

CRUCIBLE STEEL CO. v. FFOLKES—MASTER IN CHAMBERS—  
JUNE 24.

*Judgment Debtor—Examination of Transferees—Con. Rule 903—Action pending to Set aside Transfers.*—Motion by the plaintiffs, judgment creditors, under Con. Rule 903, for an order for the examination of two transferees of the judgment debtor. An action was commenced on the 28th March, 1913, to set aside the transfer of certain lands by the judgment creditors to the transferees now sought to be examined. In that action, of necessity, these transferees were defendants. The transfer attacked was said, in the endorsement on the writ of summons, to have been made on the 30th May, 1910, as shewn by the production of a copy of the certificate registered in the Land Titles office on the 2nd June, 1910. No part of the debt in respect of which the plaintiffs recovered judgment was incurred before the 9th November, 1910, as shewn on the endorsement of the writ issued on the 22nd May, 1911, in the action in which the plaintiffs obtained judgment. These facts were not in dispute. It was argued by counsel for the transferees that there was no power to order an examination under Con. Rule 903, when it was clear that the transfer was made before the liability which was the subject of the action had accrued. In answer Ontario Bank v. Mitchell, 32 C.P. 73, was cited. The Master said that that case did not assist. It was also said—in answer to the argument that, as these transferees were defendants in the pending action, this was an attempt to get discovery before the time—that an examination under Con. Rule 903 would have wider scope than an examination for discovery. The Master said that the language of the Rule itself, at the close, seemed to negative that suggestion. Such an examination should naturally precede an action such as was now pending. When the judgment creditor had issued his writ, it seemed idle to have the examination sought for here. There was no record of any such order ever having been made; and that is generally a proof that it cannot be made. Motion dismissed, with costs as in Smith v. Clergue, 14 O.W.R. 31. Wright (Millar & Co.), for the plaintiffs. J. A. Worrell, K.C., for the transferees.