

widow and administratrix of *John Mitchell*, who died intestate; and on her death, intestate, *Hugh* became administrator of *John*, and on *Hugh's* death the defendant became his administrator. *Janet* was entitled to one-third of her husband's personalty, and in that respect it seems plain that she or her estate ought to be bound by these proceedings, so as to protect the defendant from another suit in regard to it. If the plaintiffs seek relief against her estate, it will be incumbent on them to have some person before the Court, representing her to render these accounts; but, if they do not seek these accounts, all that the defendant can require is protection from any demand on behalf of her estate, and this will be sufficiently attained by serving her representative with a copy of the decree, without technically making him a party to the suit: *English v. English* (a).

1875.

Mitchell
v.
Mitchell.

I do not find that the Master has refused to require this to be done. The only evidence I have of his ruling is his certificate, and in that he states: "That the defendants took the objection that before proceedings can be taken under the decree, the personal representative of *Janet Mitchell* must be before the Court, which objection was over-ruled." So that the Master seems only to have refused to require the representatives to be before the Court *then*, and I think it was quite competent for the Master to proceed as he has done, assuming, of course, that before he makes his report he will see that all proper parties have been served; and, according to *English v. English*, if the account was waived against *Janet's* estate, it would have been improper for him to require the representative to be made a party. Judgment.

On another ground I am inclined to think the appeal should be dismissed. The ruling was made on the 11th

(a) 12 Grant 441.