able against him. No report had been made, and the other parties had not altered their position in any way by reason of the admissions.

Held, that so rigid a rule as that a party should never be allowed to withdraw admissions could not be laid down; and G. McB. was allowed to attack the items admitted, they to be regarded as *prima facie* correct, and the onus of displacing them to be upon G. McB.

S. H. Blake, Q.C., for G. McB.

Hoyles, for the plaintiff.

D. W. Saunders, for the defendant, D. McB.

Wilson, C.J.] [September 24.

RE WOLTZ V. BLAKELEY.

Prohibition — Division Court — Order for imprisonment—Division Court clerk.

Held, that in an order made by a Division Court judge upon judgment summons for payment of the judgment within a certain time, a clause directing that the judgment debtor should be imprisoned unless he paid the debt within the time limited was beyond the jurisdiction of the judge; and prohibition was ordered as to that part of the order.

Semble, the defendant should have called upon the clerk of the Division Court to show cause against the issuing of any order of imprisonment, as he was the person alone to act upon the order of imprisonment already made.

Reeve, Q.C., for the motion.

Aylesworth, contra.

Mr. Dalton, Q.C.] [September 28.

SHERWOOD ET AL. V. GOLDMAN.

Writ of summons—Indorsement of plaintiff's residence—Irregularity.

The words: "This writ was issued by E. F., of ———, solicitor for the said plaintiff, who resides at ———," in Form 1 O. J. A. mean that the plaintiff's own residence is to be endorsed on the writ of summons, and a writ without such indorsement is irregular.

Small, for defendant.

Baird, for plaintiffs.

Proudfoot, J.] [September 29.

THE BANK OF B. N. A. V. THE WESTERN ASSURANCE CO.

Discovery of fresh evidence—Opening publication —Powers of trial judge.

At the trial, June 25th, 1884, Proudfoot, J. (7 O. R. 166), found that the plaintiffs were not entitled to recover a sum of £1,500 sterling from the defendants.

Held, that PROUDFOOT, J., now sitting as a single judge in court, had power to entertain a motion to open up the judgment and to put in further evidence, and for a new trial, upon the discovery by the plaintiffs of fresh evidence as to the £1,500; or in the alternative for leave to bring a new action for the £1,500.

Synod v. *De Blaquiere*, 10 P. R. 11, followed.

S. H. Blake, Q.C., for the plaintiffs.

McCarthy, Q.C., and *A. R. Creelman*, for the defendants.

Mr. Dalton, Q.C.] [October 1.

GILMORE V. TOWNSHIP OF OXFORD ET AL.

Writ of summons—Indorsement—Claim—Rule 5 O. J. A.

The writ of summons was issued against three defendants—A, B and C.

The endorsement was that the plaintiff claimed to have declared void a deed from A to B, and a deed from B to A. C was not mentioned at all in the endorsement, nor did it appear in any way upon the writ what the plaintiff claimed against him.

Upon motion to set aside the copy and service upon C,

Held, that the endorsement was sufficient under Rule 5 O. J. A., and the motion was refused with costs.

H. J. Scott, Q.C., for the motion.

Caswell, contra.
