

1875. same was so set down while the defendant was in con-
tempt for disobedience to an order issued by said Master.
Mitchell
v.
Mitchell.

Mr. *Cassels* for the plaintiff.

Mr. *Arnoldi*, for the defendant.

The other facts and the points relied on are stated in the judgment.

Judgment. PROUDFOOT, V. C.—The defendant appeals from the ruling of the Master, at Brantford, made on the 11th of June last, by which he decided that the personal representative of *Janet Mitchell*, deceased, was not a necessary party to the cause, and that it was not necessary that the estate should be represented on the reference; and also from the ruling of the Master on the 29th of September last, that the warrant issued by him on the 13th of July last, requiring the defendant to bring in accounts, was regular and the defendant bound to obey it, because, as to this last ruling, the warrant was issued in vacation and was a nullity, and because it was issued when the representative of *Janet Mitchell* was not a party to the suit. The defendant had not brought in the accounts as directed by the Master, and an order for an attachment had issued before the notice of appeal had been given, but in order to escape the attachment they were brought in before the argument.

I declined to consider the propriety or regularity of the Master's direction to bring in the accounts since the defendant had chosen to comply with it, and I therefore dismissed the second ground of appeal with costs.

As to the first ground of appeal. The decree directed an account to be taken of the personal estate of *John Mitchell* come to the hands of *Janet Mitchell*, or *Hugh Mitchell*, or the defendant; *Janet Mitchell* being the