

v.35F, no.7-34

DEVINE *v.* THE TIVERTON.¹

District Court, E. D. New York.

June 11, 1888.

ADMIRALTY—PRACTICE—TRIAL—NON-PRODUCTION OF EVIDENCE.

Claimant laying stress upon the presumption arising from the fact that the hatch-cover, which libelant asserted had broken under his weight, and which the proofs showed was in his possession, had not been produced on the trial, it was *held*, that the case should be kept open, with liberty to libelant to produce in court the hatch-cover in question, and with liberty to both sides to take further evidence regarding the same.

In Admiralty.

Noah Tebbetts, for libelant.

DEVINE v. THE TIVERTON.¹

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.

¹ Reported by Edward G. Benedict, Esq., of the New York bar.