

THE EMULOUS.¹

District Court, E. D. New York. December 1, 1884.

OBJECTION TO DEPOSITION—LACHES.

A cause being called for trial, the libelant offered in evidence a deposition, which was objected to. The libelant submitted to the objection on being allowed a continuance of the cause and leave to examine the witness anew. Three years after, the cause being again called, the libelant appeared by another proctor, and offered the same deposition. *Held*, that the libelant could not be allowed to question the validity of the objection; and, as no other evidence was offered, the libel must be dismissed.

In Admiralty.

A. B. Stewart, for libelant.

Wheeler & Souther, for claimant.

BENEDICT, J. This cause was called for hearing some three years ago, when the libelant offered in evidence a deposition taken *de bene esse*. The deposition was objected to, and the libelant submitted to the objection on being allowed a continuance and permission to examine the witness anew. The witness not having been re-examined, 44 the libelant now, by a new proctor, brings up the case, and in support of the libel offers the same deposition objected to on the former hearing. Having submitted to the objection at the first hearing, he cannot at this late date, and when, as it may be presumed, the witnesses for the other side are scattered, be permitted to question the validity of the objection once submitted to. The same result would follow if, as the libelant contends, the objection taken at the first trial was sustained by the court, but wrongfully. For it would be unjust to the claimant, who has acted upon the ruling of the court, to permit the libelant, after this long delay, to reopen the question raised by the objection to the deposition, and passed on at the first hearing.

There being no evidence for the libelant except that contained in the deposition referred to, the libel must be dismissed, and with costs.

¹ Reported by R. D. & Wyllys Benedict, Esqs., of the New York bar.

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