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CHAMBERS.

CANADIAN MINING, ETC., CO. v. WHEELER.

*Judgment Debtor—Transferee of—Examination—Third Mortgagee—
“Exigible under Execution”—Legal and Equitable Execution—
Receiver—Rule 903—56 Vict. ch. 5, sec. 9 (O.)*

The holder of a third mortgage given by a judgment debtor is not examinable under Rule 903.

Application by the plaintiffs, who are execution creditors of defendant, for an order to examine his transferee.

W. R. P. Parker, for plaintiffs.

J. J. MacLennan, for transferee.

The Master in Chambers:—The transferee is a mortgagee to whom the judgment debtor has given a mortgage on certain lands belonging to the debtor, and who had previously given two prior mortgages thereon to other parties

Counsel for the transferee contends that the rule under which the plaintiffs apply, does not include him, as he is not a person “to whom the debtor has made a transfer of his property or effects *exigible under execution.*” He admits that the debtor has given him a mortgage on certain real estate belonging to the debtor, but claims that it is a third mortgage upon the property, and therefore is not a transfer of property exigible under execution: *Jarvis v. Ireland*, 4 A. R. 118 at p. 122.

Counsel for the plaintiffs claim that the words “exigible under execution” include equitable execution, and the appointment of a receiver: *In re Pope*, 17 Q. B. D. 743.

The former Con. Rule 928, from which the present Rule 903 is taken and under which the present application is made, was not limited by the words “exigible under execution.” These words were, for the first time, added to the present Rule at the last consolidation, and were apparently taken from similar words used in 56 Vict. ch. 5, sec. 9 (O.) This section became Rule 904 in the last consolidation of the rules, and, no doubt, Rule 903 was made to harmonize