

CELLULOID MANUF'G CO. V. RUSSELL *ET AL.*

*Circuit Court, S. D. New York.*

April 9, 1888.

UNITED STATES EXAMINERS—TAKING TESTIMONY OUT OF DISTRICT.

An examiner of the United States circuit court for the Southern district of New York cannot take testimony outside of his district.

In Equity. Motion to strike out testimony.

*J. E. Hindon Hyde*, for complainant.

*H. M. Ruggles*, for defendant

LACOMBE, J. This is a motion to strike out certain testimony taken before one of the examiners of this district, sitting at Waterbury, Conn. There is nothing in the statutes or rules, or in any reported case, which authorizes a person designated as “examiner of the circuit court of the United States for the Southern district of New York” to sit and take testimony outside of his district. The decision cited (*Railroad Co. v. Drew*, 3 Woods, 697) does not apply; in that case the examiner was specially appointed for the district in which he took the proof. The proper mode of taking testimony in equity cases pending in this circuit is indicated in a memorandum filed this day in *Arnold v. Chesebrough*, ante, 16.