

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of The English and American Shipping Company, Limited, Owners of the Ship "Mystic," and her master and crew v. The Ship "Nanna," her cargo and freight, from the Supreme Court of Canada; delivered the 7th June, 1910.*

---

Present at the Hearing :

LORD MACNAGHTEN.

LORD ATKINSON.

LORD COLLINS.

LORD SHAW.

*Nautical Assessors :*

ADMIRAL SIR ARCHIBALD L. DOUGLAS,  
G.C.V.O., K.C.B.

COMMANDER W. F. CABORNE, C.B., R.N.R.

[*Delivered by Lord Macnaghten.*]

This is an Appeal from an Order of the Supreme Court of Canada which varied a Decree of McDonald, J., sitting as Local Judge in Admiralty for the Nova Scotia Admiralty District. That learned Judge had made an award of \$25,000 in favour of the Owners, Master and crew of the s.s. "Mystic" for salvage services rendered to the s.s. "Nanna," in the course of which the "Mystic" herself sustained serious damage. His opinion was that "the damage

to the 'Mystic' was caused by the necessities of the service, and was not attributable to the fault of the salvors." The Supreme Court, on the other hand, by a majority of three Judges to two, came to the conclusion that the damage resulted from negligence or lack of seamanship on the part of the Master of the "Mystic." The Supreme Court therefore disallowed the cost of her repairs, and so reduced the amount of the award to \$12,500. The only subject on which the two Courts differed was the conduct of the Master of the "Mystic" at a critical period in the operations, and that was the only question argued before this Board.

The "Mystic" was a screw collier of 2,342 tons register. Her value was over £40,000. The "Nanna" was a Norwegian vessel of 1,125 tons gross. The value of the "Nanna," her cargo and freight was appraised at \$65,437.00, or £13,633.

It was on Monday, the 4th of February, 1907, about 20 miles south-west of Seal Island, off Cape Sable, in Nova Scotia, that the "Mystic," in water ballast, on her voyage from Boston to Louisburg, Cape Breton, fell in with the "Nanna," laden with lumber, and bound from Halifax to New York. The "Nanna" had broken her propeller shaft on the night of the 31st of January, and had been drifting about helplessly ever since. She was unmanageable and in a position of considerable danger. The "Mystic" arranged to tow her to Halifax, a voyage of about 150 miles. On Tuesday morning, when some 140 miles of the voyage had been covered, about 7.45 a.m., the whistle at Chebucto Head, at the entrance to Halifax Harbour, was heard. It sounded about a mile and a-half ahead. The "Mystic's" course was then N.E.  $\frac{1}{4}$  N. The wind was from the E.N.E.

and increasing to a gale, with thick snow. As no pilot was to be seen, the Master of the "Mystic" thought it better not to attempt to enter the harbour, and he ordered the course to be altered to E.S.E. Immediately afterwards the Bell Rock Buoy was seen about half a mile off on the port quarter. While the "Mystic" was turning slowly round under a port helm, the towing hawser parted. The "Nanna," then heading about S.E., began to drift with wind and tide towards the land at Morris Point and the dangerous reefs known as the Sambro Ledges, which extend seaward to a distance of about two miles southward. The "Mystic" followed the "Nanna." The sea was too rough to lower a boat, but by skilful manœuvring another tow-rope was passed to the "Nanna." At 9 a.m. towage was resumed. The Master of the "Mystic" had not taken any soundings since the tow-rope broke. He was so intent on the pursuit of the "Nanna" that he did not pay any heed to the Chebucto whistle. He did not hear it after he saw the Bell Rock Buoy. "I did not bother about it," he says; "I was busy." In the interval he had lost his reckoning altogether, and though the wind was blowing strongly from the E.N.E., he seems to have thought that he had been carried back to the position from which he had started, and was near the Bell Rock Buoy again. After towing for about 15 minutes in a S.E. direction, breakers were sighted on the starboard bow of the "Mystic," which were in fact breakers on the easternmost of the Sambro Ledges, either the Ede Rock or the rocks known as the Sisters. The Master of the "Mystic" then altered his course to N. under a starboard helm. After he had steered N. for nearly an hour, all the time drifting West, breakers were seen at 10.10 a.m. two or three points on the port bow, and a

buoy, which was the Stapleton Rock Buoy, and lies west of the Morris Point Buoy, only a quarter of a mile from the land, was seen about a hundred feet off. The Master of the "Mystic" did not know where he was. He then slipped the hawser and hailed the "Nanna" to let go her anchor. Both vessels succeeded in anchoring. The "Nanna" rode out the gale safely. The "Mystic" swung round over the buoy, struck the rock three times, and was much injured. By the following morning the storm had abated. The "Mystic" made her way to Halifax under her own steam. Probably she could have taken the "Nanna" with her, but it was thought better to hand the "Nanna" over to some tugs which had then appeared on the scene, and they brought her to Halifax without any difficulty.

Duff, J., who gave the leading Judgment in the Supreme Court, in a very clear and convincing Judgment expressed his opinion that the Master of the "Mystic" was guilty of a want of ordinary care, and that the injuries to his ship were attributable to his default. "He knew," says the learned Judge, "he was on the South-east coast of Nova Scotia, near the outer entrance of Halifax Harbour; that an hour and a-half before he had been within a short distance—a mile and a-half, he says—of Chebucto Head; the wind was East-North-East; for nearly an hour he had been drifting; he could hardly suppose he was drifting in an easterly direction, and on any conceivable assumption as to his position it must have been plain that north of him and west of him was the shore, and that a northerly course, maintained for even a short time, must take him into exactly the kind of danger he was trying to avoid."

Neither the trial Judge nor the learned Judges of the Supreme Court had the advantage which

their Lordships have had in the presence of nautical assessors. The question is purely a question of seamanship. The nautical assessors by whom their Lordships have been assisted are of opinion that the accident to the "Mystic" was entirely due to the fault of the Master, and that there was no excuse for his conduct after the towage was resumed. Making every allowance for the difficulty in which the Master was placed by a snowstorm of exceptional violence, and not without some regret on account of the skill and courage displayed in recovering the "Nanna," their Lordships are compelled to take the same view of his conduct after the "Nanna" was recovered. He knew, or ought to have known, that he and his tow were perilously near to the land on a dangerous coast, and that his only prudent course after clearing the breakers was, as Mr. Justice Duff says, "to proceed to sea—that is to say, on an easterly course."

Their Lordships will therefore humbly advise His Majesty that the Appeal should be dismissed.

The Appellants will pay the costs of the Appeal.

In the Privy Council.

---

**THE ENGLISH AND AMERICAN  
SHIPPING COMPANY, LIMITED,  
OWNERS OF THE SHIP  
"MYSTIC," AND HER MASTER  
AND CREW**

2.

**THE SHIP "NANNA," HER CARGO  
AND FREIGHT.**

---

---

London:  
Printed for His Majesty's Stationery Office,  
By LOVE & MALCOLMSON, LTD., Dane Street,  
High Holborn, W.C.  
1910.