

CORTES Co. v. TANNHAUSER.  
CHITTENDEN v. SAME.

*Circuit Court, S. D. New York.* December 15, 1883.

TAKING TESTIMONY IN FOREIGN COUNTRY—REV.  
ST. § 863.

Depositions of witnesses in a foreign country cannot be taken under Rev. St. § 863.

WALLACE, J. The defendants cannot take the testimony of these witnesses in a foreign country, under section 863 of the Revised Statutes. That section only applies to the taking of depositions within the United States. All the officers named, before whom depositions may be taken, are those of courts of some of the states' of this country, except notaries public, and it is not to be assumed that notaries public of foreign countries were intended to be delegated with a power which, in the case of higher officials, is confined to those of our own country. The proper course is by commission. The cases seem to be such as to render an oral examination of the witnesses expedient upon the execution of the commission. As the rest of the proofs have been so taken, the defendants are especially entitled to insist upon the same course on the examination of their foreign witnesses.