

1905  
 \*Feb. 27, 28. THE SHIP "CALVIN AUSTIN" } APPELLANT;  
 (DEFENDANT). .....  
 \*March 6.

AND

WILLIAM L. LOVITT (PLAINTIFF).....RESPONDENT.  
 ON APPEAL FROM THE EXCHEQUER COURT OF CANADA  
 NEW BRUNSWICK ADMIRALTY DIVISION.

*Maritime law — Collision — Inland waters — Narrow channel — Boston harbour.*

Rule 25 of the United States "Inland rules to prevent collision of vessels" provides that "in narrow channels every steam vessel shall, when it is safe and practicable, keep to that side of the fair-way or mid-channel which lies on the starboard side of such vessel."

*Held*, affirming the judgment appealed against (9 Ex. C.R. 160) that the inner harbour of Boston, Mass., is not a narrow channel within the meaning of said rule.

APPEAL from a decision of the local judge for the New Brunswick Admiralty District of the Exchequer Court of Canada (1) in favour of the plaintiff.

The following statement of the facts is taken from the judgment of Mr. Justice McLeod, local judge for the New Brunswick Admiralty Division.

"This is an action brought by William J. Lovitt, owner of the British barque "Reform," against the steamer "Calvin Austin" for damages caused by a collision which occurred in what is known as the Boston inner harbour.

"The "Calvin Austin" is an American steamer of about twenty-eight hundred tons register.

"The barque "Reform" is a steel vessel, British register, of about 545 tons, and was just terminating a voyage

\*PRESENT :—Sedgewick, Girouard, Davies, Nesbitt and Idington JJ

from Rosario *via* Buenos Ayres to Boston with a cargo of wool and hide clippings when the collision occurred.

"The steamer "Calvin Austin" is a passenger steamer running between the ports of Boston and St. John, and at the time of the collision she was just leaving Boston for St. John. The collision happened in the Boston inner harbour on the 30th of July, 1903, at about 15 minutes past 12 o'clock in the day. The dock which the "Calvin Austin" used in Boston is known as the "Commercial" dock, and is on the south side of the harbour. On the 30th of July she left her dock a few minutes after 12 o'clock noon. 12 o'clock is her time for sailing, but she was a few minutes late leaving that day. The pilot, Captain Mitchell, says she came out of her dock, and when she left the dock (that is, when she was clear of the dock) it was 10 minutes past 12 o'clock. Shortly before she left the dock but just as she was preparing to leave a five-masted schooner, the "Van Allens Boughton," in tow of the tug 'J.S. Chandler,' passed down the harbour. The length of hawser between the tug and the schooner was about 75 fathoms. Shortly afterwards and immediately before she in fact left her dock a fishing schooner in tow of the tug "William J. Williams" came out of her dock just below the "Commercial" dock, on the same side of the harbour, a dock known as the "T dock," and proceeded down the harbour. The length of hawser between the tug and fishing schooner was about 40 or 50 fathoms. There were vessels anchored on both sides of the harbour, that is, on both the north and south sides of the harbour or channel. The day was fine and clear, but there was a strong south-west or west-south-west wind blowing. The "Van Allens Boughton," in tow of the tug "Chandler," was going down about the centre of the harbour or channel, or possibly a little to the southern or starboard side going out.

1905  
THE SHIP  
CALVIN  
AUSTIN  
v.  
LOVITT.  
—

1906  
THE SHIP  
CALVIN  
AUSTIN  
v.  
LOVITT.  
—

The fishing schooner, in tow of the tug "Williams", was following the "Van Allens Boughton" down, a little on her starboard side. When the "Calvin Austin" came out of her dock she came clear out free from the dock, some of the witnesses say a length and a half or two lengths—one witness gives a shorter distance—but, at all events, when she got clear of the dock her helm was put hard a-port. She took a south-east course, which would take her down the harbour, and when she came on her course she was rather on the port side of the "Van Allens Boughton."

"The "Calvin Austin," when she took her course of south-east, was going faster than the "Van Allens Boughton" or the fishing schooner. She was probably three lengths behind the "Van Allens Boughton," and so far as I can gather from the evidence was just commencing to pass the fishing schooner but was some two or three hundred feet from her port side. Among the vessels anchored on the north side of the harbour was a barque, the "Davis P. Davis," that appeared to be anchored a little outside the line of vessels so that her bow projected somewhat farther out in the harbour than the other vessels. When the "Calvin Austin" was straightened on her course she gave a signal of two whistles. Captain Pike, of the "Calvin Austin," says they were given to the tug "Williams", having the fishing schooner in tow. At the time those whistles were given the "Calvin Austin" had commenced to pass the fishing schooner—one of the witnesses says she had in fact passed the schooner.

"From all the evidence she was at all events passing the schooner when the whistles were given and was some two hundred feet on her port side and about two lengths or two lengths and a half behind the "Van Allens Boughton." The whistles were answered by the "Williams" towing the fishing schooner, by the

"Chandler" towing the "Van Allens Boughton," and the "Pallas" towing the "Reform." Capt. Pike says he heard the answer of the "Williams", but did not hear the other two. A few minutes after this signal was given, and Capt. Pike says after he had passed the tug of the fishing schooner and without any further signal being given, the helm of the "Calvin Austin" was passed hard a-port and she crossed the stem of the "Van Allens Boughton," and attempted to pass her on her starboard side and as she came on the starboard quarter of the "Van Allens Boughton" she met the "Reform" in tow of the tug "Pallas", coming up on that side and ran into her about a-midship, striking her about a foot abaft of the fore rigging breaking a number of her plates and doing a good deal of damage.

1905  
THE SHIP  
CALVIN  
AUSTIN  
v.  
LOVITT.

"The pilot of the "Calvin Austin" says she left the wharf at ten minutes past twelve, that is when she swung clear of the wharf it was ten minutes past twelve and the collision occurred at fifteen minutes past twelve, five minutes later.

"The "Reform" was coming into Boston that day, and some distance outside of the Boston light she took the tug Pallas, and shortly after the pilot came on board and took charge. The tug first took her in tow on a hawser about one hundred feet long and they proceeded thus to the Boston light, passing through what is called the Narrows at the entrance of the harbour, past Castle Island, until they came about to what is called "Burnham's Channel" buoy. There they stopped and took in the hawser and the tug dropped down alongside the barque and made fast on her port side. The wharf she was going to is what is known as the "Cunard wharf" on the north side of the harbour, or nearly opposite the "Commercial" wharf, and the captain of the tug says he went on the port side as it would be handier to put her into her wharf on that side. She

1905  
THE SHIP  
CALVIN  
AUSTIN  
v.  
LOVITT.  
—

would lie with her starboard to the wharf. As they were taking in the hawser the tug "Chandler", with the "Van Allens Boughton" in tow, was coming down the harbour or channel, and she gave two whistles to the Pallas, indicating that she wished to pass starboard to starboard. This was answered by the "Pallas" consenting. She then was made fast alongside the barque and they proceeded up the harbour on the south or port side at about two or two and a half knots an hour. Just after the tug was made fast alongside of the "Reform" the first two whistles of the "Calvin Austin" were heard and were answered by the "Pallas" consenting to meet starboard to starboard, those aboard the "Pallas" saying they supposed the signal was intended for them. The "Reform" in tow of the Pallas proceeded up the south side of the harbour or channel and when she was passing the "Van Allens Boughton" the "Calvin Austin" came across the stern of the "Van Allens Boughton" and the collision occurred. The "Calvin Austin" as she came on the starboard quarter of the "Van Allens Boughton" and saw the "Reform," again gave two whistles, put her helm hard to port and her engines full speed astern. The "Pallas" answered with two whistles. The helm of the "Reform" was put hard to port and the engines of the "Pallas" full speed astern, but the vessels came together and the damage occurred as stated."

The learned judge held that the "Calvin Austin" was solely to blame for the collision and gave judgment accordingly, assessing the damages at \$9,059.61.

The questions at issue on the present appeal are stated in the judgment of the court delivered by Mr. Justice Davies.

*Stockton K.C.* for the appellant.

*H. H. McLean K.C.* and *Edward S. Dodge* (of the Bar of the State of Massachusetts), for the respondent.

The judgment of the court was delivered by

DAVIES J.—This was an action brought in the Admiralty Court of the City of Saint John, N. B., by the respondent, the owner of the barkentine “Reform” against the SS. “Calvin Austin” for damages caused by the collision of the two ships in the inner harbour of Boston, Mass.

By agreement of the parties the damages were fixed, in case the “Calvin Austin” was found solely liable, at \$9,059.61, for which amount the local judge in admiralty gave judgment.

The main contest on the appeal was as to the application and construction of articles 25 and 27 of the regulations for preventing collisions prescribed and enacted by the Congress of the United States relating to the navigation of all harbours, rivers and inland waters of the United States, certain ones specially named excepted of which Boston is not one. These two articles or regulations are as follows:—

#### NARROW CHANNELS.

Art. 25. In narrow channels every *steam-vessel* shall, when it is safe and practicable, keep to that side of the fair-way or mid-channel which lies on the starboard side of such vessel.

#### GENERAL PRUDENTIAL RULE.

Art. 27. 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.

The appellant, the “Calvin Austin,” contended that the inner harbour of Boston was a “narrow channel” within the meaning of the words in rule 25, and that the barkentine “Reform” and her tug boat the Pallas were guilty of a direct breach of that rule in coming into and sailing along “that side of the fair-way or mid-channel of that inner harbour lying on the port side of such vessel” and that no “circumstances”

1905  
THE SHIP  
CALVIN  
AUSTIN  
v.  
LOVITT.  
Davies J.

1905  
THE SHIP  
CALVIN  
AUSTIN  
v.  
LOVITT,  
—  
Davies J.

were proved under the articles making such a course of navigation and breach of the rule excusable.

The respondent submitted that the inner harbour of Boston, after passing inwardly the buoy, indifferently called the "Gas Buoy" or "Buoy No. 9", was not a "narrow channel" within the meaning of article 25, and, secondly, if it was, the circumstances proved fully justified the "Reform" and her tug in keeping to the southern side of that harbour.

The local judge in admiralty, Mr. Justice McLeod, held both contentions of the respondent well founded. We are of the opinion that he was right on both points.

As regards the main question, whether the inner harbour of Boston, at the point where the collision occurred, was a "narrow channel" within the meaning of the words of article 25, we have carefully read the evidence relative to the harbour, its configuration, its buoys, its depth, its dredging, its docks, and its entrance channel, and examined most carefully the charts shewing all these important facts, and we are of the opinion that neither the language nor the reason of the rule are properly applicable to this inner harbour. As it appears from the chart, the line of the inner harbour forms a kind of semi-circle and is almost entirely lined with docks and wharves.

The depth of water from the docks on the north side to those on the south side, and from those on the west to the place of the collision, nearly out to the Gas Buoy, is practically uniform. There is no fair-way or mid-channel in this inner harbour to which the words of the rule could apply or by which ships sailing in it could be guided. When vessels reach this inner harbour they either anchor under the direction of the harbour master or proceed straight to their dock or wharf wherever that is in North, South or West

1905  
 THE SHIP  
 CALVIN  
 AUSTIN  
 v.  
 LOVITT.  
 ———  
 Davies J.  
 ———

Boston. The waters in front of these docks are used as anchorage grounds for vessels under the direction of the harbour master. Several small rivers run into this inner harbour but they do not affect the question now in consideration. From the Gas Buoy seawards the evidence and the charts shew there is what might be called a "narrow channel" in whole or in part. Its depth and width are more or less defined and it is marked by buoys the greater part of the way. It is not necessary for us, however, to decide whether this channel from the sea to the Gas Buoy, or any part of it, is or is not a "narrow channel." What we have to determine is whether the inner harbour inside of these buoys, at the place where the collision occurred, is such a channel, and we hold it is not.

The object of the rule is to prevent collisions by keeping steamers on the proper side of narrow channels though which they steam. It is a reasonable and necessary rule for such waters but we cannot see reason or object in its application to such a place as this inner harbour. Surrounded except at its entrance from the sea by docks and wharves, having practically a uniform depth of water, and not having either a natural fair-way or mid-channel or an artificially buoyed one to indicate to vessels the side of the fair-way which would lie on their starboard side, we cannot see how article 25 could reasonably be applicable to it.

This conclusion would practically decide the case because, if the "Reform" was being towed where she was at the time of the collision properly and not in violation of the rule, it was not really arguable that she had been guilty of faults or neglect which would bring her within the rule of contributory negligence.

In deference, however, to the able argument of Dr. Stockton that the "Calvin Austin" was not shewn to have been guilty of any positive fault either in the



1905  
THE SHIP  
CALVIN  
AUSTIN  
v.  
LOVITT.  
Davies J.

steam signals she gave before the collision took place or otherwise in her navigation, we have given special attention to the evidence upon these points. We fully agree with the trial judge that the steamer was distinctly to blame for the misleading steam signals or whistles she gave and that these signals directly led up to the collision. They were heard and answered by the tug of the "Reform" amongst other vessels and properly acted upon by them and the subsequent wrongful navigation of the "Calvin Austin" at variance with those signals given by herself, was the proximate cause of the collision for which she must be held answerable.

We are unable to find, considering the circumstances of the time, place and weather conjoined with the signals from the "Calvin Austin" that the "Reform" was guilty of any negligence for which she should be held liable in whole or in part.

Concurring as we substantially do with the reasoning and the conclusions of the learned trial judge on the main questions we do not think it necessary to support our judgment with reference to the evidence as these references are all given in the trial judge's judgment.

The appeal will be dismissed with costs.

*Appeal dismissed with costs.*

Solicitor for the appellant: *John Kerr.*

Solicitor for the respondent: *H. F. Puddington.*

---