a whistle signal was heard from the "Alcoa Rambler" which was interpreted by the Master, Chief Officer and Third Officer of the "Norefjord" as a signal of three short blasts. This signal I

was similarly interpreted by two of the Naval ratings on the Naval launch escorting the "Alcoa Rambler." The anchor of the "Alcoa Rambler" was seen to be let go when the vessels were very close. The angle of the blow was about a right angle. At the time of the collision the "Norefjord" was making about 2 knots or less through the water and had begun to swing to starboard, and the "Alcoa Rambler" was also swinging slightly to starboard. After the collision the "Norefjord" had to be beached.

p. 250, L11  
p. 270, L31  
p. 25, L10  
p. 93, L8  
p. 133, L14  
II (16, 18, 23)  
p. 95, L5  
p. 97, L22  
p. 97, L15

9. The Naval launch escorting the "Alcoa Rambler" approached the "Norefjord" before the collision and one of the Naval ratings is alleged to have hailed the "Norefjord" to keep off as there was an ammunition ship coming down the harbour. This hailing is said by those on board the launch to have taken place when the "Alcoa Rambler" and the "Norefjord" were about a cable apart and shortly after the "Alcoa Rambler" had sounded her second whistle signal, which was interpreted by these naval ratings as a three short blast signal. The Pilot of the "Norefjord" said that he heard some shouting from a Naval launch but could not hear what was being said, and that he did not know that this launch was escorting the "Alcoa Rambler."

p. 248, L38  
p. 266, L8  
p. 254, L11,  
34  
p. 92, L39  
p. 120, L37  
p. 92, L30

10. During the course of the trial the Respondents referred to the Public Traffic Regulations for the Port of Halifax and particularly to paragraph 33 (a) of these Regulations. Paragraph 33 (a) is in the following terms:—

"33 (a). Ships entering harbour and carrying explosives, will be escorted from the Boom to the Quarantine Anchorage by a Naval Craft flying International letters I.C. They will remain in Quarantine Anchorage until they have been examined and found to be in safe condition and will then be moved to a berth in Bedford Basin. On this passage the Naval Craft will again provide escort. All ships seeing the Naval vessel flying International are to keep well clear."

The Respondents contended that, although paragraph 33 (a) specifically referred to incoming ships carrying explosives, there was an understanding or practice among Pilots that it also applied to outgoing ships carrying explosives. Mr. Justice Carroll, during the cross-examination of the Pilot of the "Norefjord," pointed out that any such practice would have to be strictly proved. The Pilot of the "Alcoa Rambler" said that Pilots were not issued with the Traffic Regulations, but with other instructions "more or less tied up" with them. There is no further evidence as to the nature of the instructions actually issued to Pilots. The Pilot of "Alcoa Rambler" denied that the fact that the "Alcoa Rambler" was carrying munitions gave her the right of way. None of

pp. 126, 127  
p. 110, L18  
p. 126, L33  
p. 225, L36  
p. 260, L10

RECORD  
 p. 144, L25  
 p. 246, L12  
 p. 111, L3  
 p. 128, L7  
 p. 137, L25  
 p. 292, L17  
 p. 220, L1  
 p. 232, L9  
 p. 233, L8  
 p. 235, L28  
 p. 221, L28  
 p. 232, L10  
 p. 236, L7  
 p. 260, L6

the other witnesses from the "Alcoa Rambler" was asked to deal with the Traffic Regulations but her Master said that the International Rules of the Road applied in Halifax harbour. The only other witness called by the Respondents whose evidence could be said to have any bearing on the alleged practice was the coxswain of the Naval Launch. This witness said that he escorted all ships to which he was assigned and that he was assigned to ammunition ships. He was not, however, sent to any particular ships and did not know what cargo they carried. He had had instructions to escort incoming and outgoing ships. The Pilot of the "Norefjord" said in cross-examination, that outgoing ammunition ships were not at all times escorted. The Master of the tug "Bansurf," one of the Appellant's witnesses, said that the Navy sent an escort boat to ingoing and outgoing ammunition ships. Mr. Justice Carroll decided that the ordinary Rules of the Road had not been superceded by the Traffic Regulations and it is submitted that, on the above evidence alone, he was amply justified in this decision. The action taken on board the "Alcoa Rambler," moreover, was not consistent with any suggestion that she had the right of way. Her engines were stopped as soon as the masts of the "Norefjord" were seen and, as soon as the hull of the "Norefjord" came into view, the "Alcoa Rambler" sounded a signal of three short blasts and her engines are alleged to have been put full speed astern. The Pilot of the "Alcoa Rambler" suggests that the "Norefjord" would have reduced speed and given the "Alcoa Rambler" a chance to get clear, not because of any Traffic Regulations, but if she had been warned by the Naval escort. Although he says that the "Norefjord" would have had time to go hard-a-starboard, he does not, at any time, suggest that it was her duty to keep out of the way of the "Alcoa Rambler."

11. Each of the Judges of the Supreme Court gave substantially different reasons for reversing the Judgment of Mr. Justice Carroll. The Honourable the Chief Justice gave, as his principal reason, that the evidence was clear that there was an established practice both for incoming and outgoing vessels to act in accordance with the Traffic Regulations and that, in accordance with such practice, the "Alcoa Rambler" was entitled to assume that the "Norefjord" would keep out of her way. It is submitted, for the reasons given above, that the evidence in fact established no such practice, and that those on board the "Alcoa Rambler" were not, in fact, relying on any such practice. The Hon. the Chief Justice further held that those on board the "Norefjord" should have seen the "I.C." flags on the Escort launch and, apparently, that they understood the hailing from the Escort launch. Mr. Justice Carroll, who saw the Pilot of the "Norefjord" and accepted him as a witness of truth, made no such findings and the Appellant submits that, in the premises, the Hon. the Chief Justice should not have rejected the evidence of this witness to the effect that he could not distinguish the

flags because they were hanging down and that he could not understand the words which were shouted from the Escort launch. It is further submitted that, even if a practice of Pilots had been proved by the Respondents, no such practice could supercede either local or general Regulations.

RECORD

12. Mr. Justice Kerwin gave no reasons for allowing the Appeal. Mr. Justice Taschereau made no finding on the question of whether the Traffic Regulations applied in this case, but held that, on the assumption that the "Norefjord" was "on a definite course" she had the right of way. He also found that the collision might have been avoided if the "Alcoa Rambler" had put her engines astern and dropped her anchor earlier. He held, however, that the "sole and determining cause" of the collision was the one short blast signal sounded by the "Norefjord." Mr. Justice Carroll had also found the "Norefjord" to blame for sounding this signal. It is submitted that the "Norefjord" should not be blamed for sounding this signal, because (1) it was the proper action for the "Norefjord" to take in the circumstances and (2) it in no way contributed to the collision. When the signal was sounded the wheel of the "Norefjord" was put hard-a-starboard to overcome her port swing, which was, it is submitted, proper action to take for a vessel which had a duty, under Article 21 of the Regulations for Preventing Collisions at Sea, to keep her course and speed. The wheel was kept hard-a-starboard until the collision occurred and, according to the evidence on both sides, the "Norefjord" had begun to swing to starboard before the collision. It was never suggested to the witnesses that the wheel of the "Norefjord" was not put and kept hard a starboard, as alleged and Mr. Justice Carroll made no such finding. Mr. Justice Taschereau seems to have assumed that, if the wheel of the "Norefjord" had been starboarded she would have been brought on to a course parallel to that of the "Alcoa Rambler." It is submitted that Mr. Justice Taschereau overlooked the fact that the "Norefjord" had first to overcome her port swing before her starboard wheel could take effect to swing her to starboard. Mr. Justice Taschereau held that, by sounding the one short blast signal the "Norefjord" misled those on board the "Alcoa Rambler" and that they were therefore excused for delaying their action to take off the way of the "Alcoa Rambler." Mr. Justice Carroll also held that the signal might have misled those on the "Alcoa Rambler" but only to a momentary extent because the three short blast signal sounded by the "Alcoa Rambler" indicated that she knew she was the give way ship. It is submitted that Mr. Justice Carroll failed to bear in mind sufficiently that, according to the evidence from both sides, the one short blast signal was answered almost immediately by three short blasts from the "Alcoa Rambler" when the vessels were still 1,800 to 2,000 feet apart and that Mr. Justice Taschereau also failed to give effect to this evidence. The Appellant submits that, on this evidence, the one short blast signal cannot be said to have contributed to the collision.

p. 306, L4

p. 305, L12

p. 305, L11

p. 304, L21

p. 305, L16,  
37

p. 291, L18

## RECORD

p. 311, L18

13. Mr. Justice Rand held that the last sentence ("All ships seeing the Naval vessel flying International are to keep well clear") of paragraph 33 (a) of the Traffic Regulations was independent of the remainder of the paragraph and that only this sentence applied in this case. It is submitted that this is a wrong interpretation of the paragraph.

p. 312, L28-

35

p. 310, L23

II (3)

p. 312, L20,

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p. 312, L24

p. 255, L38

p. 226, L16,

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The reason given by Mr. Justice Rand for allowing the Appeal is that the "Norefjord" failed to obey an order given by the coxswain of the Naval escort launch. Mr. Justice Rand refers, in this connection, to an Order in Council P.C. 2412 made under the War Measures Act. The material provisions of this Order in Council are reproduced in paragraph 34 of the Traffic Regulations. Mr. Justice Rand held that the hailing from the Escort launch to "keep off" was an order which superceded Art. 19 of the Regulations for Preventing Collisions at Sea, and that the "Norefjord" failed to obey this order, but that the Pilot of the "Alcoa Rambler" was entitled to assume that it would be obeyed. Mr. Justice Rand says that, if the Pilot of the "Norefjord" chose to proceed with his vessel "in ignorance of what had been attempted at least to be communicated to him from a Naval vessel carrying the signs of her authority he must be charged with the same responsibility as if he had heard the order and disregarded it." The Appellant submits that the hailing by a Naval rating from the Escort launch, which was in charge of another Naval rating who was acting as her coxswain or helmsman, was not an order within the meaning of the Order in Council and that, in any event, it could not be said to supercede Article 19 of the Regulations for Preventing Collisions at Sea. It is further submitted that, even if this hailing could be said to have been an order, the "Norefjord" cannot be held responsible for disobeying it unless it was understood, or, at least, known to have been given by someone in authority. Mr. Justice Carroll did not find that the Pilot of the "Norefjord" understood the hailing, that there was any means by which he could or should have enquired further into its meaning, or that he knew that the launch was an escort vessel or that he could have discerned the flags which she was flying. It is submitted that the decision of Mr. Justice Rand cannot be supported without one or more findings of fact inconsistent with the findings of Mr. Justice Carroll, who saw and believed the Pilot of the "Norefjord." The Appellant further submits that, even if, as was found by Mr. Justice Rand, the Pilot of the "Alcoa Rambler" was entitled to assume that the order of the Escort launch would be obeyed, the evidence of action taken by the "Alcoa Rambler" shows clearly that he did not act on any such assumption. It was, in fact, no part of the Pilot's case that he relied on any such order. In examination in chief he said that the Escort speeded, "presumably to warn the 'Norefjord'" and that, thereafter, he paid no particular attention to the Escort.

14. Mr. Justice Kellock also gives as his main reason for allowing the Appeal the failure of the "Norefjord" to obey the alleged order given



by the Escort launch. The foundation of his reasoning on this point, however, is an interpretation of the findings of Mr. Justice Carroll which is, in the Appellant's submission, erroneous. Mr. Justice Kellock says that the Trial Judge held that the Pilot of the "Norefjord" knew that the "Alcoa Rambler" was carrying explosives, that she sounded the signal "K," or danger signal, and that the "Alcoa Rambler" was bound to have an escort vessel under paragraph 33 (a) of the Traffic Regulations. Mr. Justice Kellock further assumes, from these findings which he thought the Trial Judge had made, that the Pilot of the "Norefjord" recognised the Escort launch and understood the words of the hailing. Mr. Justice Carroll, when dealing with the question of whether or not the Traffic Rules have precedence over the Regulations for Preventing Collisions at Sea makes certain assumptions for the purposes of this decision and for that only. . . . It is submitted that these assumptions were clearly not intended to be findings of fact and that Mr. Justice Kellock misinterpreted the Judgment in this important respect.

15. Mr. Justice Kellock also finds that "the conduct of those in charge of the navigation of the 'Norefjord' indicated that they did not regard her, on sighting the 'Rambler' as a crossing ship within the meaning of Rule 19 at all, but that they recognised their obligation to keep clear of the 'Rambler.'" It is submitted that the evidence does not support such a finding. The Pilot of the "Norefjord" stated that when he saw the "Alcoa Rambler" coming down across the course of "Norefjord" he considered it to be the duty of the "Alcoa Rambler" to keep clear. The "Norefjord" admittedly kept her speed until a position of imminent danger arose, as it was her duty to do as the "stand on" vessel under Article 21 of the Regulations for Preventing Collisions at Sea. Mr. Justice Carroll found that the "Norefjord" also kept her course within the meaning of Article 21. This finding is not accepted by Mr. Justice Kellock although it was specifically made by Mr. Justice Carroll on the evidence of the Pilot of the "Norefjord" and the Master of the tug "Bansurf," who both gave their evidence before the Court and whose evidence Mr. Justice Carroll expressed to be true. The evidence of the Appellant's witnesses that the "Norefjord" substantially kept her course across the Basin is corroborated by several of the Respondent's witnesses. In particular the two Naval Ratings on the Escort launch, who were ahead of the "Alcoa Rambler" and, therefore, in a good position to see, both said that the "Norefjord" was at all times heading in an Easterly direction. The coxswain in charge of the "Tuna" a Patrol launch, which was to put the Degaussing Officer on board the "Norefjord," said that the "Norefjord" was on an Easterly course, turning to port slightly. The Degaussing Officer said that the "Norefjord" kept her course towards the range until just before the collision. This witness had been watching for the "Norefjord" to move from her anchorage and saw her turning on to an Easterly course, which he depicted

p. 314, L21  
p. 318, L17

p. 318, L22-29

p. 292, L7

p. 319, L6-9

p. 108, L10

p. 290, L1-17

p. 315, L16

p. 248, L1  
p. 265, L21,  
38

p. 277, L4

p. 203, L28

p. 207, L9, 35

p. 213, L39

p. 214, L25

p. 201, L10

## RECORD

II (24)  
 p. 163, L44  
 p. 164, L8  
 p. 198, L24

on a sketch. The Chief Officer of the "Alcoa Rambler" said that the "Norefjord" seemed to keep her course and the cadet on board the "Alcoa Rambler" gave evidence to the same effect. It is submitted that there was ample evidence to support the finding of Mr. Justice Carroll that the "Norefjord" at all material times substantially kept her course and that Mr. Justice Kellock was not justified in rejecting this finding.

A

p. 322, L38

16. Mr. Justice Kellock says that, on the evidence, it was not justifiable to find that the engines of the "Alcoa Rambler" went ahead for three minutes after she sounded a three short blast signal and that, if the engines did go ahead, they only did so momentarily. Mr. Justice Carroll accepted the evidence of the Pilot of the "Norefjord" and the Master of the "Bansurf" that the "Alcoa Rambler" seemed to pick up speed after the three short blast signal had been sounded but he did not specifically find that the engines of the "Alcoa Rambler" were put ahead. Mr. Justice Carroll expressed the view that something was wrong after the three short blast signal had been sounded, because the Master of the "Alcoa Rambler" repeated the full astern order twice on the telegraph.

B

p. 323, L7  
 p. 290, L27  
 p. 291, L1  
 p. 290, L36

The Master said that he first repeated the order when the vessels were 400 feet apart. It is submitted that Mr. Justice Carroll was amply justified in accepting the evidence that the "Alcoa Rambler" did not, at any rate, reduce speed as soon as would be expected after sounding the three short blast signal. The signal, according to the evidence of her Pilot, was sounded very shortly after the engines had been stopped, the distance between the vessels not having decreased materially between the time of stopping and the time of sounding the signal. According to the engineroom records, which, as was pointed out by Mr. Justice Kellock, were not impugned, there was an interval of 1½ minutes between the stop order and the full astern order. It is further submitted that if the engines of the "Alcoa Rambler" had been put full astern at 1,800 feet, there would have been no occasion for the Master to repeat the order at 400 feet.

C

p. 145, L5  
 p. 153, L26

D

p. 236, L7

The speed of the "Alcoa Rambler" had been only 6 knots and her engines had then been put to slow for a minute and thereafter stopped before they were put full astern. The Pilot said that the speed of the "Alcoa Rambler" had been reduced to 3 knots when the "Norefjord" was first seen.

E

p. 323, L5

F

II (5)

p. 233, L30  
 p. 234, L8, 17  
 p. 235, L10

G

17. The Appellant submits that the "Alcoa Rambler" was under a duty to keep clear of the "Norefjord" in accordance with Article 19 of the Regulations for Preventing Collisions at Sea and those on board the "Alcoa Rambler," did not, in evidence, contend to the contrary. The action taken on board the "Alcoa Rambler" was, moreover, inconsistent with any suggestion that the "Alcoa Rambler" had the right of way. They appreciated, at any rate from the time when the "Norefjord" was seen clear of the vessel at anchor, that the "Norefjord" was shaping to cross the course of the "Alcoa Rambler" from starboard to port. Mr.

H

Justice Carroll found that they had, in fact, previously been informed by the Master of the "Bansurf" that the "Norefjord" was bound for the Degaussing Range on the Eastern side of the Basin. Whether or not they had fully appreciated this previous information, they had ample time, as

**A** Mr. Justice Carroll held, to take effective action to keep clear after they had seen the hull of the "Norefjord." Although they immediately sounded a three short blast signal, the engines of the "Alcoa Rambler" were not, in fact, put full astern until a substantially later time. The "Alcoa Rambler" had very little headway at the moment of collision

**B** and, if her engines had been put astern only a little earlier no collision would have occurred. If necessary the "Alcoa Rambler" could also have taken starboard wheel action to pass astern of the "Norefjord" and, if she had dropped one or, if necessary, both anchors at a sufficient distance, they would have brought her up well clear of the "Norefjord." In fact

**C** the starboard anchor was let go too late to have any effect on her headway. The Appellant further submits that, even if, contrary to his contention, the "Alcoa Rambler" had no initial duty to keep clear of the "Norefjord," she failed to take sufficient action in due time to avoid the collision within the meaning of Articles 27 and 29 of the Regulations for Preventing

**D** Collisions at Sea.

p. 291, L1-8

p. 93, L14  
 p. 145, L29  
 p. 223, L15  
 p. 197, L38  
 p. 203, L37  
 p. 255, L27

18. The Appellant submits that the navigation of the "Norefjord" was proper in the circumstances. As the "stand on" vessel, under Article 21 of the Regulations for Preventing Collisions at Sea, she kept her course and speed until risk of collision became imminent. She had

**E** been forced to alter slightly to starboard to clear a tug and tow and had then ported easy to bring her back on to her course before the "Alcoa Rambler" was seen. When the "Alcoa Rambler" was seen her wheel was put hard-a-starboard to check her port swing and it was not until very shortly before the collision that she began to swing to starboard.

**F** It is submitted that Mr. Justice Carroll was amply justified, on this evidence, in finding that the "Norefjord" kept her course. Even if, contrary to the Appellant's contention the "Norefjord" was not the "stand on" ship, it would have been unseamanlike for her to reduce her speed after hearing the signal of three short blasts from the "Alcoa

**G** Rambler," which was sounded very shortly after the "Alcoa Rambler" came into view. Even if the flags on the "Alcoa Rambler" and the Escort launch had been distinguished and the hailing from the Escort launch had been understood, the "Norefjord" could not have been blamed for not reducing speed after hearing the three short blast signal

**H** from the "Alcoa Rambler." This signal indicated that the speed of the "Alcoa Rambler" was to be reduced, presumably to allow the "Norefjord" to pass clear ahead, and any reduction of speed by the "Norefjord" could only have hampered the intended manoeuvre of the "Alcoa Rambler." When the wheel of the "Norefjord" was put hard-a-starboard

**I** this action was properly indicated under Article 28 of the Regulations for

Preventing Collisions at Sea by a signal of one short blast. Although the wheel was kept hard-a-starboard, the "Norefjord" had first to overcome her port swing and could, therefore, not alter much to starboard before the collision.

19. The Appellant submits that the "Alcoa Rambler" should **A** be held alone to blame for the collision and that the Judgments of the Supreme Court are wrong and that the Judgment of Mr. Justice Carroll should be restored, except in so far as it holds the "Norefjord" to blame for the following among other

### REASONS.

- B**
- (1) Because the "Alcoa Rambler" was under a duty under Article 19 of the Regulations for Preventing Collisions at Sea to keep clear of the "Norefjord."
  - (2) Because the "Alcoa Rambler" did not take sufficient action in due time to keep clear of the "Norefjord." **C**
  - (3) Because the navigation of the "Norefjord" was proper under Article 21 of the Regulations for Preventing Collisions at Sea.
  - (4) Because, even if the "Alcoa Rambler" was under no duty under Article 19 of the Regulations for Preventing Collisions at Sea to keep clear of the "Norefjord," she failed to take **D** sufficient action in due time, under Articles 27 and 29 of the Regulations for Preventing Collisions at Sea, to avoid the collision.
  - (5) Because the one short blast signal sounded by the "Norefjord" was a proper signal to sound in the circumstances. **E**
  - (6) Because the one short blast signal sounded by the "Norefjord" did not in any way mislead those on board the "Alcoa Rambler" and, in any event, did not contribute to the collision.
  - (7) Because, even if the "Norefjord" was not entitled to rely on **F** Article 21 of the Regulations for Preventing Collisions at Sea, her action was proper in all the circumstances.

KENNETH CARPMAEL.

WALDO PORGES.

**In the Privy Council.**

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ON APPEAL  
FROM THE SUPREME COURT OF CANADA.

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Fos. .

*Between*

OLIVIND LORENTZEN, as Director of Shipping  
and Curator of the Royal Norwegian  
Government - - - *Appellant*  
(Plaintiff)

*and*

THE SHIP "ALCOA RAMBLER" (Alcoa Steamship  
Company Inc. Owners) - *Respondent*  
(Defendant)

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**Case on behalf of the Appellant.**

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*Solicitors for the Appellant.*