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In the Privy Council.

ON APPEAL  
FROM THE SUPREME COURT OF CANADA.

UNIVERSITY OF LONDON  
3 APR 1951  
INSTITUTE OF ADVANCED  
LEGAL STUDIES

BETWEEN

OIVIND LORENTZEN as Director of Shipping  
and Curator of The Royal Norwegian Government (Plaintiff) Appellant,

AND

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

THE "ALCOA RAMBLER"  
Case on behalf of the Respondent.

UNIVERSITY OF LONDON  
W.C.1.  
-9 JUL 1953  
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## THE "ALCOA RAMBLER" Case on behalf of the Respondent.

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RECORD.

1. This is an Appeal from a Judgment of the Supreme Court of Canada (consisting of the Chief Justice of Canada, Mr. Justice Kerwin, Mr. Justice Taschereau, Mr. Justice Rand, and Mr. Justice Kellock) dated the 11th April 1946 varying a Judgment of Mr. Justice Carroll District Judge in Admiralty of the Nova Scotia Admiralty District of the Exchequer Court of Canada dated the 27th October 1944. pp. 297-323. pp. 289-292

20 2. The action arose out of a collision between the Norwegian Steamship "NOREFJORD" owned by the Royal Norwegian Government and the American Steamship "ALCOA RAMBLER" owned by the Alcoa Steamship Company Inc. which took place in Bedford Basin, Halifax, Nova Scotia at about 9.18 a.m. on the 20th August 1942. Mr. Justice Carroll held that both vessels were to blame for the collision and he apportioned the blame as to three fourth parts to the "ALCOA RAMBLER" and one fourth part to the "NOREFJORD." From that decision both parties appealed and the Supreme Court of Canada holding that the "NOREFJORD" was alone to blame for the collision allowed the appeal of the present Respondent and dismissed the cross-appeal of the present Appellant. The Justices of the Supreme Court of Canada were unanimous in their decision. Notice of Appeal by the Plaintiff to His Majesty in Council was given on the 4th May 1946. p. 292, l. 20. p. 325.

pp. 17-18.

3. The "NOREFJORD" is a steel screw steamship of 3,082 tons gross and 1,917 tons net register, 331 feet in length, 46 feet in beam, and is fitted with triple expansion steam engines turning a single shaft with a right-handed propeller. Oil fuel is burned under her boilers and at the material time the "NOREFJORD" was fully bunkered and was laden with a full cargo of sulphur of 4,653 tons deadweight. The "NOREFJORD" was on time charter to the United Kingdom Ministry of War Transport. At the material time she was in the charge of a duly licensed Halifax Harbour pilot.

p. 140.

4. The "ALCOA RAMBLER" is a steel screw steamship of 5,500 tons gross and 3,381 tons net register, 417 feet in length, 54 feet in beam and is fitted with turbine engines of 3,000 horse power driving a single shaft with a right-handed propeller. Her boilers are oil-fired. At the material time the "ALCOA RAMBLER" was laden with a full cargo of United States Army warlike stores including 1,500 tons of bombs. She also was at the material time in the charge of a duly licensed Halifax Harbour pilot.

"NOREFJORD"  
Exhibit 1.  
ditto 10.  
"ALCOA RAM-  
BLER" Exhibit 4.  
Dyke Exhibit 2.

5. There is no material dispute with regard to the place of collision which was pleaded by both sides and found by both the Court of first instance and the Supreme Court to have been simply "in Bedford Basin." The Record of Proceedings includes Charts marked by various witnesses to indicate the place of collision according to their own estimates or calculations but it is submitted that such evidence does not materially affect the issues here to be decided.

p. 289, l. 5.

6. Equally is there no dispute as to the conditions of wind and weather prevailing at the material time. The collision took place in broad daylight on a summer's morning. The weather as found by the trial Judge was fine, there was little or no wind, and no appreciable tide.

pp. 3-11.

7. When the situation with which the Preliminary Acts deal arose both ships were engaged in manœuvres which unavoidably imported a considerable degree of complexity into the case from the start. The "ALCOA RAMBLER" was bound for sea through the Narrows for gun practice having got under way from an anchorage in the Northern part of Bedford Basin and had proceeded down the Basin on a course of approximately South East but had not maintained a constant compass heading owing to the necessity of taking helm action from time to time in order to keep clear of anchored vessels of which there was a large number greatly congesting the Basin on that morning. The engines of the "ALCOA RAMBLER" were variously manœuvred for the same reason and at no time prior to the collision were they worked ahead at more than half speed. The "ALCOA RAMBLER" was exhibiting flag B of the International Code of Signals to indicate that she was carrying explosives and was preceded by an escort launch belonging to the Royal Canadian Navy which was exhibiting the B flag and the two-flag signal IC signifying "You should keep clear of me. I am laden with dangerous cargo." As will hereinafter appear it was to a large extent their

p. 142, l. 12.  
p. 231, l. 6.  
p. 216, l. 21.  
p. 224, l. 35.  
p. 246, l. 31.

view of the importance in fact and the implication in law of the presence and action of this naval launch which led the Justices of the Supreme Court to exonerate the "ALCOA RAMBLER" from all blame for the collision and to hold the "NOREFJORD" alone to blame.

p. 309, l. 16.  
p. 312, l. 9.  
p. 318, l. 1.

8. Shortly before the Preliminary Acts take up the story the "NOREFJORD" was at anchor on the West side of the Basin approximately in the Northern portion of the area known as "B," and having got under way from that anchorage she was to proceed across the Basin in a generally Easterly direction to get over on to the Degaussing Range near Wright's Point on the Eastern side of the Basin. The part of the Basin in which the "NOREFJORD" was navigating was in the words of her pilot "so congested with ships it was impossible to steer any course" and the "NOREFJORD" made more than one alteration of her helm before those on board her became aware of the coming upon the scene of the "ALCOA RAMBLER."

pp. 18-19.

p. 88, l. 35.

9. The case of the Appellant (Plaintiff) may be summarised as follows:—

The "NOREFJORD" not steering a compass course and making 5 to 6 knots through the water was crossing Bedford Basin from West to East to enter the Degaussing Range on the East side of the basin from its Southern end and was on a swing to port, which had been necessitated by the presence on her line of advance of other vessels, when the spars of the "ALCOA RAMBLER" were noticed about 600 to 700 yards distant and about 4 to 5 points on the port bow of the "NOREFJORD." The hull of the "ALCOA RAMBLER" was at the moment of first sighting obscured from the view of those on board the "NOREFJORD" by one of the anchored vessels. As soon as the "ALCOA RAMBLER" was seen clear of the anchored vessel the helm of the "NOREFJORD" was put hard to starboard and one short blast was sounded on her whistle. The "ALCOA RAMBLER" was heard immediately to reply with three short blasts. The effect of the hard-a-starboard helm upon the "NOREFJORD" was not great and shortly afterwards her engines were put full speed astern and three short blasts were sounded on her whistle. Shortly afterwards the "NOREFJORD'S" engines were put full speed ahead to assist the ship in turning more to starboard and shortly afterwards again put full speed astern. The helm of the "NOREFJORD" was kept hard over to starboard up to the moment of the collision but her engines were stopped just before the impact. Shortly before the collision the "ALCOA RAMBLER" was heard to sound another whistle signal which was understood by those on board the "NOREFJORD" as being of three short blasts. It is common ground that the parts of each ship which first came into contact were the port side of the "NOREFJORD" about amidships and the stem of the "ALCOA RAMBLER." Nothing turns upon a nice assessment of the angle of the blow which was a right angle a little more or less.

p. 88, l. 35.

p. 89, l. 10.

p. 89, l. 11.  
p. 89, l. 14.

p. 89, l. 33.

p. 90, l. 30.  
p. 91, l. 13.  
p. 91, l. 16.  
p. 91, l. 31.

p. 91, l. 34.

p. 91, l. 38.

p. 24, l. 30.

p. 219, l. 17.

p. 219, l. 7.

p. 221, l. 24.

p. 143, l. 36.

p. 143, l. 33.

p. 220, l. 2.

p. 220, l. 34.

p. 221, l. 19.

p. 219, l. 28.

p. 221, l. 34.

p. 221, l. 35.

p. 222, l. 1.

p. 223, l. 20.

p. 224, l. 12.

10. The case for the "ALCOA RAMBLER" is that she was proceeding down Bedford Basin on a course of approximately South South East magnetic and with engines at half speed ahead had worked up to a speed through the water of about 6 knots when the masts of the "NOREFJORD" which had previously been seen in her anchorage were particularly noticed over the hull and superstructure of an anchored vessel at a distance of about 1,800 to 2,000 feet and bearing about two points forward of the starboard beam of the "ALCOA RAMBLER." Immediately upon sighting the masts of the "NOREFJORD" which vessel was apparently on a heading which would cause her to converge with the course of the "ALCOA RAMBLER" at an angle of about two points, the engines of the "ALCOA RAMBLER" were stopped and the "NOREFJORD" was carefully watched. Almost immediately afterwards the "NOREFJORD" sounded one short blast on her whistle and very shortly afterwards came clear into view round the stern of the anchored vessel (which was heading about North West) and was seen to be swinging to port. Immediately the "NOREFJORD'S" signal of one short blast was heard by the pilot of the "ALCOA RAMBLER" the engines of the "ALCOA RAMBLER" were put full speed astern and three short blasts were sounded on her whistle and shortly afterwards the letter K (morse code long, short, long, meaning "You are standing into danger") was sounded by the "ALCOA RAMBLER." The "NOREFJORD," however, came on still swinging to port and carrying substantial headway and notwithstanding that, the starboard anchor of the "ALCOA RAMBLER" was dropped and she was brought practically to a standstill in the water, the "NOREFJORD" with her port side about amidships struck the stem of the "ALCOA RAMBLER" and thereafter drew clear across her bows.

pp. 5-6.

11. The charges made by the "NOREFJORD" against the "ALCOA RAMBLER" are as follows:—

(A) The other ship was proceeding at excessive speed.

(B) The other ship neglected to keep a proper or any lookout. 30

(C) The other ship did not as required by the Rules, keep out of the way of the "NOREFJORD."

(D) The other ship did not slacken her speed, stop or reverse in time to avoid collision.

(E) The other ship failed to stop her headway to avoid collision.

(F) The other ship failed to drop her anchor in time to avoid collision.

(G) The other ship did not direct her course to starboard so as to go under "NOREFJORD'S" stern.

(H) The other ship gave a three short blast signal indicating that her engines were going full astern but her engines were not going full astern when such signal was given or for some time afterwards. 40

(I) The other ship did not as required by the Rules take such action as would best aid to avert the collision.

(J) The other ship neglected the precautions required by the ordinary practice of seamen and by the special circumstances of the case.

12. The charges made by the "ALCOA RAMBLER" against the "NOREFJORD" are as follows:— pp. 9-11.

10 (A) Starting from anchorage inside of and hidden by other anchored vessels, with the intention of proceeding out across the fairway, without ascertaining the presence of vessels in the fairway, and without any proper warning to them.

(B) Failure to blow a proper signal to indicate a left rudder when starting away from her anchorage.

(C) Faulty lookout.

(D) Excessive speed.

(E) Failure to see and heed the "ALCOA RAMBLER'S" red flag, her escort launch, and the latter's IC and B flags.

20 (F) Failure to take any or any adequate steps to avoid collision although approached and warned by the said escort launch of the presence, course, and nature of the cargo of the "ALCOA RAMBLER."

(G) Failure to shape course and speed reasonably to keep well clear of the "ALCOA RAMBLER" a vessel carrying explosives, in accordance with the Public Traffic Regulations of the Port of Halifax.

(H) Attempting to cut across the fairway in the face of the oncoming ALCOA RAMBLER" after the latter was first seen.

30 (I) Failure of the "NOREFJORD" to navigate in compliance with her own signal of one blast, thereby creating a situation of "surprise."

(J) Failure to blow any signal reasonably to give notice of her actual navigation.

(K) Failure to blow a danger signal or give any other warning to indicate her inability to navigate in compliance with her own one blast signal.

(L) Failure to hear and heed the "ALCOA RAMBLER'S" danger signal.

(M) Failure to stop and reverse her engine and drop anchor seasonably.

(N) Negligent use of rudder and propeller, thereby throwing her port side towards and against the stem of the "ALCOA RAMBLER" immediately before and at the instant of contact.

(O) Unseaworthiness in that her steering-gear was defective and was not properly warmed up so that her rudder failed to respond properly and promptly to the action of the steering wheel.

(P) Wrongful and unnecessary encroachment upon the course of the "ALCOA RAMBLER."

13. The cases of both parties were supported by the oral testimony of a large number of witnesses but an unusually high proportion of those witnesses were examined before examiners or upon commission and it is material to record the names and capacity of those who were and those who were not seen in person by the trial Judge. 10

The following witnesses gave their evidence in the presence of the trial Judge:—

For the "NOREFJORD":

pp. 85-129.  
pp. 129-139.

Charles Tupper Hayes	Pilot of the "NOREFJORD."
Leigh R. Verge ...	Master of the Steam Tug "BANSURF."

For the "ALCOA RAMBLER":

pp. 215-245 and  
256-263.  
pp. 245-256.  
pp. 263-273.  
pp. 273-288.

Ralph L. Clarke ...	Pilot of the "ALCOA RAMBLER."	20
Frederick Brannen ...	Coxswain of Naval Launch "H.C. 58."	
William J. Anderson...	Deck Hand on Naval Launch "H.C. 58."	
Stanley Cook ...	In charge of Motor Launch "TUNA."	

The following witnesses gave their evidence before Examiners or Commissioners:—

For the "NOREFJORD":

pp. 17-45.  
pp. 45-51.  
pp. 51-58.  
pp. 58-70.  
pp. 70-81.  
pp. 81-84.

Torbjorn F. Skjelbred	Master	
Odd Reiersen ...	Second Officer.	
Hermann Hansen ...	Chief Engineer.	
Michael Strom ...	Chief Officer.	30
Sigurd Bergen ...	Third Officer.	
Ivan Nilsen ...	At the wheel.	

For the "ALCOA RAMBLER.":

pp. 104-162.  
pp. 162-168.  
pp. 168-183.  
pp. 183-188.  
pp. 188-191.  
pp. 191-195.  
pp. 195-199.  
pp. 199-214.

Ernest Henke ...	Master	
Julius M. Kaost ...	Chief Officer.	
Clarence J. Johnson ...	Third Officer.	
Roy Barnes ...	Third Engineer.	
Mohammed Abdul ...		
Mahmoud ...	At the wheel.	
John William Storo-		40
zinski ...	Oiler.	
William R. Cross ...	Deck Cadet.	
Frederick J. Dyke ...	Lieutenant R.C.N.V.R. on board Motor Launch "TUNA."	

14. Having himself heard the evidence of the two pilots, which he found to be contradictory, and the evidence of independent witnesses on both sides, and having received the remainder of the testimony by way of transcripts of the shorthand notes of the examinations, Mr. Justice Carroll in his judgment refrained from saying specifically that he rejected the evidence of any witness on either side although he specifically stated that in an important particular he accepted the evidence of Pilot Hayes and the independent witness Verge. It was, therefore, open and remains open for an appellate tribunal to consider the evidence of all the witnesses without the handicap of knowing that an experienced Judge who was able to study their demeanour disbelieved any of them.

p. 289, l. 17.

p. 290, l. 9.  
p. 290, l. 34.

15. A consideration of the structure of the judgment of Mr. Justice Carroll suggests that his posing to himself the question of law which he apprehended he must decide was anterior in the process of his reasoning to his finding of the facts. After one or two introductory sentences he says: "The case, I think, boils down to a consideration of the question as to whether these were crossing vessels within the meaning of Rule 19 of Regulations for Preventing Collision (*sic.*):

p. 289, l. 18.

20           'When two steam vessels are crossing so as to involve risk of collision the vessel which has the other on her starboard side shall keep out of the way of the other.'

He then proceeds to find as a fact that the "NOREFJORD" was at all times "up to some manœuvres just before the collision" on an Easterly course with the "ALCOA RAMBLER" on her port bow. It is submitted that the "NOREFJORD'S" own evidence shews conclusively that she was never on a course at all from the moment she left her anchorage. This submission is supported by the judgments of Mr. Justice Taschereau and Mr. Justice Kellock in the Supreme Court of Canada although as will be seen this aspect of the case was not the basis of the most powerful factor in that Court's decision. It is further submitted on this part of the case that when Mr. Justice Carroll accepted the evidence of the witness Verge as to the navigation of the "NOREFJORD" between the time at which she got under way and the time of the collision he paid attention to one particular answer of that witness without appreciating that it was inconsistent with the testimony of all the other witnesses for the "NOREFJORD" including the pilot Hayes. It was, nevertheless, upon the evidence of Verge that the learned trial Judge based his findings (i) that the "NOREFJORD" was on a course crossing that of the "ALCOA RAMBLER" (ii) that the "NOREFJORD" kept her course. There is no dispute as to his finding that the "NOREFJORD" kept her speed. Up to a very late moment the "NOREFJORD'S" engines were working full speed ahead giving her in the circumstances a speed through the water of at least five or six knots.

p. 289, l. 25.

p. 88, l. 34.

p. 305, ll. 10-18.

p. 315, l. 16, *et seq.*

p. 130, l. 14.

p. 88, l. 36.

p. 289, l. 30.

p. 290, ll. 10-17.

p. 24, l. 23.

p. 90, l. 34.



16. Having satisfied himself, as it is submitted wrongly, that the two vessels were crossing vessels the learned trial Judge proceeded to consider and to condemn the navigation of the "ALCOA RAMBLER." He found that immediately upon hearing the signal of one short blast of the "NOREFJORD" the "ALCOA RAMBLER" sounded three short blasts but he accepted the evidence of Verge that instead of going full speed astern after sounding that signal she increased her forward speed. It is noteworthy that the "ALCOA RAMBLER" was not charged in the pleadings with increasing her forward speed nor were her witnesses cross-examined to shew that any such action was taken by her. The witnesses from the "NOREFJORD" say that the "ALCOA RAMBLER" seemed to pick up speed but on their own evidence their vessel was at that time swinging to port, that is to say towards the "ALCOA RAMBLER" thus perhaps giving the impression that the latter was approaching more rapidly. Mr. Justice Rand in the Supreme Court, referred to this evidence of Verge as "This piece of extraordinary evidence" and clearly implied that he would not have accepted it himself. He, however, found difficulty in disregarding a finding of fact by the trial Judge and based his decision in the case upon other considerations. Mr. Justice Kellock on the other hand analysed the evidence about the suggested acceleration of the headway of the "ALCOA RAMBLER" in great detail and shewed that the evidence of Verge could not be accepted without involving impossible distortions of much other undoubtedly correct testimony. It is submitted that the "ALCOA RAMBLER" did everything possible to take off her headway as soon as the "NOREFJORD'S" signal of one short blast was heard.

17. Having thus held the "ALCOA RAMBLER" to blame for breach of the crossing rule and having found the "NOREFJORD" not guilty of any contravention of the complementary Article 21 which required her if the vessels were crossing vessels to keep her course and speed, Mr. Justice Carroll turned to a consideration of the whistle signal of one short blast sounded by the "NOREFJORD." He held that signal to have been potentially misleading and the giving of it to have been negligent. It is submitted that in so holding the learned Judge was right. The judgment of Mr. Justice Taschereau in the Supreme Court it is submitted, however, sets forth this finding of the trial Judge in its true light and shews that the error of Mr. Justice Carroll in his assessment of the "NOREFJORD'S" fault lay in his failure to appreciate the fundamental effect of the sounding by the "NOREFJORD" of a helm signal as the first move by either vessel in the situation which was developing between them. Mr. Justice Taschereau (at page 305) states unequivocally "I believe that the sole and determining cause of the accident is this one blast signal given by the 'NOREFJORD'." He goes on to point out that the "ALCOA RAMBLER" being already stopped when the "NOREFJORD" sounded her one blast was entitled to assume upon hearing that blast that the "NOREFJORD" was turning away from her, with the implication that she had waived if she had ever enjoyed the status of stand-on ship under the crossing rule. It is submitted that Mr. Justice Taschereau's assessment of the true importance of the act of negligence on the part of the "NORE-

FJORD" found by the trial Judge is sufficient of itself to decide the whole question of liability in favour of the "ALCOA RAMBLER." As will be seen hereafter questions as to the effect of certain local regulations took a prominent place in the reasoning and decisions of the Justices of the Supreme Court. Mr. Justice Taschereau however, expressly refrained from deciding the case by reference to such regulations and it is submitted that his judgment would stand and would conclude this case had no such regulations existed. p. 306, l. 4.

18. One other aspect of the navigation of the "NOREFJORD" was dealt with by Mr. Justice Carroll, although for reasons which will appear, none of the Justices of the Supreme Court found it necessary to refer to it. Mr. Justice Carroll held that the putting full speed ahead of the engines of the "NOREFJORD" when they had been put full speed astern and when three short blasts had been sounded on her whistle was a manoeuvre performed in the agony of collision "done to impart as quick and radical a starboard swing to the Plaintiff ship as possible" and was not blameworthy. The passage is important, incidentally, on account of the corroboration it affords to the great body of evidence which speaks of the continued swinging to port of the "NOREFJORD" notwithstanding her starboard helm signal, but it is submitted that the interruption of the full speed astern movement of the "NOREFJORD'S" engines was a material factor in making the then threatened collision inevitable. The "NOREFJORD" was 331 feet long; when her engines were first put full speed astern she was travelling at about seven knots or 700 feet per minute; her own witnesses say that her speed was reduced before the collision; she was struck about amidships or 115 feet from her own stem. It is submitted that if her engines had been kept full speed astern instead of being put full speed ahead again she would not have advanced the fatal 115 feet and would have gone off to starboard under her helm and her reversed propeller, just as much or as little as she went off in the events which happened. p. 91, l. 31. p. 291, l. 24. p. 18, l. 10. p. 29, l. 35. p. 29, l. 42. p. 25, l. 32.

19. In the last phase of his judgment, Mr. Justice Carroll directed his attention to a matter which, although he held it to be of no consequence in the circumstances, yet took first place in the view which a majority of the Justices of the Supreme Court took of the case. This matter arose out of certain statutory provisions for regulating navigation in Canadian waters in time of war which derive from The War Measures Act, 1914, Statutes of Canada, Chapter 2. Under that Act an Order in Council was made, namely P.C. 2412 dated the 26th August 1939, Clause 1 of which Order is as follows:— p. 291, l. 30.

40 "1. Every vessel within the ports of Canada or Canadian waters, as defined in the Customs Act, shall comply with such orders as to the navigation and mooring of vessels as may be issued by, or on behalf of, the Minister of National Defence, and shall obey any orders given, whether by signal or otherwise, by any officer in command of any of His Majesty's Canadian ships or of any other of His Majesty's ships or any naval, military or air force officer engaged in the defence of the coasts of Canada."

Part II.  
p 2.

Under the powers conferred by that clause of the Order in Council the Rear-Admiral commanding the Atlantic Coast issued a body of instructions intituled "Port of Halifax, Public Traffic Regulations," section 33 (a) of which is as follows :—

" 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. 10  
All ships seeing the Naval vessel flying International are to keep well clear."

p. 292, l. 7.

The existence of these Regulations was brought to the notice of the trial Judge in the course of the evidence and arguments were addressed to him thereon but although he found, as he said, "for the purposes of this decision and for that only," (a) that the pilot of the "NOREFJORD" knew that the "ALCOA RAMBLER" was carrying explosives, (b) that the "ALCOA RAMBLER" sounded the K signal and (c) that the "ALCOA RAMBLER" under the Regulation was bound to have an escort, he held that there was no obligation upon the "NOREFJORD" to do other than she 20  
did or to manœuvre differently because of the presence of an ammunition ship. It was upon this note that having found both ships to blame for the collision, Mr. Justice Carroll apportioned the blame as to three fourth parts to the "ALCOA RAMBLER" and as to one fourth part to the "NOREFJORD."

p. 292, l. 11.

p. 292, l. 20.

20. The conclusion of the arguments upon the appeal and the cross-appeal left the Supreme Court of Canada unanimous in holding the "ALCOA RAMBLER" free from blame for the collision and attributing the whole blame, instead of the one fourth part apportioned by the trial Judge, to the negligence of the "NOREFJORD." This unanimity was, however, reached 30  
by reasoning along several different avenues of approach, a short restatement of which is a necessary foundation for the "Reasons" hereinafter set out.

p. 297.  
p. 298, l. 7.

p. 299, l. 13.  
p. 299, l. 15.

p. 299, l. 27.

21. The Chief Justice of Canada after recapitulating the findings of the trial Judge, turned to criticise his disregarding of the proven facts that the "ALCOA RAMBLER" was an ammunition ship flying International letters IC and that she was being escorted by a naval escort. Without holding that Traffic Regulation 33 (a) took precedence over the Rules of the Road he found that "it was undoubtedly the practice in the Harbour both for incoming and outgoing vessels to act in accordance with that regulation." He went on to state his view that when the colliding vessels first sighted each other the 40  
situation was such as is envisaged by and legislated for in Article 27 of the Regulations for Preventing Collisions at Sea, which reads :—"In obeying and construing these rules due regard shall be had to all dangers of navigation and collision and to any special circumstances which may render a departure from

the above rules necessary in order to avoid immediate danger." He therefore held that the "ALCOA RAMBLER" was entitled to stand upon her advertised status as an ammunition ship and to assume that the "NOREFJORD" would keep out of her way, and that the "NOREFJORD" having failed so to do should bear the whole responsibility for the collision. In particular, he blamed the "NOREFJORD" for a bad look-out.

22. Mr. Justice Kerwin whose judgment followed immediately upon that of the Chief Justice of Canada refrained from stating his reasons and may, it is submitted, fairly be assumed to have adopted the reasoning of the Chief Justice.

23. Reference has already been made in this Case to the judgment of Mr. Justice Taschereau who was able to reach the conclusion that the "NOREFJORD" was alone to blame for the collision without invoking Regulation 33 (a) in support of his findings. His principal criticism of the navigation of the "NOREFJORD" was directed against her continued swinging to port after sounding a starboard helm signal which misled those in charge of the "ALCOA RAMBLER." The learned Judge went on to approve the action in fact taken by the "ALCOA RAMBLER" making it clear that in his opinion the "NOREFJORD" by her own action had denied whatever status she might ever have had as a stand-on crossing ship. It is submitted with great respect that the reasons of Mr. Justice Taschereau state the true view of this case upon the law and the facts and are sufficient to conclude the matter in favour of the present Respondent.

24. Mr. Justice Rand whose judgment followed next after that of Mr. Justice Taschereau, although, clearly disinclined to agree with the trial Judge in his acceptance of the evidence of the witness Verge felt difficulty about upsetting his findings of fact, and based his own opinion as to liability upon the local Regulations hereinbefore mentioned. The substance of his view depends upon his finding, upon the evidence contained in the Record but not considered in any detail in the judgment of Mr. Justice Carroll, that those on board the naval launch escorting the "ALCOA RAMBLER" hailed the "NOREFJORD" to keep clear of the ammunition ship, and that those in charge of the "NOREFJORD" improperly disregarded and disobeyed what was an order "by signal or otherwise" within the meaning of Clause 1 of P.C.2412 and were, therefore, guilty of negligence. The learned Judge did not tarry to decide whether the legislative regulation upon which he based his decision was a "special rule duly made by a local authority" within the meaning of Article 30 of the Regulations for Preventing Collisions at Sea, but held that within or without that Article it was paramount to those Regulations, Article 19 of which did not in the circumstances apply.

Article 30 is as follows:—"Nothing in these Rules shall interfere with the operation of a special Rule, duly made by local authority, relative to the navigation of any harbour, river or inland waters."

pp. 313-323.

25. The fifth and last judgment in the Supreme Court was that of Mr. Justice Kellock. He analysed the evidence in considerable detail and in particular shewed that up to the time when she first saw the "ALCOA RAMBLER" the "NOREFJORD" was not on a course and had been manœuvring to clear ships anchored in the part of the Basin which she had to cross and was as a consequence of such manœuvring swinging to port for some time after her helm was put hard-a-starboard. From that finding of fact which, it is submitted, is to be preferred to that of the trial Judge upon the same phase of the case, the learned Justice of the Supreme Court turns to the effect of the "order" which he finds the "NOREFJORD" received from the naval launch escorting the "ALCOA RAMBLER." He concludes that such "order" imposed upon the "NOREFJORD" an absolute duty to keep out of the way of the "ALCOA RAMBLER," and that those in charge of the "NOREFJORD" recognised such obligation. It is on account of their failure to keep clear in a situation in which they knew they had no right of way that Mr. Justice Kellock blames those in charge of the "NOREFJORD." Mr. Justice Kellock passes then to a review of the navigation of the "ALCOA RAMBLER" and by means of a most detailed analysis of the evidence, disposes of the criticisms which the trial Judge based upon the testimony of the witness Verge, and he finds nothing to condemn in the management of the Respondent's vessel.

p. 315, l. 9, *et seq.*

p. 319, l. 12.

p. 290, l. 2.

p. 318, l. 1, *et seq.*

p. 3. 19, l. 8.

p. 319, l. 17, *et seq.*

p. 320, l. 17.

26. In the premises it is submitted that the Supreme Court of Canada was right in holding the "ALCOA RAMBLER" to have been free from blame for this collision and in holding that the negligence of the "NOREFJORD," which the learned trial Judge held to be a partial cause of the collision, was in fact the sole cause. The Respondent therefore submits that the Judgment of the Supreme Court of Canada should be upheld and that this Appeal should be dismissed for the following (amongst other)

### REASONS.

- (1) BECAUSE the "NOREFJORD" was rightly held to have been negligent by the trial Judge and all the Justices of the Supreme Court.
- (2) Because the finding of negligence against the "ALCOA RAMBLER" by the trial Judge was not supported by the evidence and was based upon a misapprehension of the law.
- (3) BECAUSE the colliding vessels were never crossing ships within the meaning of Article 19 of the Regulations for Preventing Collisions at Sea.
- (4) BECAUSE in all the circumstances of this case the provisions of the said Article 19 were inoperative being in conflict with Regulation 33 (a) of the Port of Halifax, Nova Scotia Public Traffic Regulations which Regulation 33 (a) is a

special rule duly made by local authority relative to the navigation of any harbour, etc. within the meaning of Article 30 of the Regulations for Preventing Collisions at Sea.

- (5) BECAUSE the "NOREFJORD" sounded a whistle signal of one short blast at an improper time and in such circumstances as to mislead and, in fact, misled, those on board the "ALCOA RAMBLER."
- 10 (6) BECAUSE the "NOREFJORD" swung to port at an improper time and continued so to swing after sounding a starboard helm signal of one short blast on her whistle and took no or no effective steps to go to starboard in accordance with her whistle signal.
- (7) BECAUSE the "NOREFJORD" was never upon a definite course.
- (8) BECAUSE the "NOREFJORD" having seen or being under a duty to have seen the naval craft escorting the "ALCOA RAMBLER" flying the International Code letters IC, negligently failed to keep clear of the "ALCOA RAMBLER."
- 20 (9) BECAUSE the "NOREFJORD" failed to appreciate as she ought to have done that the circumstances in which the "ALCOA RAMBLER" was first seen were "special circumstances" within the meaning of Article 27.
- (10) BECAUSE those in charge of the "NOREFJORD" disregarded and disobeyed the lawful orders of the officer in charge of the naval escort launch "H.C. 58" to keep clear of the "ALCOA RAMBLER."
- 30 (11) BECAUSE those on board the "NOREFJORD" negligently failed to keep a good look-out.
- (12) BECAUSE those in charge of the "NOREFJORD" attempted to cross ahead of the "ALCOA RAMBLER" being an ammunition ship, at an improper time.
- (13) BECAUSE the "NOREFJORD" negligently failed to stop and reverse her engines or otherwise to take off her headway in due time and having reversed her engines, again put them full speed ahead.
- (14) BECAUSE the "ALCOA RAMBLER" was in the circumstances, entitled to assume that the "NOREFJORD" would keep out of the way.
- 40 (15) BECAUSE the "ALCOA RAMBLER" stopped her engines immediately upon sighting the "NOREFJORD."

- (16) BECAUSE the engines of the "ALCOA RAMBLER" were put full speed astern immediately the signal of one short blast sounded by the "NOREFJORD" was heard.
- (17) BECAUSE upon hearing the "NOREFJORD'S" signal of one short blast those in charge of the "ALCOA RAMBLER" were justified in believing that the "NOREFJORD" was not claiming the status of a stand-on crossing ship.
- (18) BECAUSE the "ALCOA RAMBLER" took prompt and effective steps progressively to reduce her headway from the moment of first sighting the "NOREFJORD." 10
- (19) BECAUSE the finding of fact by the trial Judge that the "ALCOA RAMBLER" failed to go astern when she ought to have done and instead went ahead was based upon a misconception of the evidence.
- (20) BECAUSE there was no suggestion made to those in charge of the "ALCOA RAMBLER" that her engines were mistakenly worked ahead instead of astern, and the Defendants' (Respondents') witnesses were given no opportunity of dealing with such a suggestion.
- (21) BECAUSE those on board the "ALCOA RAMBLER" 20 were not guilty of negligence.
- (22) BECAUSE the judgment of the trial Judge was wrong in so far as it attributed blame to the "ALCOA RAMBLER" and should not be restored in that respect.
- (23) BECAUSE the Supreme Court of Canada rightly exonerated the "ALCOA RAMBLER" from blame for the collision.

R. F. HAYWARD.

ROLAND ADAMS.

In the Privy Council 23/7/1947

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ON APPEAL

*From the Supreme Court of Canada.*

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

*v.*

THE SHIP "ALCOA RAMBLER"  
(Alcoa Steamship Co. Inc., Owners)  
*Respondent*  
(Defendant)

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*Draft*

**Case**

FOR THE RESPONDENTS.

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