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CARTWRIGHT, MASTER. JANUARY 23RD, 1905.

CHAMBERS.

WATT v. MACKAY.

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

Motion by plaintiffs for a commission to New York to take the evidence of one of the plaintiffs, who resided there.

F. J. Roche, for plaintiffs.

N. F. Davidson, for defendant.

THE MASTER.—The question in what circumstances such an order should be made is fully discussed and the authorities collected in *Robins v. Empire Printing and Publishing Co.*, 14 P. R. 488. . . . In view of the principles laid down there and also in Rule 312, it does not seem right to debar plaintiffs from presenting to the Court all material evidence that they may be able to adduce.

The material in support of the motion is, no doubt, scanty. It would have been more satisfactory and more in accordance with the usual practice to have had an affidavit from Mrs. Maclay (the plaintiff whose evidence was sought) herself.

I think, however, that the order I propose to make will test the good faith of plaintiffs.

An order may go to examine Mrs. Maclay as asked at New York, before William Seton Gordon, a member of the Ontario Bar resident at New York. This examination is to be taken also as her examination for discovery if defendant desires. Plaintiffs, before issuing the order, are to pay to defendant's solicitor \$40 to enable him to attend on the execution of the commission. In the event of the success of plaintiffs no greater costs are to be allowed against the defendant for and