

OSLER, J.A.—Section 8 (1) of the Assignments and Preferences Act, R. S. O. ch. 147, provides that “an assignee may be removed, and another substituted, or an additional assignee appointed, by a Judge of the High Court, or of the County Court where the assignment is registered.” The method of procedure under this clause is not prescribed by the Act, as it is in matters arising under secs. 34-39, nor is any provision made as to how the evidence is to be taken, whether *viva voce* or by affidavit. The notice of the original motion stated that in support of it would be read the examination of the assignee intended to be taken and the affidavit of one Le Vallée. No affidavit was filed or produced, and the examination of the assignee has not been taken. It appears that an appointment to examine him before the local officer at St. Catharines under Rule 491 was taken out and served upon him, but that he refused to attend, on the ground that Con. Rule 491 did not apply to a proceedings of this nature, which is not in Court, and in which the Judge acts simply as *persona designata*. The notice of motion stated no ground for the removal of the assignee.

In my opinion, in such a proceeding as this the assignee is entitled to know what is alleged against him as disqualification or other ground of removal, and, however briefly and compendiously, it should be expressly stated in the notice. The motion ought not to be launched in the bold fashion here adopted, in the hope of fishing out of the assignee's examination something or other to support it.

The motion to remove should be dismissed because no reason is stated in the notice why the assignee ought to be removed, and because there are no materials of any kind before the Judge to supply the omission.

The motion to commit must also be dismissed. There is nothing in the Assignments and Preferences Act or the Judicature Act or Rules which enables a Judge to apply to the principal proceeding the procedure applicable in an action. *Re Young*, 14 P.R. 303, referred to. That has been expressly done to a limited extent in matters arising under secs. 34, 37, and 39, but this only emphasizes the omission in the case of a proceeding under sec. 8 (1). The assignee is not obliged to attend upon the appointment of an officer who had no authority to issue it.

Motions dismissed with costs.