

*Butler, Stillman & Hubbard*, for claimant.

BENEDICT, J. On reading the briefs presented in this case, I observe that great stress is laid by the claimant upon the non-production by the libelant of the hatch-cover, which the libelant asserts broke under his weight, and which the proofs show to be in his custody, or under his control. If my recollection serves me, the production of the hatch-cover was tendered by the libelant at the trial; and it seems to me more conducive to justice to have it produced, instead of leaving the case to be decided upon the assertion of the libelant that the hatch-cover broke under his weight, on the one hand, and the presumption that if produced it would show the contrary, on the other. This case is held open, with leave to the libelant to produce the hatch-cover in question, and with liberty to both sides to present any evidence regarding the same as they may be advised.

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EUBERWEG v. LA COMPAGNIE GENERALE TRANSATLANTIQUE.<sup>1</sup>

*District Court, E. D. New York. June 5, 1888.*)

DEPOSITIONS—FOREIGN WITNESS—INTERPRETER—DUTY OF STENOGRAPHER.

Witnesses for respondent were being examined through an interpreter, and, a difference arising as to the accuracy of the translation, respondent's proctor announced that the answers would be written down as translated by him, and the stenographer, on being appealed to by libelant's proctor, announced that he would do as respondent's proctor directed. Libelant's proctor thereupon withdrew, and the examination was completed in his absence. On motion to suppress the depositions, *held*, that libelant's proctor was justified in withdrawing, and the motion should be granted, even though it appeared that the depositions were not eventually taken in the manner complained of by libelant's proctor.

In Admiralty. On motion to suppress depositions as irregularly taken.

*Biddle & Ward*, for libelant.

*Coudert Bros.*, for respondent.

BENEDICT, J. This is a motion to suppress certain depositions. It is made on behalf of the libelant. There is a difficulty with the motion, arising out of the fact that the depositions complained of have not been filed, and that they are not mentioned with particularity. The depositions complained of were taken under these circumstances: Notice of taking the depositions of certain witnesses was given, and the proctors on both sides attended, and the taking of the depositions commenced. The witnesses were unacquainted with the English language, and were examined through an interpreter. A difference seems to have arisen as to the accuracy of the translations made, and the proctor for the claimant an-

<sup>1</sup> Reported by Edward G. Benedict, Esq., of the New York bar.

nounced that the stenographer would take down the answers of the witnesses as translated by him. To this the proctor for the libelant objected, and inquired of the stenographer as to his intention. The stenographer replied that, being employed by the claimant's proctor, he felt bound to take the instructions of the claimant's proctors in the particulars in dispute. Whereupon the libelant's proctor withdrew. It seems that after the withdrawal of the proctor for the libelant, the taking of the depositions was continued, and, as it now appears, not in accordance with the method announced to the libelant's proctor, that the stenographer would correct the translation of the interpreter. In this way several depositions were taken on behalf of the claimants, without the presence of any person on behalf of the libelant, and of course without cross-examination. The libelant's proctor now asks that the depositions so taken be declared irregular and be suppressed.

Upon the point in controversy my opinion is that the method of taking the depositions, which the libelant's proctor supposed to have been announced, and of which he now complains, was improper. The libelant's proctor was entitled to have the answers of the witnesses as interpreted by the sworn interpreter taken down by the stenographer. It is also my opinion that, after the notice given, and the statement made by the stenographer of his intention to take down the notes in accordance with the method directed by the claimant's proctor, the libelant's proctor was justified in withdrawing, in the belief that such intention would be carried into effect. It is my opinion, therefore, that the depositions taken after his withdrawal, without any disavowal of intention to follow that method, although not taken in accordance with the method complained of by the libelant's proctor, the same having been taken in the absence of the libelant's proctor, and without cross-examination, should be suppressed.

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THE ALESIA.<sup>1</sup>

BONANNO v. LA COMPAGNIE FRANÇAISE DE NAVIGATION À VAPEUR CYP.  
FABRE & CIE.

(District Court, E. D. New York. June 5, 1888.)

1. SHIPPING—DAMAGE TO CARGO—FROST—BILL OF LADING—EXCEPTION.

The steam-ship A. arrived in the port of New York in February, with one hold filled with green fruit, and general merchandise in the others. The 16th was a warm day, and the ship commenced to discharge the fruit, but the discharge was stopped by request of certain consignees, with the assent of the libelant. All the fruit could have been discharged on that day. The following three days were cold, and no fruit was discharged until the 20th and 21st, when, the weather having moderated, the discharge was completed, and the fruit transferred to a warehouse. It was afterwards found to be frozen, and for its loss this action was brought. The bill of lading contained the ordi-

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