

Case No. 4,272.
[4 Ben. 127.]¹

THE E. C. SCRANTON.

District Court, S. D. New York.

April, 1870.

PRACTICE IN ADMIRALTY—EXCEPTIONS TO COMMISSIONER'S REPORT.

The propriety of the action of a commissioner, to whom it has been referred to ascertain the damages in a collision case, in refusing to allow a person to be sworn to contradict testimony previously given, cannot be raised by an exception to the report, but must be raised by an application to the court before the report is made.

[Cited in *The Transit*, Case No. 14,138.]

[See *The E. C. Scranton*, Case No. 4,271.]

This case came up on an exception to the report of a commissioner, to whom it was referred to ascertain and compute the damages in a case of collision.

BLATCHFORD, District Judge. The exception is disallowed. The question of the propriety of the action of the commissioner, in refusing to allow a person to be sworn to contradict testimony previously given, cannot be raised by an exception to the report of the commissioner. It ought to have been raised by an application to the court, before the report was made, to direct the commissioner to allow the person to be sworn. *The Columbus* [Case No. 3,041]; *Tyler v. Simmons*, 6 Paige, 127; *Schwarz v. Sears, Walker*,

The E. C. SCRANTON.

Ch. 19; Ward v. Jewett, Id. 45; Troy Iron & Nail Factory v. Corning [Case No. 14,196].

¹ [Reported by Robert D. Benedict, Esq., and here reprinted by permission.]