Naval War College Review

Volume 6
Number 9 *December*

Article 2

1953

Admiralty Law and its Relation to Command at Sea

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NAVAL WAR COLLEGE REVIEW

Issued Monthly
U. S. Naval War College
Newport, R. I.

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SECURITY INFORMATION

ADMIRALTY LAW AND ITS RELATION TO COMMAND AT SEA

A Lecture Delivered
at the Naval War College
on 18 May 1953, by
Rear Admiral Ira H. Nunn, U.S.N.

INTRODUCTION

Since mid-1950, the Navy has increased greatly in size; not only as to ships of the Navy itself but as to ships of the Military Transportation Service as well. Increases have been largely by way of activation of ships of the "moth ball fleet." Relatively few new ships have been added to our active seagoing forces.

Since this time and to the present date, we have lost 14,000 tons of ships by collision whereas we have lost only 4,000 tons as a result of enemy action.

We have lost far more lives in collisions at sea since June of 1950 than we have lost by enemy action; and during the same period the ships of the Navy have suffered much more damage as a result of collision than the enemy has been able to inflict upon them.

If it be that our professional skills and attainments in commanding and conning ships are deficient and that we are thereby too often in collision, we should feel a deep concern because nothing is more elementary and native to the naval profession than the safe conduct of ships.

These are the startling facts to naval officers and especially startling and of great concern to the Navy's admiralty lawyers

who are confronted with the chore of adjusting the claims and making the settlements which necessarily follow as an aftermath of collision at sea.

THE NATURE OF ADMIRALTY LAW

Let us examine briefly this thing known as *the admiralty law*, this tool for resolving the controversies which arise out of maritime damage. It is a strange thing, this admiralty law, but it has been with us a long time. It has its roots in antiquity.

I suppose the most ancient and at the same time the most simple law was the law of the jungle under which loss or damage caused by another was simply allowed to lie where it fell. The victim absorbed his loss without compensation from anyone.

But man's sense of justice was inflamed by the fact that a person damaged without fault on his own part had no recourse by peaceful means to recover his loss from the ones who did the injury. Of course, the injured party could use self-help by way of revenge but this only added to the sum total of loss and greatly disturbed the peace of the community.

Hence, man's progress from a savage to a civilized state has been marked by the development of rules designed to overcome the law of the jungle. No longer under law does the loss lie where it falls. The law causes the guilty party, or the party at fault, to make the injured party whole.

Thus, if I murder a citizen of the State and thus reduce the State's manpower, the injured State requires that my life

be forfeited in order that by my example others will be persuaded not to kill.

If I give my promise to another and receive value in return and then fail to perform so that the one to whom I made the promise is damaged, he may bring an action against me in the courts on the contract. The courts will require that I render up a sum of money sufficient to put the promisee in the same position he would have been had I not breached my promise.

If I willfully or negligently injure my neighbor or damage his property and he be without fault, the courts will require that I respond in damages in order that my neighbor may be made whole once again. The law will not let the loss lie where it fell.

Thus, the law of crimes, the law of contracts and the law of torts and all the other phases and branches of the law are designed to create justice as among men and to render obsolete the law of the jungle.

The admiralty law is no exception. Its pattern, however, is somewhat different from the pattern of the common law and these are the following reasons for this difference:

First, the admiralty law is ancient. It has been evolved slowly and by minute increment since man first ventured upon the surface of the sea with his person and his goods.

We believe that the common law of England commenced its development at the time of the Norman invasion. Therefore, it began to exist as we know it about the year 1066 A.D.

The earliest recorded admiralty law cases originated at the height of the power of the kingdom of Rhodes, about 900 B.C.

Thus, the concepts upon which admiralty law are based are about 2000 years older than those of our common law. Custom, practice and statute have modified both systems greatly throughout the years, but the reasons for a difference still exist.

Second, the admiralty law is universal among maritime nations. It is apparent from the mobile nature of its principal subject matter (I refer to ships) that there must exist a world-wide similarity in application of admiralty law by all of the principal maritime nations.

The admiralty law is really a part of the ancient "law merchant" and in that regard is not dissimilar from the law of negotiable paper — bills of exchange and promissory notes — which are governed by rules known to business men everywhere.

Third, the admiralty law proceeds along equitable rather than legal principles.

Thus, there is no jury. Cases are tried to the court. Usually the court disposes only of the issue of liability. The assessment of damage is usually left to a commissioner or proctor who is an officer of the court similar to the master in equity or to the referee in bankruptcy. If the parties do not agree as to the extent of damage, the proctor hears the evidence and reports his findings to the court for adoption.

The fact that there is no jury in admiralty has led to some strange consolidations of business in the courts. For example, there has at times been a court in England which devoted itself to the unrelated matters of Probate, Divorce and Admiralty.

Fourth, the admiralty courts have a limited jurisdiction. This limitation is, of course, to matters of a maritime nature.

Admiralty has jurisdiction of contracts of a maritime character. Ocean bills of lading, charter parties, marine insurance policies and ship repair contracts are typical. A contract to construct a ship is not within the jurisdiction of admiralty. But once construction is complete, all contracts to further her navigation and operation are matters for the admiralty courts.

The jurisdiction of admiralty in tort — that is, civil wrongs arising independently of contract — depends upon the locale of the injury. If the incident occurs upon navigable water, admiralty has jurisdiction. Damage done by ships to shore structures is within the jurisdiction of admiralty.

THE DIFFERENCES BETWEEN ADMIRALTY LAW AND THE COMMON LAW

There being reasons why the admiralty law is peculiar, let us see what the principal differences are.

MUTUAL FAULT.

Throughout my remarks this morning, I shall use the term "common law" to describe the body of law extant in this country exclusive of the admiralty field. There are those among you who will realize that such a reference to the common law is not quite accurate. I adopt it, however, in the sense I have described, as a reasonable satisfactory expedient for my present purpose.

Should I, while driving my automobile upon the highway, operate it negligently so that it collided with your automobile

which you yourself were driving, you could not recover from me at common law if you yourself were operating your car negligently and your negligence contributed to the accident. Your contributory negligence would be a bar to your recovery. For like reason, of course, I could not recover from you.

Admiralty law does not follow the common law doctrine of contributory negligence. Admiralty uses instead a rule of mutual fact which works like this: if ship Able and ship Baker collide by reason of the mutual fault of their respective navigators, the resultant damages are divided beween those two ships. Thus, if ship Able is damaged to the extent of $5,000 and ship Baker to the extent of $10,000, the damages of ship Able are substracted from those of ship Baker and the balance is divided between them so that ship Baker receives $2,500 and ship Able gets nothing. The ship damaged most gets one-half the difference. Hence, the only way you may collect in a mutual fault situation is to suffer more damage moneywise than the other fellow.

I believe the reason admiralty employs a doctrine of mutual fault is because admiralty procedure is designed to do equity between the parties. It is said that he who seeks equity must do equity, so a damaged ship seeking recompense is expected to make recompense for the damage she has done.

THE MARITIME LIEN.

Now, the maritime lien.

There are circumstances at common law under which a person may acquire a right to retain an article in his possession and look to that article for payment of a fee or other charge. There

are only a few instances in which this right may be acquired. For example, a warehouseman who stores goods may retain the goods until the storage charge is paid, and if the charge is not paid he may sell the goods to satisfy his claim. In order to exercise his lien, however, the warehouseman must have possession of the goods. If he surrenders possession, he loses his common law lien.

Now the maritime lien is quite an extensive and flexible thing — not nearly so restrictive as the common law lien.

This is because the admiralty law looks upon a ship as a legal person which has definite and personal needs. She requires food, servants, equipment and many things to enable her to continue the purpose for which she was created — that is, navigation. Generally speaking, to all who assist her, she may become personally liable — liable *in rem* — for the services they have rendered. Thus, those who furnish her with supplies, fuel, towage and many other things have a lien against the ship itself for their compensation. They may hold the ship and even sell her to satisfy their claims.

Unlike the common law lien, the maritime lien is not dependent upon the lienor's possession. The lien follows the ship wherever she goes or into whosoever's possession she may come — even into the hands of a *bona fide* purchaser. A maritime lien may be divested only by sale under a decree of an admiralty court in a proceeding against the ship itself — that is, in a proceeding *in rem.*

When questions of priority among lien holders arise, the liens take priority in the inverse order in which they were incurred. The theory behind this rule is that what was last done for the benefit of the ship was for the benefit of all concerned, including

the holders of earlier liens. So the latest lien will defeat prior liens when the liens are in competition with each other.

This is a very curious situation in the law where a claim latest in point of time is better than prior claims.

There is good reason for the peculiarities of the maritime lien. A ship by its very nature travels about and often finds itself in strange places and in need of assistance. It is a great help to the ship in securing its needs if the supplier knows he will acquire a lien which he will not lose when the ship departs and which will take precedence over other liens with which the ship may have been previously encumbered.

SALVAGE.

The law of maritime salvage is another instance in which there is divergence between the admiralty law and the common law.

If my neighbor's house catches afire and I voluntarily go to the rescue and spend great effort and incure grave personal risk in saving his property and extinguishing the fire, he is under no legal obligation to pay for my services. The Good Samaritan acquires no rights at common law.

The law of admiralty has a different concept. If a ship breaks down at sea or catches on fire, a volunteer who tows the ship to port or extinguishes the fire is entitled to a fair compensation for his salvage services. A salvor acquires a lien upon the ship to such an extent as an admiralty court may decide to be appropriate for the services rendered.

I suppose the law of salvage is a by-product of the unwritten law of the sea which requires that assistance be rendered to those in distress. Life at sea is still dangerous and a ship in distress desperately needs assistance from outside. The property involved is usually of high value and human lives are often involved. It is well, therefore, that the unwritten law of the sea exists and that assistance will be prompted by the fact that a salvor has a legal right of compensation as well as a moral duty to respond.

GENERAL AVERAGE.

The doctrine of general average is another peculiarity of the maritime law for which no counterpart exists at common law. General average works like this:

If a ship is driven by heavy weather onto the shore and it becomes necessary in the process of refloating her to lighten ship by throwing part of the cargo overboard, the owners of the jettisoned cargo are not without redress. The law requires that the value of the abandoned cargo, together with any other expenses incurred in saving the ship, be thrown into general average and all of the interests involved in the venture contribute to the cargo loss and other expenses in the proportion which their respective values bear to the amount of loss.

This doctrine of general average is based upon the concept that the voyage of a ship is a joint venture in which all involved participate alike; and no interest is entitled to succeed at the expense of any other interest.

LIMITATION OF LIABILITY.

Still another unusual provision of admiralty law is the one under which a shipowner may, in certain situations, limit

his liability against tort claims to the value of his ship immediately after the accident. Of course, if the ship is lost, its value after the accident is nothing.

There are, of course, certain circumstances at common law where a person's liability is limited. The liability of a stockholder in most corporations is limited to the extent of his holdings; and I suppose that the liability of a bankrupt person is limited to the value of his assets. But the common law generally is wary of permitting persons to insulate themselves for liability for their acts.

The provision for a limitation of the shipowner's liability in admiralty came about by statute. The incentive which prompted the legislation was the desire first by Great Britain and then by the United States to encourage the investment of capital in shipping enterprises.

It was urged in support of this legislation that a shipowner cannot control his vessel to the same degree that the owner of a factory on shore can control his plant. The shipowner has constructed a seaworthy vessel at great cost, caused it to be inspected and manned it with skilled personnel certified as competent by an agency of the Government — the Coast Guard. It was argued that in such a situation, the damage which those in control of the vessel might do, if the shipowner was not in privity with the act causing damage, he was entitled in good conscience to limit his loss for tort damage to the value of the vessel immediately after the accident plus her pending freight.

Such was the law for several years until there occurred the disaster to the MORRO CASTLE.

The MORRO CASTLE, a passenger ship, caught fire while bound from Havana to New York. She was beached on the New Jersey coast. One hundred and thirty-five lives were lost and serious injuries were sustained by many of the survivors.

The ship had been completely gutted by fire and had only scrap value. The shipowner could, of course, limit his liability to that value. The consequence was that the next of kin of those who met their death and those who suffered serious injury received practically no compensation.

The unfairness of the situation thus revealed led Congress to amend the law so as to require, in those cases where the ship's value after the accident was insufficient to care for all claims, that the limitation fund be increased by a sum equal to $60 per gross ton — this additional fund to be available solely for distribution to death and personal injury claimants.

Another effect of the amendment made at this time was to cause the privity or knowledge of the Master to the negligent act which caused the damage to be that of the shipowner himself so as to defeat limitation insofar as death or personal injury claimants were concerned.

ADMIRALTY JURISDICTION IN THE UNITED STATES

The nature of admiralty law and its peculiarities having been discussed, it seems appropriate to point out that admiralty jurisdiction in the United States is vested in the Federal Courts.

The Constitution provides that the judicial power of the United States shall extend to all cases of admiralty and maritime jurisdiction.

Thus, the Federal District Courts have initial jurisdiction of admiralty actions. Appeals lie to the United States Courts of Appeal and to the Supreme Court of the United States in much the same manner as other actions commenced in the Federal District Courts.

ADMIRALTY SUITS BY OR AGAINST THE GOVERNMENT

There has never been any difficulty about the Government bringing suit against others in admiralty matters. Prior to 1916, however, private persons had no legal remedy against the United States for damage caused by Government vessels.

This was the result of the doctrine of sovereign immunity which we inherited from Great Britain. Under this doctrine "the King can do no wrong." The natural consequence of this lack of remedy for private persons in the courts, the Government not having consented to be sued in admiralty cases, was that Congress was presented with numerous bills for the relief of private persons who had been injured by the negligent operation of Government vessels. Congress was under a considerable burden in handling this type of business which was really a fit subject for adjudication in the courts.

So Congress incorporated into the Shipping Act of 1916 a provision which made the vessels of the United States Shipping Board, while they were employed as merchant vessels, subject to "all laws, regulations and liabilities governing merchant vessels" despite the Government's ownership and operation of the vessels.

In the case of the LAKE MONROE, the Supreme Court of the United States held that the waiver of sovereign immunity

contained in the Shipping Act of 1916 subjected the merchant vessels of the Shipping Board to proceedings *in rem* in admiralty. The arrest and seizure of these Government ships proved embarrassing to the United States.

Accordingly, Congress passed in 1920 the Suits in Admiralty Act which exempted Government merchant vessels from seizure or arrest, but provided that libels *in personam* could be filed against the Government in any case where a procecding in admiralty could be maintained if the vessel were privately owned.

The Shipping Act and the Suits in Admiralty Act covered only merchant vessels of the United States and there was still no waiver of sovereign immunity with respect to public vessels. All naval vessels are, of course, public vessels of the United States.

The Act which governs suits against the United States for damage caused by its public vessels — which, of course, includes naval vessels — is the Public Vessels Act of 1925. This Act permits a libel *in personam* to be brought in admiralty against the United States for damages caused by public vessels.

The net result is that Government vessels of all kinds, public and merchant, are now subject to just about the same liabilities as commercial vessels, with the exception that arrest, seizure, or the existence of a maritime lien against a Government vessel are not allowed. The personal credit of the United States is substituted for the security which arrest or lien affords.

While the Public Vessels Act allowed suit against the Government for damages caused by a naval vessel, it made no provision to enable the Department of the Navy to settle these cases administratively.

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ADMINISTRATIVE SETTLEMENT OF ADMIRALTY CLAIMS

Prior to 1944, the Navy had a very restricted authority to settle admiralty claims administratively. Settlement could be accomplished only if the claim did not exceed $3000. This, of course, was useless in settling anything other than very minor claims. Hence, most of the Navy's admiralty business was thrown into litigation where it was either settled by the Department of Justice or actually tried in the Federal Courts.

The great increase of naval activity in World War II, with the resultant increase of admiralty business, induced Congress in 1944 to authorize the Secretary of the Navy to settle claims for damage caused by naval vessels in amounts up to and including $1,000,000. The Secretary has corresponding authority to settle the Government's claims for damage to naval property caused by vessels or floating objects.

In addition, some claims of an admiralty nature not involving a naval vessel can be dealt with under the Federal Tort Claims Act of 1946. Examples of this type of claim occur when a commercial vessel sustains damage through the negligence of a pilot who is in the service or employ of the Navy, and — another case — when a naval crane on shore drops a bucket on a commercial barge when loading or discharging.

The Admiralty Division of the Office of the Judge Advocate General is charged with the processing and settlement of claims under the Secretary's settlement authority.

COLLISION AT SEA

The great bulk of the Navy's admiralty business lies in the field of maritime torts, and the most often encountered of the

maritime torts is that of collision. Certainly, the collision is the most dramatic and the most injurious of the maritime torts.

Collisions are difficult to adjudicate. The testimony is always conflicting. In fact, it is said that typical collision occurs when two vessels sight each other on a clear day at a distance of several miles on opposite and approaching courses, and each vessel backs full until the collision occurs.

There are, of course, many and varied maritime torts. To mention a few of the examples of the variety involved in this broad field:

There are the damages to shore structures where a vessel misjudges the effect of wind, tide and current, and lands too hard against a wharf or dolphin;

There are the cases of damage by swells or wave-wash, set up by a passing vessel, which cause damage along the shore;

There are the situations where a vessel does damage to fish nets, lobster pots and crab traps;

There are incidents of cargo damage in the rather rare cases where commercial cargo is carried in a Navy bottom;

There are the cases of personal injury to stevedores, passengers and visitors on board ship;

There are oil spills encountered while taking fuel on board which may cause damage to the hulls of other vessels or small craft nearby;

If a naval vessel should blow her tubes in an unfavorable wind, resulting in soot damage to nearby property, this would be considered damage caused by the vessel;

There is a case on record where a small boat was trying to run a line to the shore in the vicinity of San Francisco. When the line-throwing gun was fired the line parted, with the result that the projectile over-carried and landed in the living room of a house on the beach in San Francisco — causing damage of course;

There was an incident in which a naval vessel while engaged in anti-aircraft target practice fired a shell which fell several miles inland and exploded near a farmer's truck, demolishing the truck and seriously injuring the farmer. This claim was settled as damage caused by a naval vessel.

The concept of damage caused by a ship is given a broad interpretation, as you can see. The theory is that pretty generally any act by the ship will be considered the proximate or legal cause of damage.

Perhaps the greatest extension of the theory is found in the case of the CAVALIER, a Canadian vessel which during the war was ordered to follow in the wake of a small patrol craft into the harbor at Norfolk, Virginia. The patrol craft, being of shallow draft, passed safely over the hulk of a submerged wreck, but the CAVALIER, being of greater draft, struck the wreck and sustained serious damage. The Supreme Court of the United States held that the injury to the CAVALIER was damage caused by a naval vessel even though there had been no contact between the CAVALIER and the patrol craft.

There are still other illustrations of the wide variety of

cases which may be included in the concept of damage caused by a naval vessel.

If a ship's crew were painting the hull, using a sprayer instead of brushes, and some of the paint spray was carried by the wind to the hull of a small pleasure craft moored nearby or to automobiles parked near the ship's berth, this could be considered damage caused by a naval vessel.

So it would be also in the case of a vessel which might be so unfortunate as to drop her anchor in a cable area, snagging and parting privately owned cables under the water.

The same would be true of a naval vessel moored for a long time in the vicinity of commercial clam flats or oyster beds, whose sewage discharge contaminated the bivalves so they could not be harvested and sold commercially. The damage might well be considered to have been caused by the naval vessel.

The right to sue the United States under the Public Vessels Act and the Secretary of the Navy's settlement authority extends also to claims for compensation for towage and salvage services rendered to a naval vessel.

The examples I have mentioned illustrate the great variety of claims and their diverse nature with respect to which the Government has waived its sovereign immunity and which are included in the Secretary's settlement authority.

THE EXPENSE OF COLLISION

The maritime tort which comes closest home to the naval

officer is that of collision — by that I mean the unhappy situation which comes about when two ships touch each other.

Since Korea, naval activities have increased tremendously. Since then, many millions of dollars have been spent in reactivating and recommissioning the ships needed for combat, patrol, transport and training. The Navy has, in fact, activated some 590 ships from the "moth-ball" fleet to meet the needs caused by the Korean emergency.

The Navy's objective is constant readiness for assigned missions. Apart from the harmful interference with scheduling, logistics and combat readiness — which the laying up of a ship for collision repair entails — there is a great financial loss suffered by the Government in the payment of damage claims either through settlement or through litigation.

I have previously pointed out that the Government is liable in the same manner as a private shipowner for damage inflicted by naval vessels. The discharge of that liability is a further drain on our Treasury and is harmful to our economy.

I do not mean to imply that the naval vessel is always to blame. Indeed, in many cases the naval and private ships are both at fault. Sometimes the naval vessel and at other times the private vessel is solely at fault. Then sometimes the collision is between two naval vessels — as in the unfortunate WASP-HOBSON incident. No matter what the blame, or who is involved, collision results in expense to the United States.

These cases involve not only the expense of effecting physical damage repairs, the expense of detention of a vessel during the

repair period, drydocking and other miscellaneous expenses, but also the disruption of crews and, in addition, the disclosure of evidence of poor ship handling which does not serve to enhance naval prestige.

The records of our Admiralty Division disclose that since Korea the Navy has spent $505,000 in settlement of claims for damage caused by naval vessels. These payments all come out of appropriated funds, of course. During the same period the Navy has collected only $189,000 in payment for damage caused by others to naval vessels. We seem to be paying out almost $3 for every $1 we collect. These figures do not represent total losses or gains because under the rule of mutual fault, which I have previously explained, damages are divided or set off in cases where blame attaches to both ships. And, too, these figures do not include what we pay out by reason of cases which are litigated in the courts.

In one major case now being litigated, the Government's ultimate loss will exceed $14,000,000. In addition to this fiscal debacle, we lost a much needed and recently activated hospital ship. I refer to the BENEVOLENCE-LUCKENBACH collision.

In another case which we are now trying to settle the claims approximate $12,000,000. This is the unfortunate collision between the GENERAL HERSEY and the Argentine vessel MAIPU.

As of today, there are 124 claims for damage caused by naval vessels totaling approximately $14,000,000 which are awaiting administrative settlement. About 67% of this amount arises out of collision damage.

While the vast majority of the collision claims against the Navy are disposed of pursuant to the Secretary of the Navy's

settlement authority, it is inevitable that some claims must be litigated. The claims pending in litigation number 37 and involve an approximate total of $4,550,000.

THE CAUSE OF COLLISION

It has probably occurred to you to wonder, while I have been talking, what is the chief cause or fault by the Navy which results in our enormous bill for admiralty damage. Many things contribute to our fault in these cases, of course, but I have no hesitation in naming the principal fault — and that is excess speed in a fog.

I've often wondered why we are so often guilty of excess speed during conditions of reduced visibility. I can only speculate upon the answer; but, based upon my own experience and the cases recently decided by the courts as well as those which I've observed since taking office as Judge Advocate General, I believe I can say that at least a very large contributing reason is an unwarranted reliance upon radar.

RADAR

This leads me to a discussion of the impact of radar upon admiralty law.

Radar can be either a blessing or a curse. Most often it is a blessing. It is too new for the law upon the subject to have been completely crystallized. Nevertheless, I feel that some precepts can be drawn at this time from the cases which have been decided.

With respect to radar, I'd like to state a few cases and then distill from the decisions what I believe those cases show the law

to be — at least they indicate what we may call a trend of judicial decision.

BARRY-MEDFORD.

In the BARRY-MEDFORD case decided in 1946, the THOMAS BARRY, an Army transport making 18 knots sighted a fog bank ahead — which she entered 22½ minutes later without reducing speed. Collision occured with the trawler MEDFORD two minutes after BARRY entered the fog bank. BARRY was equipped with radar but the radar was not placed in operation prior to entry into the fog bank. MEDFORD had no radar.

At the time of collision, MEDFORD had no lookout in the bow and was sounding improper fog signals. Counsel for BARRY, admitting an immoderate speed in a fog on the part of his vessel, nevertheless argued for a mutual fault settlement because of MEDFORD'S faulty lookout and improper sound signal. His argument was rejected and a mutual fault settlement denied because of BARRY'S failure to activate and use her radar. The Court (U. S. District Court for the Eastern District of New York) said:

> "The failure of the BARRY to use her radar is the most serious and sinister aspect of this case. The perfection of that device is thought to have invoked a new concept of the responsibilities of vessels so equipped, touching their handling and operation in or near a fog area * * *.
>
> "The offending ship could have informed herself of the presence and track of the MEDFORD in abundant time to have avoided by a wide margin any danger whatever of striking her. Under such circum-

> stances, it is impossible to yield to the argument for the BARRY, that her conduct is to be condoned to any extent, in view of her failure to employ the very device which was installed to prevent a collision."

Here, then, is a duty laid by the Courts upon radar-equipped vessels to use radar in or near a fog. There seems little question that this duty would also apply under any conditions of reduced visibility.

Furthermore, dictum in the opinion indicates that, with radar in operation, the court would expect a series of ranges and bearings to be taken and plotted to determine the course and speed of the target in time to take avoiding action.

AUSTRALIA STAR-HINDOO.

The following year, that is in 1947, the case involving the AUSTRALIA STAR and the HINDOO was decided.

In this case, which occured during the war, the AUSTRALIA STAR was proceeding at night blacked out. She was radar-equipped and her radar was in operation. She picked up the HINDOO by radar twenty-eight minutes before the collision, and twelve minutes before the collision the AUSTRALIA STAR turned on her navigation lights——but at no time did she track HINDOO by radar or take other avoiding action. HINDOO was at fault by reason of insufficient lookouts and counsel for AUSTRALIA STAR sought to avoid fault by AUSTRALIA STAR.

The Court, however, made a finding of mutual fault on the ground that had the AUSTRALIA STAR tracked HINDOO by

radar, she could have avoided collision. The Court said, among other things:

> "It has been suggested that to hold the AUSTRALIA STAR at fault is to penalize her because of her equipment with radar. That is a misconception. The conduct which is regarded as negligent on the part of a person of sound vision is not the same as that which is condemned when practiced by the blind. The fault of the AUSTRALIA STAR is that she chose to remain blind when she had the means to see.
>
> "Prudent navigation involves taking advantage of all the safety devices at hand * * *."

You will note that in the BARRY case a radar-equipped ship made no use of radar. In the AUSTRALIA STAR case a radar-equipped ship did use her radar but did not use it to the full extent of its potentialities. The Courts found fault with both situations.

Thus, we may expect the Courts to hold that a radar-equipped vessel operating in a fog or under conditions of low visibility, must place her radar in operation and, in addition, must obtain a succession of ranges and bearings and must determine the course and speed of any vessel picked up by radar in order to avoid collision.

THE SOUTHPORT.

In a British case decided by the High Court of Justice, Admiralty Division, in 1949, the SOUTHPORT — one of the colliding vessels — was using her radar apparently to its full potential

but she misinterpreted the information she received from her radar apparatus. In other words, this case involves a full use of radar but an erroneous evaluation of radar data.

At the time of the accident, the SOUTHPORT was running in a fog at a speed of 9 knots. The Courts held under the circumstances then prevailing this was an excessive speed which could not be excused on the theory that radar permitted greater speed because here the vessel failed to make proper use of her radar.

The Courts expressly left open the question whether a vessel making proper use of her radar would be justified in running at a speed higher than that which would be moderate under ordinary circumstances.

TRITON-BARANOF.

The very recent case of the TRITON-BARANOF was decided by the Exchequer Court of Canada (British Columbia Admiralty District) on February 2nd, 1953. It reflects a further aspect of the impact of radar on collision law.

TRITON and BARANOF approached each other one fine clear summer night in the Straight of Georgia, in Alaskan waters. The ships were approaching nearly head-on but under circumstances which would have resulted in a starboard-to-starboard passing if both vessels had maintained course and speed. The collision occured in pilot waters and pilots were conning both vessels.

The ships did not maintain course and speed as they should have done and a collision resulted. The situation became confused

and I believe may best be described in the words of one of the pilots who responded in the following hopeless fashion when asked how the collision occured:

> "The only idea I have is that he cut across my bow; where he came from and how he got there I don't know. What he was doing I don't know."

However, the Court had no difficulty in finding the BARANOF at fault because on that fine clear summer night the pilot of that ship was conning by radar rather than by visual means which were available to him.

The Court in its opinion quoted this excerpt from an article by Mr. James H. Hamilton in "Harbor and Shipping" of January, 1953:

> "In a recent collision case in the United States Courts the Judge made the remark that radar 'is a very good working cane but a very bad crutch!' His intention was no doubt to call to mind the fact that the introduction of radar as an aid to navigation did not warrant the assumption that the international 'Regulations for Preventing Collisions at Sea' are bypassed or in any way changed by reason of the additional and valuable assistance which radar provides."

IN GENERAL.

I believe than an examination of the decided cases, a few of which I have discussed, lead reasonably to the following inferences as to radar's effect on navigation and the Rules of the Road:

1. Radar is no substitute for lookouts — nor will reliance upon radar excuse the failure to keep a proper lookout.

2. A radar-equipped vessel is under a duty to operate its radar for purposes of tracking targets when in or when approaching an area of restricted visibility.

3. The use of radar will not excuse immoderate speed as interpreted under Article 16 of the Rules of the Road.

4. A vessel which misinterprets or makes improper use of the information furnished by her radar set may be at fault in violation of the General Prudential Rule.

5. Under wartime conditions it is a fault on the part of an escort vessel for failing to supply radar-obtained information to ships under her control but this fault cannot be imputed to the colliding non-radar-equipped vessels.

6. The failure of a vessel to carry navigational radar does not render the vessel unseaworthy,

and last, but not least

7. Radar is a very good-working cane but a very bad crutch.

One last thought on collision:

I've said that the most frequent cause is immoderate speed in a fog. In reading the many cases which illustrate that point,

I've been forcibly impressed with the number of such accidents which occur very soon after entering the fog bank. Our present HERSEY-MAIPU is such a case; so is the BARRY-MEDFORD case which I have previously discussed. There are many others.

It seems that the crucial time is upon entry into a fog bank. There must be a reason unknown to me why this is so without attempting to explain it, I leave it with you as a warning from which you may profit.

THE REVISED INTERNATIONAL RULES OF THE ROAD

I have promised myself the pleasure of warning you, sometime during the course of this talk, of the forthcoming advent of the Revised International Rules of the Road.

Mariners who sail the high seas on and after January 1st of 1954 will be sailing under these Revised Rules.

They were drafted at the International Safety of Life at Sea Conference held in London in 1948.

The rules were to become effective when Great Britain, as the depository nation, had signified that there had been a "substantial unanimity" of acceptance by the maritime nations participating in the Conference. Formal notice of unanimity was issued on January 1st, 1953, so that, as provided in the convention, the rules will become effective one year from that date.

This is the first revision of the International Rules of the Road in many years.

The rules have not been changed so that mariners will be confronted with entirely new rules. However, there are sufficient

differences between the old and the new to require mariners to study the new rules carefully.

A detailed discussion of the changes would be inappropriate here, still I believe it desirable to mention briefly some of those which are most important.

The new rules will be applicable to seaplanes on the water as well as to vessels.

The range light, now optional, will become mandatory except for vessels less than 150 feet in length and for vessels engaged in towing.

The lighting requirements for pilot vessels, fishing vessels and vessels engaged in towing operations have been revised. These revised details will require your careful study.

The presently optional fixed stern light has been made mandatory and its range of visibility has been increased from one to two miles.

The range of visibility of anchor lights has been increased for all vessels under 150 feet in length from one to two miles, and for vessels exceeding that length from one to three miles.

Fog signals for certain vessels at anchor in a fog have been revised and the distress signals have been re-grouped, with a new signal provided. Again, these revisions will require careful study.

A bend signal of one prolonged blast has been made mandatory for vessels navigating channels.

Another new and very important signal which, in my opinion, should tend to prevent collisions in the privileged and bur-

dened vessel situations is that a danger signal of five or more short blasts has been authorized for use by a privileged vessel in doubt as to the burdened vessel's intentions or actions.

The necessary enabling legislation adopting the rules for use by the United States and authorizing the President to proclaim them at the proper time, was enacted by the Congress on October 11th, 1951.

Now with the adherence to the Convention by the very substantial majority of the leading maritime nations, the Presidential Proclamation is in the process of issuance.

The Hydrographer has been designated to disseminate the new rules to the Fleet and they will undoubtedly be circulated in the very near future.

I commend them to your careful study and consideration.

CONCLUSION

It may be that those of us who follow the sea have become too secure in our reliance on modern instrumentalities. If that be true, the present is the best time to take stock of our situation and to return to the degree of care and prudence which has been the hall-mark of mariners since men first began "to go down to the sea in ships."

BIOGRAPHICAL SKETCH OF LECTURER

Rear Admiral Ira H. Nunn, U.S.N., was graduated from the U. S. Naval Academy in 1924. He is also a graduate of Harvard University Law School.

Rear Admiral Nunn's appointment as Judge Advocate General in June, 1952, marked his fourth assignment in that office. He served there first in 1931, again in 1937, and as Legislative Counsel from 1945 to 1948.

During World War II, Admiral Nunn participated in operations in the Pacific Theatre — first, as Commander Destroyer Division 2 and, later, in command of Destroyer Squadron 47 with additional duty as Commander Destroyer Division 54.

In addition to the Navy Cross, he was awarded the Bronze Star Medal with Combat "V" and Gold Star in lieu of the second Bronze Star.

Immediately prior to the assumption of his duties as Judge Advocate General, he served as Executive Assistant and Senior Aide to the Chief of Naval Operations.