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JUSTICE WILLIAM MITCHELL: A CENTENNIAL TRIBUTE†

March 9, 1981 marks the centennial of the appointment of Justice William Mitchell to the Supreme Court of Minnesota.¹ During his nineteen-year tenure on the court, Justice Mitchell wrote over 1,600 opinions,² achieving national recognition for the clarity of his writing and for his concise legal analyses:³

† The William Mitchell Law Review is indebted to the following members of the Mitchell family for the information and assistance they provided in the preparation of this Tribute: William Mitchell, grandson of Justice Mitchell; Mary Staples, wife of Loring Staples, Sr., a grandson of Justice Mitchell; Polly Bancroft, wife of Richard Bancroft, Sr., a cousin of Justice Mitchell's son, William DeWitt Mitchell; and John H. Daniels, great-grandson of Justice Mitchell. The William Mitchell Law Review also is indebted to the Minnesota Historical Society, the Winona County Historical Society, and Washington and Jefferson College for the papers and documents they provided.

1. Governor John S. Pillsbury signed the commission appointing William Mitchell associate justice of the Minnesota Supreme Court on March 9, 1881. Appointment and Commission of William Mitchell to the Office of Associate Justice of the Supreme Court of the State of Minnesota (Mar. 9, 1881) (on file at William Mitchell Law Review office). See 13 DICTIONARY OF AMERICAN BIOGRAPHY 69 (D. Malone ed. 1934) (on file at William Mitchell Law Review office); C. FLANDRAU, 1 ENCYCLOPEDIA OF BIOGRAPHY OF MINNESOTA 147 (1900) (on file at William Mitchell Law Review office); PROGRESSIVE MEN OF MINNESOTA 437 (M. Shutter & J. McLain eds. 1897) (on file at William Mitchell Law Review office); C. WEDGE, 1 HISTORY OF WINONA COUNTY 279 (1913) (on file at William Mitchell Law Review office); Jaggard, *William Mitchell*, in 8 GREAT AMERICAN LAWYERS 397 (W. Lewis ed. 1909) (on file at William Mitchell Law Review office); Lees, *William Mitchell*, 4 MINN. L. REV. 377, 382 (1920); Stryker, *William Mitchell*, in 1 HISTORY OF BENCH AND BAR OF MINNESOTA 66 (H. Stevens ed. 1904) (on file at William Mitchell Law Review office); Address by James A. Tawney, Proceedings in Memory of Associate Justice Mitchell (Oct. 2, 1900), reprinted in 79 Minn. xxii, xxiii (1901); Washington & Jefferson College, Fortieth Anniversary of the Jefferson College Class of 1853, at 30 (1894) (on file at William Mitchell Law Review office); Saint Paul & Minneapolis Pioneer Press, Mar. 12, 1881, at 4, col. 3; Winona Daily Republican, Mar. 10, 1881, at 2, col. 1.

2. The number of *per curiam* decisions Justice Mitchell wrote is unknown. Moreover, “[a]part from *per curiam* opinions, he prepared in whole or in part many decisions for other members of the bench who were unequal in point of capacity for labor to do their allotted share of the work.” Jaggard, *supra* note 1, at 426.

3. Justice Mitchell “was a great analyzer of complex practical situations.” Address by James A. Tawney, *supra* note 1. “His thought flew to the essence of the matter like an arrow to its mark . . .” *Id.* “His luminous mind struck like an X-ray through all the opacities of legal sophistry to the gravamen of the matter in controversy.” Saint Paul Pioneer Press, Aug. 22, 1900, at 4, col. 1. “His mind was a quick solvent for the most refractory and opaque material of legal contention.” Letter from Dean Woodruff, Cornell University College of Law, to Edward Lees, quoted in Lees, *supra* note 1, at 386. In the opinions of Justice Mitchell, “[i]mmaterial allegations are quickly disposed of, the principles which most control the decision are stated in a clear and orderly manner, and the

He saw directly the human element that caused the conflict; he reviewed, not at too great length, the diverse common law precedents and brought them into workable adjustment by the formulation of a rule which is at once equitable and pliant; and it is all accomplished with a lucidity and force of expression that reflect the working of a clear and powerful mind.⁴

Noting his "accurate scholarship, lucid expression and shrewd good sense,"⁵ legal scholars have placed Justice Mitchell in the ranks of those who mark the highest achievement in our nation's state courts.⁶ His opinions frequently are reprinted and cited in law school casebooks.⁷ Moreover, his opinions form an unequalled contribution to the foundation of Minnesota common law:⁸

decision reached and stated so that anyone must understand it." Letter from Professor Bennett, Boston Law School (Sept. 3, 1898), *reprinted in* Saint Paul Pioneer Press, Nov. 2, 1898, at 4, col. 3. "He saw, and, unlike many other prominent judges, he was able to make others see and understand the turning and distinguishing points in the case before him." Stryker, *supra* note 1, at 67. "Like most men who think clearly, he wrote clearly." Jaggard, *supra* note 1, at 411. *See* Letter from Professor Edmund M. Morgan, Yale Law School, *quoted in* Lees, *supra* note 1, at 387-88; Letter from Dean Wigmore, Northwestern University School of Law, *reprinted in* Lees, *supra* note 1, at 387.

4. Letter from Dean Woodruff, *supra* note 3.

5. Letter from Dean Wigmore, *supra* note 3; *see* Jaggard, *supra* note 1, at 409.

6. Letter from Professor Bennett, *supra* note 3; Letter from Professor Edmund M. Morgan, *supra* note 3; Letter from Professor J.B. Thayer, Harvard Law School (Sept. 2, 1898), *reprinted in* Saint Paul Pioneer Press, Nov. 2, 1898, at 4, col. 2; Letter from Dean Wigmore, *supra* note 3; Letter from Professor Samuel Williston, Harvard Law School, *quoted in* Lees, *supra* note 1, at 387; Letter from Dean Woodruff, *supra* note 3.

7. *See, e.g.*, C. GREGORY, H. KALVEN & R. EPSTEIN, *CASES AND MATERIALS ON TORTS* 144, 185, 280 (3d ed. 1977) (quoting Justice Mitchell in *Johnson v. St. Paul City Ry.*, 67 Minn. 260, 262, 69 N.W. 900, 901 (1897), *Osborne v. McMasters*, 40 Minn. 103, 41 N.W. 543 (1889), and *Christianson v. Chicago, St. P., M. & O. Ry.*, 67 Minn. 94, 97, 69 N.W. 640, 641 (1896)); W. PROSSER, *HANDBOOK OF THE LAW OF TORTS* 190 n.31, 192 n.47 (4th ed. 1971) (quoting Justice Mitchell in *Osborne v. McMasters*, 40 Minn. 103, 105, 41 N.W. 543, 544 (1889) and *Akers v. Chicago, St. P., M. & O. Ry.*, 58 Minn. 540, 544, 60 N.W. 669, 670 (1894)); S. RIESENFELD, *CREDITORS' REMEDIES AND DEBTORS' PROTECTION* 373-74 (3d ed. 1979) (quoting Justice Mitchell in *Wadsworth v. Schisselbauer*, 32 Minn. 84, 87, 19 N.W. 390, 390-91 (1884)).

8. *See* 2 T. CHRISTIANSON, *MINNESOTA: A HISTORY OF THE STATE AND ITS PEOPLE* 200 n.3 (1935); Jaggard, *supra* note 1, at 429; Lees, *supra* note 1, at 399; Stryker, *supra* note 1, at 65.

During the years he served on the Supreme Court Bench, this State went through its formative years when the basic decision law was being declared. Contracts, boundary line disputes, chattel and real estate mortgage litigation, negotiable instruments, eminent domain, landlord and tenant, principal and agent, vendor and purchaser, pleadings, practice and evidence, consumed the Court's attention. Negligence cases were relatively few. The State was evolving from a pioneer agricultural society into the industrial era which became more pronounced at the turn of the century. It was with reference to these basic principles in our jurisprudence that Judge Mitchell made such a marked contribution to the law.

Address by Gunnar H. Nordbye, Dedication of Bronze Bust of William Mitchell at Wil-

I think sometimes that we forget the lasting obligations we are under to those early settlers of Minnesota who fashioned our laws, and marked out the policy of our state, on such broad and lasting foundations. To few if any among the pioneers of Minnesota is greater credit due than to . . . William Mitchell.⁹

This Tribute to Justice William Mitchell is offered to commemorate his years of dedicated scholarship in service to the State of Minnesota. Following a brief biography of the Justice, this Tribute will review his more commonly cited opinions and conclude with a history of William Mitchell College of Law.

I. BIOGRAPHY

William Mitchell was born in Stamford, Welland County, Ontario on November 19, 1832.¹⁰ He was the first of ten children born to Scottish immigrants, John Mitchell, a cabinetmaker, and Mary Henderson Mitchell.¹¹ In 1837 the Mitchell family moved from Stamford to a nearby farm, living plainly and frugally.¹² William Mitchell received instruction in basic courses and foreign languages from the family's clergyman.¹³ In 1848 he enrolled in Jefferson College, a small Presbyterian liberal arts college in Canonsburg, Pennsylvania,¹⁴ where Latin, Greek, logic, and mathe-

William Mitchell College of Law (May 6, 1959) (unpublished manuscript on file at William Mitchell Law Review office).

9. Address by William H. Yale, Proceedings in Memory of Associate Justice Mitchell (Oct. 2, 1900), *reprinted in* 79 Minn. xlii, xlv (1901).

10. C. FLANDRAU, *supra* note 1, at 147; PROGRESSIVE MEN OF MINNESOTA, *supra* note 1, at 437; THE UNITED STATES BIOGRAPHICAL DICTIONARY AND PORTRAIT GALLERY OF EMINENT AND SELF-MADE MEN: MINNESOTA VOLUME 35 (1879) [hereinafter cited as UNITED STATES BIOGRAPHICAL DICTIONARY] (on file at William Mitchell Law Review office); Jaggard, *supra* note 1, at 387; R. Carr, The Mitchell Family (unpublished geneology) (on file at William Mitchell Law Review office); Washington & Jefferson College, *supra* note 1, at 30; Winona Daily Republican, Aug. 21, 1900, at 3, col. 2.

11. See PROGRESSIVE MEN OF MINNESOTA, *supra* note 1, at 437; Jaggard, *supra* note 1, at 387; R. Carr, *supra* note 10; Winona Daily Republican, Aug. 21, 1900, at 3, col. 2.

12. See R. Carr, *supra* note 10; Address by Thomas Wilson, Proceedings in Memory of Associate Justice Mitchell (Oct. 2, 1900), *reprinted in* 79 Minn. xxv, xxv (1901).

13. Address by Thomas Wilson, *supra* note 12; see Winona Daily Republican, Aug. 21, 1900, at 3, col. 2.

14. C. FLANDRAU, *supra* note 1, at 147; PROGRESSIVE MEN OF MINNESOTA, *supra* note 1, at 437; UNITED STATES BIOGRAPHICAL DICTIONARY, *supra* note 10, at 35; Winona Daily Republican, Aug. 21, 1900, at 3, col. 2. See [1853] Jefferson College, Catalogue of the Officers and Students of Jefferson College, Canonsburg, Penn'a 7 (on file at William Mitchell Law Review office). For a brief history of Jefferson College, now Washington and Jefferson College, see Washington & Jefferson College, 200 Years: W & J (1980) (on file at William Mitchell Law Review office).

matics were stressed.¹⁵ The scholastic demands at Jefferson were exacting and thorough; the moral discipline was severe.¹⁶ Among classmates noted for their strength, industry, and earnestness,¹⁷ William Mitchell was described as a determined scholar, deservedly holding the place of *primus inter pares*.¹⁸ After graduating from Jefferson College in 1853, William Mitchell followed fellow-classmate Eugene M. Wilson, his future law partner and life-long friend, to Morgantown, Virginia.¹⁹ There William Mitchell taught for two years at the Morgantown Academy²⁰ and read law in the office of Eugene Wilson's father, Edgar C. Wilson.²¹ In March 1857, William Mitchell was admitted to the Virginia bar.²²

In April 1857, William Mitchell and Eugene Wilson traveled by steamboat up the Mississippi River to Winona, Minnesota, where they decided to establish their law practice.²³ On September 3, 1857, William Mitchell returned briefly to Morgantown to marry Jane Hanway Smith, a widow with one child.²⁴ Jane Hanway Mitchell bore three daughters before her death in 1867.²⁵ On July

15. See Washington & Jefferson College, 200 Years: W & J (1980) (on file at William Mitchell Law Review office); Galles, *Mitchell was cut out for appellate judgeship*, Wm. Mitchell Opinion, Feb. 1975, at 4, col. 1.

16. Jaggard, *supra* note 1, at 388.

17. *Id.*

18. *Id.* at 388 n.1; see Washington & Jefferson College, *supra* note 1, at 30. The translation of "*primus inter pares*" is "the first among equals." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE UNABRIDGED 1802 (1976).

19. PROGRESSIVE MEN OF MINNESOTA, *supra* note 1, at 437; Jaggard, *supra* note 1, at 389; Winona Daily Republican, Aug. 21, 1900, at 3, col. 2.

20. C. FLANDRAU, *supra* note 1, at 147; PROGRESSIVE MEN OF MINNESOTA, *supra* note 1, at 437; UNITED STATES BIOGRAPHICAL DICTIONARY, *supra* note 10, at 35; Jaggard, *supra* note 1, at 389; Washington & Jefferson College, *supra* note 1, at 30; Winona Daily Republican, Aug. 21, 1900, at 3, col. 2.

21. PROGRESSIVE MEN OF MINNESOTA, *supra* note 1, at 437; UNITED STATES BIOGRAPHICAL DICTIONARY, *supra* note 10, at 35; Jaggard, *supra* note 1, at 389; Washington & Jefferson College, *supra* note 1, at 30; Winona Daily Republican, Aug. 21, 1900, at 3, col. 2.

22. PROGRESSIVE MEN OF MINNESOTA, *supra* note 1, at 437; UNITED STATES BIOGRAPHICAL DICTIONARY, *supra* note 10, at 35; Jaggard, *supra* note 1, at 390; Washington & Jefferson College, *supra* note 1, at 30; Winona Daily Republican, Aug. 21, 1900, at 3, col. 2.

23. PROGRESSIVE MEN OF MINNESOTA, *supra* note 1, at 437; UNITED STATES BIOGRAPHICAL DICTIONARY, *supra* note 10, at 35; Jaggard, *supra* note 1, at 390; Washington & Jefferson College, *supra* note 1, at 30; Winona Daily Republican, Aug. 21, 1900, at 3, col. 2; Winona Daily Republican, July 7, 1857, at 2, col. 2.

24. See C. FLANDRAU, *supra* note 1, at 149; UNITED STATES BIOGRAPHICAL DICTIONARY, *supra* note 10, at 36; Jaggard, *supra* note 1, at 396 n.6; R. Carr, *supra* note 10; Washington & Jefferson College, *supra* note 1, at 30; Winona Daily Republican, Aug. 21, 1900, at 3, col. 2.

25. See note 24 *supra*.

11, 1872, William Mitchell married Francis Merritt Smith, a widow from Chicago with one child.²⁶ Francis Merritt Mitchell bore a daughter and son during their long marriage.²⁷

William Mitchell maintained a private practice with politically active law partners until his election to the Minnesota district court bench in 1873.²⁸ Eugene Wilson practiced only briefly with William Mitchell. In 1857 Eugene Wilson was appointed United States District Attorney.²⁹ Later in his career, Eugene Wilson was elected to the United States House of Representatives and to the Minnesota State Senate.³⁰ William Mitchell's second partner, Daniel S. Norton, served in both the Minnesota State Senate and the United States Senate.³¹ William Mitchell's third partner, William H. Yale, served as a Minnesota State Representative, a Minnesota State Senator, and Lieutenant Governor of Minnesota.³²

Although his law practice was reasonably successful, William Mitchell disliked the ordinary practice of law.³³ He was a reserved man who was not a skilled orator,³⁴ and did not possess the combative attributes of a successful trial lawyer.³⁵ His strength as an attorney was founded in his reputation for integrity, his keen powers of analysis, and the fairness with which he approached all questions of fact or law:³⁶

He also felt it to be his duty as a lawyer to exercise a salutary sway in the fashioning and moulding of our jurisprudence and laws, and to exert a healthy and conservative influence on the

26. *See id.*

27. C. FLANDRAU, *supra* note 1, at 149; UNITED STATES BIOGRAPHICAL DICTIONARY, *supra* note 10, at 36; R. Carr, *supra* note 10; Washington & Jefferson College, *supra* note 1, at 30.

28. *See* C. FLANDRAU, *supra* note 1, at 147; PROGRESSIVE MEN OF MINNESOTA, *supra* note 1, at 437; UNITED STATES BIOGRAPHICAL DICTIONARY, *supra* note 10, at 35; Washington & Jefferson College, *supra* note 1, at 30.

29. Jaggard, *supra* note 1, at 391.

30. *See* MINNESOTA CONGRESSMEN, LEGISLATORS, AND OTHER ELECTED STATE OFFICIALS 129 (W. Toensing ed. 1971); Jaggard, *supra* note 1, at 391.

31. *See* MINNESOTA CONGRESSMEN, LEGISLATORS, AND OTHER ELECTED STATE OFFICIALS, *supra* note 30, at 88; Jaggard, *supra* note 1, at 392.

32. *See* MINNESOTA CONGRESSMEN, LEGISLATORS, AND OTHER ELECTED STATE OFFICIALS, *supra* note 30, at 131; Jaggard, *supra* note 1, at 392.

33. Address by Thomas Wilson, *supra* note 12.

34. *Id.*; Address by William H. Yale, *supra* note 9.

35. *See* Jaggard, *supra* note 1, at 394; Lees, *supra* note 1, at 380; Address by Thomas Wilson, *supra* note 12.

36. *See* Jaggard, *supra* note 1, at 393-94; Lees, *supra* note 1, at 380-81; Address by William J. Hahn, Proceedings in Memory of Associate Justice Mitchell (Oct. 2, 1900), reprinted in 79 Minn. xxxvii, xxxviii (1900); Address by William H. Yale, *supra* note 9.

community in which he lived, through the clients whom he advised, the juries whom he addressed, and the citizens with whom he mingled. He took a broad view of what, as a member of the legal profession, was due from him to the state. He acted upon the theory that, as a citizen, his obligations were commensurate with his opportunities, and these, by reason of his training, learning, and ability, were greater than those of any other class of citizens. To the discharge of these obligations, the embracing of these opportunities, he devoted his faculties with the same conscientious estimate of his calling as in the performance of his more immediate professional service.³⁷

William Mitchell was active in service to the Winona community. From 1859 to 1860, he represented Winona at the Second Minnesota Legislature, where the bulk of county and municipal regulations were framed.³⁸ William Mitchell was known by his colleagues as "one of the most tireless, indefatigable, and successful workers of that lawmaking body."³⁹ In 1862 William Mitchell was elected Winona County Attorney, serving in that post from 1863 to 1864.⁴⁰ William Mitchell represented his ward on the Winona City Council for four years.⁴¹ He was director of the Winona Public Library,⁴² director of the LaCrosse, Trempealeau & Prescott Railroad,⁴³ first president of the Winona & Southwestern Railroad,⁴⁴ and incorporator and first president of the Winona Savings Bank.⁴⁵ Although he was not a member of any church, he taught Bible class at the First Presbyterian Church of Winona.⁴⁶

37. Address by William J. Hahn, *supra* note 36.

38. C. FLANDRAU, *supra* note 1, at 147; PROGRESSIVE MEN OF MINNESOTA, *supra* note 1, at 437; UNITED STATES BIOGRAPHICAL DICTIONARY, *supra* note 10, at 35; Jaggard, *supra* note 1, at 393; Lees, *supra* note 1, at 380; Address by William H. Yale, *supra* note 9; Winona Daily Republican, Aug. 21, 1900, at 3, col. 2.

39. Address by William H. Yale, *supra* note 9.

40. See C. FLANDRAU, *supra* note 1, at 147; PROGRESSIVE MEN OF MINNESOTA, *supra* note 1, at 437; UNITED STATES BIOGRAPHICAL DICTIONARY, *supra* note 10, at 35; Jaggard, *supra* note 1, at 393; Lees, *supra* note 1, at 380; Winona Daily Republican, Aug. 21, 1900, at 3, col. 2.

41. Jaggard, *supra* note 1, at 393; Lees, *supra* note 1, at 380.

42. Lees, *supra* note 1, at 380.

43. *Id.*

44. PROGRESSIVE MEN OF MINNESOTA, *supra* note 1, at 437; UNITED STATES BIOGRAPHICAL DICTIONARY, *supra* note 10, at 35; Lees, *supra* note 1, at 380; Winona Daily Republican, Aug. 21, 1900, at 3, col. 2.

45. See note 44 *supra*.

46. See PROGRESSIVE MEN OF MINNESOTA, *supra* note 1, at 437; UNITED STATES BIOGRAPHICAL DICTIONARY, *supra* note 10, at 36; Jaggard, *supra* note 1, at 395-96; Lees, *supra* note 1, at 382; Address by James A. Tawney, *supra* note 1; Address by Thomas Wilson, *supra* note 12; Winona Daily Republican, Aug. 21, 1900, at 3, col. 2.

William Mitchell was a Republican until 1867 when he became a "self-styled independent Democrat" because of his dissatisfaction with the reconstruction policies of President Johnson.⁴⁷ Nonetheless, in 1873 William Mitchell was elected district judge for the Third Judicial District, a strong Republican district.⁴⁸ After serving a seven-year term, he was reelected in 1880 and served as a district judge until his appointment to the Minnesota Supreme Court.⁴⁹

William Mitchell was singularly suited to the judiciary.⁵⁰ Among practitioners, Judge Mitchell was noted for his great insight and for his ability to cut to the essential facts and relevant issues.⁵¹ He heard counsel attentively and patiently, making no display of his own knowledge.⁵² He questioned counsel with courtesy, not to embarrass, but to aid in the solution of the case at bar.⁵³ His jury instructions were direct and clear.⁵⁴

In 1880 the Minnesota Legislature increased the size of the supreme court from three to five and directed the Governor to appoint two additional justices to serve on the supreme court until the next regular election.⁵⁵ Governor John S. Pillsbury, a Republican, resisted pressure to appoint the additional justices along party lines.⁵⁶ On March 9, 1881, Governor Pillsbury signed the

47. PROGRESSIVE MEN OF MINNESOTA, *supra* note 1, at 437; UNITED STATES BIOGRAPHICAL DICTIONARY, *supra* note 10, at 35-36; Jaggard, *supra* note 1, at 397; Lees, *supra* note 1, at 380; Letter from William D. Mitchell to Dumas Malone (Oct. 2, 1933) (on file at William Mitchell Law Review office); Winona Daily Republican, Aug. 21, 1900, at 3, col. 2.

48. William Mitchell took his seat as district judge in January 1874. Winona Daily Republican, Aug. 21, 1900, at 3, col. 2. See UNITED STATES BIOGRAPHICAL DICTIONARY, *supra* note 10, at 35; Jaggard, *supra* note 1, at 394.

49. PROGRESSIVE MEN OF MINNESOTA, *supra* note 1, at 437; Washington & Jefferson College, *supra* note 1, at 30; Winona Daily Republican, Aug. 21, 1900, at 3, col. 2; Winona Daily Republican, Mar. 10, 1881, at 2, col. 1.

50. See PROGRESSIVE MEN OF MINNESOTA, *supra* note 1, at 437; UNITED STATES BIOGRAPHICAL DICTIONARY, *supra* note 10, at 35; Jaggard, *supra* note 1, at 395; Lees, *supra* note 1, at 381; Address by William J. Hahn, *supra* note 36; Address by Thomas Wilson, *supra* note 12.

51. See Lees, *supra* note 1, at 381; Address by William J. Hahn, *supra* note 36.

52. PROGRESSIVE MEN OF MINNESOTA, *supra* note 1, at 437; Lees, *supra* note 1, at 381; Address by James A. Tawney, *supra* note 1; Winona Daily Republican, Aug. 21, 1900, at 3, col. 2.

53. Address by William J. Hahn, *supra* note 36.

54. Address by Thomas Wilson, *supra* note 12.

55. See Act of Mar. 7, 1881, ch. 141, 1881 Minn. Laws 184; Jaggard, *supra* note 1, at 397.

56. See Jaggard, *supra* note 1, at 397; Saint Paul Pioneer Press, Mar. 12, 1881, at 3, col. 3.

commission appointing William Mitchell associate justice of the Minnesota Supreme Court.⁵⁷ The nonpartisan appointment was hailed in the press:

As to Judge Mitchell, he has already given ample proofs during his eight or nine years service on the district bench, that he is among the worthiest to wear the judicial ermine. No higher testimony to his ability and character need be cited than the simple fact that, though a Democrat residing in a strong Republican district, he has been twice called by the unanimous voice of the bar and the unanimous choice of both political parties to the judgeship of that district. He was the recognized leader of the bar in that district when at this united summons of the bar and people he went upon the bench, and he has performed the duties of the office with such marked ability and integrity that he has taken the highest rank among the district judges.⁵⁸

William Mitchell was elected to three consecutive six-year terms as associate justice of the Minnesota Supreme Court, with the support of both Republican and Democratic parties.⁵⁹ In 1898 a prominent Republican politician sought a position on the Minnesota Supreme Court.⁶⁰ As a result, Justice Mitchell failed to obtain the endorsement of the Republican party for a fourth term.⁶¹ Despite the support of the Democratic and Populist parties, Justice Mitchell's bid for reelection failed, causing a great outcry of protest from around the country:⁶²

[T]he grievous miscarriage in the State of Minnesota last autumn is still fresh in men's minds,—whereby the electors, out of the mere excess of party spirit, refused a re-election to the Supreme Court to the ablest judge upon that bench, a judge of very distinguished capacity, hardly second to any judge on any bench in this country, Mr. Justice Mitchell.⁶³

57. See note 1 *supra*.

58. Saint Paul Pioneer Press, Mar. 12, 1881, at 4, col. 3.

59. See C. FLANDRAU, *supra* note 1, at 147; PROGRESSIVE MEN OF MINNESOTA, *supra* note 1, at 437; Jaggard, *supra* note 1, at 397; Washington & Jefferson College, *supra* note 1, at 30; Saint Paul Pioneer Press, Nov. 2, 1898, at 4, col. 2.

In 1891 President Harrison signed a commission appointing William Mitchell to the Eighth Circuit Court of Appeals, however, the commission was recalled for reasons unrelated to Justice Mitchell. See Jaggard, *supra* note 1, at 397.

60. Letter from William D. Mitchell, *supra* note 47.

61. *Id.*

62. See, e.g., Letter from Professor Bennett, *supra* note 3; Letter from Professor J.B. Thayer, *supra* note 6; Saint Paul Pioneer Press, Aug. 22, 1900, at 4, col. 1; Saint Paul Pioneer Press, Nov. 2, 1898, at 4, col. 2.

63. *The Tenure of Judicial Office*, 13 HARV. L. REV. 1, 1 (1899).

Justice Mitchell returned to private practice in St. Paul, joining his son, William DeWitt Mitchell, in partnership.⁶⁴ His health deteriorated rapidly after he left the court.⁶⁵ On August 21, 1900, at the age of 67, Justice William Mitchell died of a stroke.⁶⁶

II. THE OPINIONS OF JUSTICE MITCHELL

Justice William Mitchell sat on the Minnesota Supreme Court at a time of great social change, when the primarily agrarian economy of Minnesota was ceding to the advance of industrialization.⁶⁷ His opinions form much of the foundation of Minnesota common law, and his pronouncements of basic principles of contract, agency, and tort law⁶⁸ are still cited and quoted frequently.⁶⁹ This

64. Saint Paul Pioneer Press, Aug. 22, 1900, at 4, col. 1; *see* Minneapolis Journal, Dec. 15, 1899, at 4, col. 1.

William DeWitt Mitchell became Solicitor General of the United States, and later, Attorney General under President Hoover. *See* Letter from John H. Daniels to Mike Fairchild (July 11, 1980) (on file at William Mitchell Law Review office).

65. Jaggard, *supra* note 1, at 399; Address by Thomas Wilson, *supra* note 12.

66. Jaggard, *supra* note 1, at 399; Address by Thomas Wilson, *supra* note 12; Minneapolis Journal, Aug. 22, 1900, at 6, col. 5; Saint Paul Globe, Aug. 22, 1900, at 1, col. 1; Saint Paul Pioneer Press, Aug. 22, 1900, at 4, col. 1; Winona Daily Republican, Aug. 21, 1900, at 3, col. 2.

67. In Minnesota, the expansion of the railroads and the improved methods and mechanization of the farming and lumber industries were major factors in the state's tremendous growth between 1860 and 1890. In 1867 St. Paul was connected by rail to Chicago; in 1870 the St. Paul-Duluth Railroad was established, connecting Minnesota to the Atlantic seaboard; in 1871 the Mississippi River was connected to Lake Superior by rail; and in 1878 the predecessor of the Burlington Northern Railroad was established when James J. Hill purchased the St. Paul & Pacific Railroad and built it into the Great Northern Railroad. Minnesota's expanding rail network allowed greater population movement to the North and West and helped launch the state's iron ore industry. *See* T. BLEGEN, MINNESOTA: A HISTORY OF THE STATE 287-96 (1963); 3 W. FOLWELL, A HISTORY OF MINNESOTA 60 (1926).

The railroads and better farming equipment spurred Minnesota's growth as a wheat and milling center. The area of cultivated land tripled from 1865 to 1870 and then doubled from 1870 to 1875. The increase in the production of spring wheat from two million bushels in 1860 to over 34 million bushels in 1880 is indicative of the agricultural boom that saw the creation of the Pillsbury Company and the Washburn-Crosby Company (now General Mills) and made Minneapolis the world's largest milling center. *See* T. BLEGEN, *supra*, at 340-57; 3 W. FOLWELL, *supra*, at 62.

68. While issues of contract, agency, and tort were of particular importance during the industrialization of the late nineteenth century, other areas of law important to the state of Minnesota also were addressed in the over 1,600 opinions written by Justice Mitchell. Among the other subjects discussed by Justice Mitchell were the powers of the state government and the rights and duties of property owners.

Justice Mitchell narrowly interpreted the powers granted to the state government by the Minnesota Constitution. Justice Mitchell stated that article XI, section 3 of the constitution (formerly article IX, section 5 of the 1857 Minnesota Constitution), which prohibits the state from incurring indebtedness for works of internal improvement, extended to