1875.

Mitchell v. Mitchell.

In *Curzon* v. *De La Zouch* (*a*), the defendant had obtained time to plead answer or demur, not demurring alone, and after the time had expired was taken upon an attachment for not answering. He then filed a demurrer and answer, which were ordered to be taken off the file, but time was given to him to file an answer. These do not shew that an attachment is a necessary preliminary to contempt. Attachments in such cases required no proceeding save a *præcipe*. The Court expressed no opinion of contempt having been incurred. But though in contempt it is competent for the defendant to take the proceedings she is now taking.

Lord *Bacon's* 78th Order provided that, "They that are in contempt, specially, so far as proclamation of rebellion, are not to be heard, neither in that suit, nor any other, except the Court of special grace suspend the contempt."

Judgment.

In *Ricketts* v. *Mornington* (*b*), where, on a cause coming on to be heard, the defendant objected that the plaintiff was in contempt for disobedience to an order in the cause the Vice-Chancellor says: "Lord *Bacon's* Order, as administered in practice, is confined to cases where parties who are in contempt come forward voluntarily and ask for indulgences; but the rules of the Court make it imperative on the plaintiff to bring his cause to a hearing at a certain time, and therefore the cause must proceed."

So in *Wilson* v. *Bates* (*c*), it was held that a plaintiff may issue an attachment against a defendant for want of answer, although he himself is in contempt for non-payment of costs, which he has been ordered to pay to the defendant.

(*a*) 1 Sw. 185.
(*b*) 7 Sim. 200.
(*c*) 9 S. W. 54, 3 M. & C. 197.