FALCONBRIDGE, C.J. JANUARY 31ST, 1905.

CHAMBERS.

## WATT v. MACKAY.

*Evidence—Foreign Commission — Examination of Plaintiff abroad—Terms—Costs.*

Appeal by plaintiffs from order of Master in Chambers, ante 93, imposing terms upon plaintiffs as a condition of allowing the issue of a commission to take the evidence of one of the plaintiffs abroad.

F. J. Roche, for plaintiffs.

N. F. Davidson, for defendant.

FALCONBRIDGE, C.J., dismissed the appeal with costs.

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ANGLIN, J. JANUARY 31ST, 1905.

TRIAL.

## CALEDONIA MILLING CO. v. SHIRRA MILLING CO.

*Water and Watercourses—Dam—Ownership by two Persons in Common — Agreement—Construction—Rights in Regard to Water—Surplus Water—Injunction—Damages.*

Action to restrain defendants from making a wrongful use of water drawn from a dam known as No. 5, erected at Caledonia on the Grand river, and for damages.

G. Lynch-Staunton, K.C., and A. O'Heir, Hamilton, for plaintiffs.

E. E. A. DuVernet and H. Arrell, Caledonia, for defendants.

ANGLIN, J.—Dam No. 5 was erected under statutory powers by the Grand River Navigation Co., who owned and operated mills situated on opposite banks of the Grand river, on which the grist mills of both plaintiffs and defendants are erected, and also the land upon which the saw-mill mentioned below stands. A subsequent owner of these two grist mill properties desiring to dispose of them to different purchasers, it became necessary to provide for the interest which each purchaser should have in the dam and water privileges upon which both depended for power. The parties have not