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The Opinions of Justice Mitchell

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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. His opinions form much of the foundation of Minnesota common law, and his pronouncements of basic principles of contract, agency, and tort law are still cited and quoted frequently. This

64. Saint Paul Pioneer Press, Aug. 22, 1900, at 4, col. 1; see Minneapolis Journal, Dec. 15, 1899, at 4, col. 1.
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).
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
section of the Tribute to Justice William Mitchell will highlight a

"any kind of work that is deemed important enough for the state to construct," except, of course, . . . those which are used exclusively by and for the state, as a sovereign, in the performance of its governmental functions." Rippe v. Becker, 56 Minn. 100, 117, 57 N.W. 331, 335-36 (1894). The Minnesota Supreme Court has continued to use this distinction in determining the activities for which the state may constitutionally incur indebtedness. See, e.g., Minnesota Hous. Fin. Agency v. Hatfield, 297 Minn. 155, 164-66, 210 N.W.2d 298, 303-05 (1973) (state financing of nonprofit housing acceptable governmental function); Visina v. Freeman, 252 Minn. 177, 191-94, 89 N.W.2d 635, 647-49 (1958) (use of state funds to finance construction of port not violative of internal improvements prohibition).

The drafters of the Minnesota Constitution understood the dangers of combining unrelated pieces of legislation under a single, deceptively-titled act. To prohibit such "log-rolling legislation" the Minnesota Constitution provided that "[n]o law shall embrace more than one subject, which shall be expressed in its title." MINN. CONST. of 1857, art. IV, § 27 (currently MINN. CONST. art. IV, § 17). Parties have attempted to use this provision to have adverse legislation declared unconstitutional for failure to describe adequately the subject matter in the act's title. Justice Mitchell recognized the true purpose of the single-subject rule:

Its purposes are two: First, to prevent what is called "logrolling legislation" or "omnibus bills," by which a number of different and disconnected subjects are united in one bill, and then carried through by a combination of interests; second, to prevent surprise and fraud upon the people and the legislature by including provisions in a bill whose title gives no intimation of the nature of the proposed legislation, or of the interests likely to be affected by its becoming a law . . . .

Johnson v. Harrison, 47 Minn. 575, 577, 50 N.W. 923, 924 (1891) (emphasis in original).

In Johnson, plaintiff attempted to avoid the effects of the probate code by contending that the title of the act that established the code did not embrace the subject of acquiring title to real property by descent. Justice Mitchell rejected this narrow interpretation of the single-subject requirement. He stated:

The term "subject," as used in the constitution, is to be given a broad and extended meaning, so as to allow the legislature full scope to include in one act all matters having a logical or natural connection. To constitute duplicity of subject, an act must embrace two or more dissimilar and discordant subjects that by no fair intendment can be considered as having any legitimate connection with or relation to each other. All that is necessary is that the act should embrace some one general subject; and by this is meant, merely, that all matters treated of should fall under some one general idea, so connected with or related to each other, either logically or in popular understanding, as to be parts of, or germane to, one general subject.

Id. The use of the single-subject rule as a technical device to negate properly-enacted legislation has not abated. See, e.g., Wass v. Anderson, 312 Minn. 394, 252 N.W.2d 131 (1977) (law affecting truck stops may be part of law entitled "Act relating to transportation"); Hunt v. Nevada State Bank, 285 Minn. 77, 113-14, 172 N.W.2d 292, 313-14 (1969) (legislation entitled "Act relating to the service of process upon non-resident individuals" valid for service of process upon foreign corporations); State v. Bell, 280 Minn. 55, 56-57, 157 N.W.2d 760, 761-62 (1968) (single-subject rule deals with titles of acts, not titles of individual sections within acts). The Minnesota Supreme Court still rejects such attacks with the words of Justice Mitchell, "The title [of the act] was never intended to be an index of the law." Wass v. Anderson, 312 Minn. 394, 403, 252 N.W.2d 131, 137 (1977) (quoting Johnson v. Harrison, 47 Minn. 575, 578, 50 N.W. 923, 924 (1891)).

In deciding issues of property law Justice Mitchell eschewed blind reverence for legal formality and, guided by the intent of the parties, followed the path of common sense. If the parties to a real property transaction intended consent by their conduct, it was not
number of his more celebrated opinions to demonstrate the undimi-

nished currency of his work as well as illustrate his great analyti-
cal power and straightforward eloquence.

**CONTRACTS**

**Parol Evidence Rule**

In *Thompson v. Libby*, a case decided in 1885, Justice Mitchell’s dis-
cussion of the proper use of the parol evidence rule serves as an 
excellent example of his clear writing style:

[W]here the parties have deliberately put their engagements 
into writing in such terms as to import a legal obligation, with-
out any uncertainty as to the object or extent of such engage-
ment, it is conclusively presumed that the whole engagement of 
the parties, and the manner and extent of their undertaking, 
was reduced to writing. . . . Of course, the rule presupposes 
that the parties intended to have the terms of their complete 
agreement embraced in the writing, and hence it does not 
apply where the writing is incomplete on its face and does not 
purport to contain the whole agreement . . . .

. . . It is sometimes loosely stated that where the whole con-
tract be not reduced to writing, parol evidence may be admit-
ted to prove the part omitted. But to allow a party to lay the 
foundation for such parol evidence by oral testimony . . .
would be to work in a circle, and to permit the very evil which 
the rule was designed to prevent. The only criterion of the

necessary that a grantor should actually write his signature to a deed by his own hand. If 
signed with the grantor’s authority or adopted by him as his signature, although written 
by another, it was a sufficient signing by the grantor. Conlan v. Grace, 36 Minn. 276, 281, 
30 N.W. 880, 883 (1886). Also, if the intent of the parties clearly showed that a convey-
ance was to take place, manual delivery of the instrument was not necessary. *Id.*

In the land of numerous lakes and connecting rivers, the rights of riparian landowners 
were of great importance to many Minnesotans. Justice Mitchell helped clarify the rights 
of riparian landowners. He stated that a riparian landowner had a fee simple interest that 
extended to the center of an unnavigable body of water and to the low-water mark of a 
navigable body of water, the navigability to be determined by use in fact and not by the 
ebb and flow of the tide. *See* Lamprey v. State, 52 Minn. 181, 53 N.W. 1139 (1893). With 
respect to navigable waters, a riparian landowner had an absolute fee interest to the high-
water mark, *In re* Minnetonka Lake Improvement, 56 Minn. 513, 520-21, 58 N.W. 295, 
296 (1894), a fee simple interest to the low-water mark, and a right to the use of the water 
to the point of navigability even beyond the low-water mark. Union Depot, St. Ry. & 
Transfer Co. v. Brunswick, 31 Minn. 297, 301, 17 N.W. 626, 628 (1883).

69. *See, e.g.,* note 7 *supra* and accompanying text; notes 128, 133, 136, 139 *infra* and 
accompanying text.

70. 34 Minn. 374, 26 N.W. 1 (1885).
completeness of the written contract as a full expression of the agreement of the parties is the writing itself.

... Parol evidence of extrinsic facts and circumstances would, if necessary, be admissible... to apply the contract to its subject-matter, or in order to a more perfect understanding of its language.\(^{71}\)

A writing must be complete to satisfy the parol evidence rule. In *Wheaton Roller-Mill Co. v. John T. Noe Manufacturing Co.*,\(^{72}\) Justice Mitchell explained that

the only criterion of the completeness of the written contract as a full expression of the agreement of the parties is the writing itself; but, in determining whether it is thus complete, it is to be construed, as in any other case, according to its subject-matter, and the circumstances under which and the purposes for which it was executed.\(^{73}\)

In an earlier case, Justice Mitchell had discussed the limits of the parol evidence rule with respect to separate oral agreements not inconsistent with the written contract:

The rule forbidding the use of parol evidence to affect a written instrument does not apply to a case where a part only of the dealings between the parties in respect to a particular subject-matter is reduced to writing, except as respects such part. It is always competent to prove by parol the existence of any separate oral agreement as to any matter on which the document is silent, and which is not inconsistent with its terms, if, from the circumstances of the case, the court infers that the parties did not intend the document to be a complete and final statement of the whole of the transaction between them.\(^{74}\)

Justice Mitchell wrote his first opinion for the Minnesota Supreme Court in 1877, four years before his appointment to the court. Sitting *pro hac vice*,\(^{75}\) Justice Mitchell's opinion in *State v. Young*\(^{76}\) heralded an attitude toward contract law that would bring him repeated recognition in the following century.\(^{77}\) The decision was noteworthy for the principle that a sealed instrument

\(^{71}\) Id. at 377-78, 26 N.W. at 2-3.
\(^{72}\) 66 Minn. 156, 68 N.W. 854 (1896).
\(^{73}\) Id. at 160, 68 N.W. at 855.
\(^{74}\) Phoenix Publishing Co. v. Riverside Clothing Co., 54 Minn. 205, 206, 55 N.W. 912, 912 (1893).
\(^{75}\) “For this one particular occasion.” BLACK'S LAW DICTIONARY 1091 (5th ed. 1979).
\(^{76}\) 23 Minn. 551 (1877).
\(^{77}\) See Jaggard, *supra* note 1, at 394-95.
could be altered by parol authority and that such authority could be given and be effective as if the instrument were unsealed: 78

[Parol authority is adequate and sufficient to authorize an addition to, or alteration of, even a sealed instrument. At the present day, the distinction between sealed and unsealed instruments is arbitrary, meaningless, and unsustained by reason. The courts have, for nearly a century, been gradually doing away with the former distinctions between these two classes of instruments, and if they have not yet wholly disappeared, it simply proves the difficulty of disturbing a rule established by long usage, even after the reason for the rule has wholly ceased to exist. 79

Statute of Frauds

Realizing the perfunctory and summary effect of the Statute of Frauds, Justice Mitchell was circumspect in its application. 80 He took care to see that its harsh consequences were felt only when the formation, not the performance, of the contract failed to satisfy its requirements. In Scheerschmidt v. Smith, 81 plaintiff had entered into a written contract with defendant for the lease and purchase of land. The contract called for three installments and a final lump-sum payment and also provided that if plaintiff defaulted on any of his payments, defendant could declare the contract void. After plaintiff took possession and made the first installment as required, defendant attempted to enforce the forfeiture clause when the next installment was not made according to the contract terms. Plaintiff did not deny knowledge of the clause but produced facts showing that it had been waived orally by defendant. Responding to defendant's claim that the oral modification of a written contract

78. See 23 Minn. at 556-57. See generally Jaggard, supra note 1, at 394-95.

79. State v. Young, 23 Minn. 551, 557 (1877). Other opinions of Justice Mitchell described additional exceptions to the parol evidence rule. See Scheerschmidt v. Smith, 74 Minn. 224, 229, 77 N.W. 34, 35 (1898) (oral waiver of written forfeiture provision); Liljengren Furniture & Lumber Co. v. Mead, 42 Minn. 420, 424, 44 N.W. 306, 308 (1890) (subsequent alterations to original agreement); Kausal v. Minnesota Farmers' Mut. Fire Ins. Ass'n, 31 Minn. 17, 23, 16 N.W. 430, 431-32 (1883) (writing misstates actual agreement).

80. With respect to transactions of interests in real property, Minnesota law provided that "[e]very contract . . . for the sale of any lands . . . shall be void unless the contract, or some note or memorandum thereof, expressing the consideration, is in writing and subscribed by the party by whom the . . . sale is to be made . . . ." MINN. GEN. STAT. ch. XLI, tit. II, § 12 (1866) (current version at MINN. STAT. § 513.05 (1980)).

81. 74 Minn. 224, 77 N.W. 34 (1898).
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for the sale of land was barred by the Statute of Frauds, Justice Mitchell said:

[T]he distinction must be kept in mind between the contract itself, which is within the purview of the statute, and the subsequent performance, which is not. . . . [E]ven as to contracts within the statute of frauds a waiver of a forfeiture for nonperformance, according to the terms of the written contract, may be proven by parol.82

**Damages**

Another fundamental issue of contract law, the measure of damages for breach, was addressed by Justice Mitchell in *Lilengren Furniture & Lumber Co. v. Mead.*83 Echoing the benefit-of-the-bargain principle expounded in the landmark English case of *Hadley v. Baxendale*,84 Justice Mitchell established the following standard for damages incurred from the breach of a sales contract:

The ordinary damage—that is, that which naturally, and in the usual course of things, results from the breach of a contract for the sale and delivery of goods, wares, and merchandise—is the difference between the contract and market prices; or, in other words, the extra cost to the vendee of procuring the articles elsewhere in the market. Ordinarily, this is the damage which may be reasonably supposed to have been contemplated by the parties, when making the contract, as the probable result of its breach.85

In the same opinion, Justice Mitchell stated the criteria for recovery of consequential damages:

[T]o render a party liable for damages different and greater than [ordinary damages] . . . , there must be some special facts and circumstances, out of which they naturally proceed, known to the person sought to be held liable, under such circumstances that it can be inferred from the whole transaction that such damage was in the contemplation of the parties, at the time of making the contract, as the result of its breach, and that the party sought to be charged consented to become liable for it.86

Justice Mitchell added that although a party may know the intended use of the goods contracted for, failure to deliver would not

82.  *Id.* at 229, 77 N.W. at 35.
83.  42 Minn. 420, 44 N.W. 306 (1890).
84.  9 Ex. 341, 156 Eng. Rep. 145 (1854).
85.  42 Minn. at 422, 44 N.W. at 307.
86.  *Id.*
lead to consequential damages unless the breaching party knew that such damages were the inevitable consequence of the breach.\textsuperscript{87}

**AGENCY AND BUSINESS ASSOCIATIONS**

Discussing the creation of an agent's authority, Justice Mitchell said:

There is no claim that any express authority was given; but this is not necessary. Such authority may be implied from the circumstances. It may be implied from the facts proved, when these facts, all taken together and fairly considered, justify the inference.\textsuperscript{88}

In a later opinion he added that

if the authority of an agent is known to be open for exercise only in a certain event, or upon the happening of a certain contingency, or the performance of a certain condition, the occurrence of the event, or the happening of the contingency, or the performance of the condition, must be ascertained by him who would avail himself of the results ensuing from the exercise of the authority.\textsuperscript{89}

In *Kausal v. Minnesota Farmers' Mutual Fire Insurance Association*,\textsuperscript{90} an 1883 decision, Justice Mitchell stated that even in the face of contractual language to the contrary, public policy required and custom of the trade confirmed that an insurance salesman be regarded as the agent of the company, not the policyholder. The defendant in *Kausal* had attempted to avoid liability for the actions of its agent by arguing that its agent was the agent of the insured. Plaintiffs, unable to read or write English, had relied on defendant's agent to fill out a fire insurance application. As executed, the application misstated the ownership of the property to be insured. The application contained provisions declaring the policy null and void for any misrepresentation and imposed liability on plaintiffs for the actions of the agent. Rejecting defendant's claim that it was not bound by the improperly executed contract, Justice Mitchell stated:

[A]gents of insurance companies . . . must be deemed the agents of the insurers and not of the insured in all that they do.

\textsuperscript{87} See *id.* at 423, 44 N.W. at 307.
\textsuperscript{88} State v. Young, 23 Minn. 551, 557 (1877).
\textsuperscript{89} National Bank of Commerce v. Chicago, B. & N.R.R., 44 Minn. 224, 233-34, 46 N.W. 342, 346 (1890).
\textsuperscript{90} 31 Minn. 17, 16 N.W. 430 (1883).
in preparing the application, or in any representations they
may make to the insured as to the character or effect of the
statements therein contained. This rule is rendered necessary
by the manner in which business is now usually done by the
insurers. They supply these agents with printed blanks, stimu-
late them by the promise of liberal commissions, and then send
them abroad in the community to solicit insurance. The
companies employ them for that purpose, and the public regards
them as the agents of the companies in the matter of preparing
and filling up the applications,—a fact which the companies
perfectly understand.\footnote{91}

Justice Mitchell laid down the basic rule of a principal's liability
for the acts of his agent in \textit{Ermentroul v. Girard Fire & Marine Insurance
Co.}:\footnote{92}

\[A\] principal is only liable for acts done by his agent within the
scope of the authority, actual or apparent, with which the prin-
cipal has clothed him; that it rests entirely with the principal to
determine the extent of the authority which he will give to his
agent; also, that every person dealing with an assumed agent is
bound, at his peril, to ascertain the nature and extent of the
agent’s authority.

\ldots [A] delegation of power, unless its extent be otherwise
expressly limited, carries with it, as a necessary incident, the
power to do all those things which are reasonably necessary to
carry into effect the main power expressly conferred. But it is
equally fundamental that the power implied shall not be
greater than that fairly and legitimately warranted by the facts;
in other words, an implied agency is not to be extended by con-
struction beyond the obvious purpose for which the agency was
created.\footnote{93}

As Justice Mitchell stated in \textit{Morier v. St. Paul, Minneapolis & Mani-
toba Railway},\footnote{94} “Beyond the scope of his employment the servant is
as much a stranger to his master as any third person.”\footnote{95}

Although Justice Mitchell was not the first to articulate these
agency principles, his efficient use of English and American au-
thority and his ability to distill and state the law simply are exem-
plary. Justice Mitchell’s skills are evident in yet another example.

\footnotesize{\begin{itemize}
\item \footnote{91. \textit{Id.} at 20-21, 16 N.W. at 430.}
\item \footnote{92. 63 Minn. 305, 65 N.W. 635 (1895).}
\item \footnote{93. \textit{Id.} at 309-10, 65 N.W. at 637.}
\item \footnote{94. 31 Minn. 351, 17 N.W. 952 (1884).}
\item \footnote{95. \textit{Id.} at 352, 17 N.W. at 952.}
\end{itemize}}
In *Bohn Manufacturing Co. v. Hollis*, defendants were lumber retailers that were members of a trade association. Plaintiff was a lumber wholesaler that had made sales in competition with association members. When a representative of the defendant’s association informed plaintiff that he would notify all association members of plaintiff’s sales and request that they not do business with plaintiff until it paid the association ten percent of the amount of the sales, plaintiff obtained a temporary order enjoining such notification. Justice Mitchell recognized the gravity of the issues raised:

The case presents one phase of a subject which is likely to be one of the most important and difficult which will confront the courts during the next quarter of a century. This is the age of associations and unions, in all departments of labor and business, for purposes of mutual benefit and protection. Confined to proper limits, both as to end and means, they are not only lawful, but laudable. Carried beyond those limits, they are liable to become dangerous agencies for wrong and oppression. Beyond what limits these associations or combinations cannot go, without interfering with the legal rights of others, is the problem which, in various phases, the courts will doubtless be frequently called to pass upon.

In dissolving the injunction, Justice Mitchell applied “a few well-settled, elementary principles of law”:

1. The mere fact that the proposed acts of the defendants would have resulted in plaintiff’s loss of gains and profits does not, of itself, render those acts unlawful or actionable. That depends on whether the acts are, in and of themselves, unlawful. “Injury,” in its legal sense, means damage resulting from an unlawful act. Associations may be entered into, the object of which is to adopt measures that may tend to diminish the gains and profits of another, and yet, so far from being unlawful, they may be highly meritorious. . . .

2. If an act be lawful,—one that the party has a legal right to do,—the fact that he may be actuated by an improper motive does not render it unlawful. As said in one case, “the exercise by one man of a legal right cannot be legal wrong to another,” or, as expressed in another case, “malicious motives make a bad case worse, but they cannot make that wrong which, in its own essence, is lawful.” . . .

3. To enable the plaintiff to maintain this action, it must appear that defendants have committed, or are about to com-

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96. 54 Minn. 223, 55 N.W. 1119 (1893).
97. *Id.* at 231, 55 N.W. at 1120.

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mit, some unlawful act, which will interfere with, and injuriously affect, some of its legal rights. We advert to this for the reason that counsel for plaintiff devotes much space to assailing this association as one whose object is unlawful because in restraint of trade. We fail to see wherein it is subject to this charge; but, even if it were, this would not, of itself, give plaintiff a cause of action. No case can be found in which it was ever held that, at common law, a contract or agreement in general restraint of trade was actionable at the instance of third parties, or could constitute the foundation for such an action. The courts sometimes call such contracts "unlawful" or "illegal," but in every instance it will be found that these terms were used in the sense, merely, of "void" or "unenforceable" as between the parties; the law considering the disadvantage so imposed upon the contract a sufficient protection to the public.

4. What one man may lawfully do singly, two or more may lawfully agree to do jointly. The number who unite to do the act cannot change its character from lawful to unlawful. The gist of a private action for the wrongful act of many is not the combination or conspiracy, but the damage done or threatened to the plaintiff by the acts of the defendants. If the act be unlawful, the combination of many to commit it may aggravate the injury, but cannot change the character of the act. In a few cases there may be some loose remarks apparently to the contrary, but they evidently have their origin in a confused and inaccurate idea of the law of criminal conspiracy, and in failing to distinguish between an unlawful act and a criminal one. It can never be a crime to combine to commit a lawful act, but it may be a crime for several to conspire to commit an unlawful act, which, if done by one individual alone, although unlawful, would not be criminal. Hence, the fact that the defendants associated themselves together to do the act complained of is wholly immaterial in this case. We have referred to this for the reason that counsel has laid great stress upon the fact of the combination of a large number of persons, as if that, of itself, rendered their conduct actionable.

5. With these propositions in mind, which bring the case down to a very small compass, we come to another proposition, which is entirely decisive of the case. It is perfectly lawful for any man (unless under contract obligation, or unless his employment charges him with some public duty) to refuse to work for or to deal with any man or class of men, as he sees fit. This doctrine is founded upon the fundamental right of every man to conduct his own business in his own way, subject only to the condition that he does not interfere with the legal rights of
others. And, as has been already said, the right which one man may exercise singly, many, after consultation, may agree to exercise jointly, and make simultaneous declaration of their choice. This has been repeatedly held as to associations or unions of workmen, and associations of men in other occupations or lines of business must be governed by the same principles. Summed up, and stripped of all extraneous matter, this is all that defendants have done, or threatened to do, and we fail to see anything unlawful or actionable in it.98

This lengthy quote illustrates well the facility with which Justice Mitchell discussed the most difficult and sensitive of issues.99

NEGLIGENCE

As the State of Minnesota became more populous, and cities and railroads expanded to serve the growing population,100 the frequency of personal injuries increased. During this period of growth, courts were faced with the problem of defining and applying a standard of reasonable care, as well as determining equitable allocations of loss. Justice Mitchell was responsible for the development of a general theory of negligence that was well-formulated at a relatively early date, while other jurisdictions were struggling with the theory well into the early twentieth century.101 His view of negligence law was clear and simple: the standard of care was

98. Id. at 233-35, 55 N.W. at 1121-22.
99. Speaking of Justice Mitchell, Gunnar H. Nordbye, United States District Court Judge for the State of Minnesota, said: "He was a man of profound scholarship in the law and gifted with the knowledge and meaning of the value of words with which he could set forth his legal views in a manner and quality of expression which rendered his opinions models for conciseness and lucidity." Address by Gunnar H. Nordbye, Winona County Historical Society (Jan. 17, 1961). Said Edwin Jaggard, Associate Minnesota Supreme Court Justice from 1905 to 1911: "His language was simple, not labored, and had a smoothness and grace that was purely natural. Like men who think clearly, he wrote clearly. His phrases were always lucid, rarely picturesque; never bizarre." Jaggard, supra note 1, at 411.
100. Minnesota's population grew from 172,023 in 1860 to over 1,300,000 by 1890. Compare 2 W. FOLWELL, supra note 67, at 64 with 3 W. FOLWELL, supra note 67, at 192. See generally note 67 supra.
that of a reasonable person in light of all the circumstances;\textsuperscript{102} the liability of a negligent party extended to all injuries that flowed directly and naturally from his negligent acts;\textsuperscript{103} liability was limited only by efficient, intervening causes.\textsuperscript{104}

**Procedure**

During trials of negligence actions, disputes arose over the relative duties of judge and jury. Justice Mitchell believed that all issues not clearly issues of law should be decided by a jury. In the 1883 decision of *Abbett v. Chicago, Milwaukee & St. Paul Railway*,\textsuperscript{105} Justice Mitchell said:

Negligence is ordinarily a question for the jury. It is always so where the evidence on material points is conflicting, or where, the facts being undisputed, different minds might reasonably draw different conclusions from them. Negligence cannot be conclusively established, as a matter of law, upon a state of facts on which fairminded men of ordinary intelligence may differ as to the inferences to be drawn from it . . . . But where the facts are undisputed or conclusively proved, and there is no reasonable chance for drawing different conclusions from them, then the question, as in any other case, becomes one of law for the court. And even if there be controversy in the evidence as to some facts, yet if those that are uncontroverted clearly and indisputably establish negligence, it is still a question of law for the court.\textsuperscript{106}

Another issue was the function of a trial court and jury in evaluating the testimony of an expert witness. Justice Mitchell imposed on the court the duty of setting the qualifications for a witness to testify as an expert.\textsuperscript{107} The jury had the duty of deciding whether the witness met the court's qualifications,\textsuperscript{108} as well as deciding the value to be given the witness' testimony.\textsuperscript{109}

\textsuperscript{102} See Wright v. City of St. Cloud, 54 Minn. 94, 97-98, 55 N.W. 819, 820 (1893); Henkes v. City of Minneapolis, 42 Minn. 530, 531, 44 N.W. 1026, 1027 (1890).

\textsuperscript{103} See Christianson v. Chicago, St. P., M. & O. Ry., 67 Minn. 94, 97, 69 N.W. 640, 641 (1896).

\textsuperscript{104} See Wright v. City of St. Cloud, 54 Minn. 94, 98-99, 55 N.W. 819, 820-21 (1893).

\textsuperscript{105} 30 Minn. 482, 16 N.W. 266 (1883).

\textsuperscript{106} Id. at 483-84, 16 N.W. at 266.

\textsuperscript{107} Martin v. Courtney, 75 Minn. 255, 259, 77 N.W. 813, 814 (1899).

\textsuperscript{108} Stevens v. City of Minneapolis, 42 Minn. 136, 137, 43 N.W. 842, 843 (1889).

\textsuperscript{109} See Martin v. Courtney, 75 Minn. 255, 261, 77 N.W. 813, 815 (1899); Stevens v. City of Minneapolis, 42 Minn. 136, 140, 43 N.W. 842, 844 (1889).
Duty

Justice Mitchell was cautious in relying on customary practices or self-imposed rules of conduct to determine a standard of reasonable care. He stated that evidence of customary practices could be useful in evaluating the knowledge of a defendant before his tortious conduct, and thus for establishing a duty of care.\(^{110}\) As for self-imposed or private work rules, Justice Mitchell stated that they were not admissible to establish a standard of care:

\[\text{[A] person cannot, by the adoption of private rules, fix the standard of his duty to others. . . .} \]
\[\ldots [S]uch rules may become an important factor in the application of legal principles to the conduct of a person . . . where the rule was known to him, and he governed, or had a right to govern, his conduct accordingly.}^{111}\]

Evidence of private work rules was admissible if the rules were set by a school of thought or profession of which the party was a member.\(^{112}\) With respect to the medical profession, Justice Mitchell said:

\[
\text{A physician or surgeon is not an insurer that he will effect a cure. Neither is he required to come up to the highest standard of skill known to the profession. When he accepts professional employment, he is only bound to exercise such reasonable care and skill as is usually exercised by physicians or surgeons in good standing of the same school of practice.}^{113}\]

Another evidentiary issue common to many tort cases was the introduction of evidence of a person's prior or subsequent careless acts or subsequent repair of a defect for the purpose of proving a breach of duty. Justice Mitchell believed that such evidence was unrelated to the cause of action and was inadmissible because it did not serve to establish a defendant's breach of duty.\(^{114}\) For similar reasons, Justice Mitchell stated that evidence of the general incompetence of a defendant, or his agent, was inadmissible.\(^{115}\) In

\[^{110}\text{See Martin v. Courtney, 75 Minn. 255, 77 N.W. 813 (1899); Kelly v. Southern Minn. Ry., 28 Minn. 98, 9 N.W. 588 (1881), overruled on other grounds, Morse v. Minneapolis & St. L. Ry., 30 Minn. 465, 16 N.W. 358 (1883).}\]
\[^{111}\text{Fonda v. St. Paul City Ry., 71 Minn. 438, 449, 74 N.W. 166, 169 (1898).}\]
\[^{112}\text{See Martin v. Courtney, 75 Minn. 255, 258, 77 N.W. 813, 814 (1899).}\]
\[^{113}\text{Id. at 261, 77 N.W. at 815.}\]
\[^{114}\text{See Morse v. Minneapolis & St. L. Ry., 30 Minn. 465, 467, 16 N.W. 358, 358-59 (1883).}\]
\[^{115}\text{See Fonda v. St. Paul City Ry., 71 Minn. 438, 446, 74 N.W. 166, 168 (1898).}\]
the 1881 decision of *Kelly v. Southern Minnesota Railway*, Justice Mitchell had affirmed the admission of evidence of repairs made after the injury. Two years later in *Morse v. Minneapolis & St. Louis Railway*, Justice Mitchell reversed his decision in *Kelly* saying:

[O]n mature reflection, we have concluded that evidence of this kind ought not to be admitted under any circumstances, and that the rule heretofore adopted by this court is on principle wrong; not for the reason given by some courts, that the acts of the employees in making such repairs are not admissible against their principals, but upon the broader ground that such acts afford no legitimate basis for construing such an act as an admission of previous neglect of duty. A person may have exercised all the care which the law required, and yet, in the light of his new experience, after an unexpected accident has occurred, and as a measure of extreme caution, he may adopt additional safeguards. The more careful a person is, the more regard he has for the lives of others, the more likely he would be to do so, and it would seem unjust that he could not do so without being liable to have such acts construed as an admission of prior negligence. We think such a rule puts an unfair interpretation upon human conduct, and virtually holds out an inducement for continued negligence.

Landowners who expanded their enterprises or introduced heavy equipment onto their lands often became the targets of tort claims. Justice Mitchell clarified the rules for determining the liability of a landowner to persons injured on his land. In *City of Wabasha v. Southworth*, Justice Mitchell held that a landowner, while not an insurer, was responsible for the ordinary care and maintenance of alterations made to the adjacent public street or sidewalk for his own convenience. In *Akers v. Chicago, St. Paul, Minneapolis & Omaha Railway*, Justice Mitchell held that a landowner was not liable for injuries to trespassers unless the injuries were the result of the landowner's malice or reckless disregard of
safety, and in *Twist v. Winona & St. Peter Railroad*, Justice Mitchell affirmed the rule that landowners were not liable for injuries suffered by trespassers, in this case, a ten-and-a-half-year-old boy who injured himself playing on a turntable in defendant’s train yard. Justice Mitchell stated that if the child trespasser had the mental capacity to understand the nature of his acts, the landowner owed him no duty of protection. Justice Mitchell observed:

To the irrepressible spirit of curiosity and intermeddling of the average boy there is no limit to the objects which can be made attractive playthings. In the exercise of his youthful ingenuity, he can make a plaything out of almost anything, and then so use it as to expose himself to danger. If all this is to be charged to natural childish instincts, and the owners of property are to be required to anticipate and guard against it, the result would be that it would be unsafe for a man to own property, and the duty of the protection of children would be charged upon every member of the community except the parents or the children themselves.

Just as he had shown restraint in imposing liability on private landowners, Justice Mitchell was likewise careful in imposing liability on municipalities for the maintenance of streets and sidewalks. Justice Mitchell stated:

> [T]he general, if not universal, doctrine is, that the duty of a city to exercise reasonable care to keep its sidewalks in safe condition for travel is not limited to structural defects, but extends also to dangerous accumulations of ice and snow.

> . . . In this climate, and in this new state, the duty of cities with respect to ice and snow must necessarily be somewhat limited, and care should be taken that they be not held to a degree of diligence beyond what is reasonable, in view of their situation. What reasonable care might require in a milder climate . . . might be too high a standard in this climate . . . . All that is required is reasonable care under all the circumstances, and, in determining whether a defect is actionable, consideration must be had, not only to the danger to be apprehended from it, but also to the practicability of remediyaing it.

As Minnesota’s society became more complex, the need for pro-

123. See id. at 545-46, 60 N.W. at 670-71.
124. 39 Minn. 164, 39 N.W. 402 (1888).
125. See id. at 167-68, 39 N.W. at 404-05.
126. Id. at 167, 39 N.W. at 404.
127. Wright v. City of St. Cloud, 54 Minn. 94, 97, 55 N.W. 819, 820 (1893).
tective legislation increased. Statutes created more and more legal duties and became a common basis for tort claims. Justice Mitchell detailed the rules relevant to causes of action based on violations of statutory duties of care, or negligence per se, in *Osborne v. McMasters*:\(^{128}\)

Negligence is the breach of legal duty. It is immaterial whether the duty is one imposed by the rule of common law requiring the exercise of ordinary care not to injure another, or is imposed by a statute designed for the protection of others. In either case the failure to perform the duty constitutes negligence, and renders the party liable for injuries resulting from it. The only difference is that in the one case the measure of legal duty is to be determined upon common-law principles, while in the other the statute fixes it, so that the violation of the statute constitutes conclusive evidence of negligence, or, in other words, negligence *per se*. The action in the latter case is not a statutory one, nor does the statute give the right of action in any other sense except that it makes an act negligent which otherwise might not be such, or at least only evidence of negligence. All that the statute does is to establish a fixed standard by which the fact of negligence may be determined.\(^{129}\)

Earlier in the same opinion, Justice Mitchell had stated the essence of the doctrine of negligence per se:

[W]here a statute or municipal ordinance imposes upon any person a specific duty for the protection or benefit of others, if he neglects to perform that duty he is liable to those for whose protection or benefit it was imposed for any injuries of the character which the statute or ordinance was designed to prevent, and which were proximately produced by such neglect.\(^{130}\)

This principle was emphasized again five years later in *Akers v. Chicago, St. Paul, Minneapolis & Omaha Railway*.\(^{131}\) Justice Mitchell stated:

Even if a defendant owes a duty to someone else, but does not owe it to the person injured, no action will lie. The duty must be due to the person injured. These principles are elementary, and are equally applicable whether the duty is imposed by pos-

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128. 40 Minn. 103, 41 N.W. 543 (1889). *Osborne* is a case that still is used in law schools to illustrate the principle of negligence *per se*. C. GREGORY, H. KALVEN & R. EPSTEIN, *CASES AND MATERIALS ON TORTS* 185-86 (3d ed. 1977).

129. *Id.* at 105, 41 N.W. at 543-44.

130. *Id.* at 104, 41 N.W. at 543.

131. 58 Minn. 540, 60 N.W. 669 (1894).
itive statute or is founded on general common-law principles. These quotations are recognized today as the rationale and rule of the law of negligence per se.

**Proximate Cause**

In what has probably become Justice Mitchell's most famous opinion, Justice Mitchell analyzed the legal concepts of foreseeability and proximate cause. Justice Mitchell held that once a breach of a duty was established, the tortfeasor was liable for all injuries proximately caused by the breach. The foreseeability of a particular injury was important only in determining the breach of duty, not in determining liability:

What a man may reasonably anticipate is important, and may be decisive, in determining whether an act is negligent, but is not at all decisive in determining whether that act is the proximate cause of an injury which ensues. If a person had no reasonable ground to anticipate that a particular act would or might result in any injury to anybody, then, of course the act would not be negligent at all; but, if the act itself is negligent, then the person guilty of it is equally liable for all its natural and proximate consequences, whether he could have foreseen them or not. Otherwise expressed, the law is that if the act is one which the party ought, in the exercise of ordinary care, to have anticipated was liable to result in injury to others, then he is liable for any injury proximately resulting from it, although he could not have anticipated the particular injury which did happen. Consequences which follow in unbroken sequence, without an intervening efficient cause, from the original negligent act, are natural and proximate; and for such consequences the original wrongdoer is responsible, even though he could not

132. *Id.* at 544, 60 N.W. at 670.
133. The excerpts from Justice Mitchell's *Osborne* and *Akers* opinions quoted in the text also are quoted by Dean Prosser in his discussion of statutory standards of conduct in his treatise on torts. W. PROSSER, HANDBOOK OF THE LAW OF TORTS 190 n.31, 192 n.47 (4th ed. 1971).
134. Justice Mitchell's statement in the *Christianson* case of the relationship between foreseeability and liability as factors of proximate cause has been called " *perhaps the leading American statement of the rule, " C. GREGORY, H. KALVEN & R. EPSTEIN, CASES AND MATERIALS ON TORTS 280 (3d ed. 1977), and " *the classic statement of this position, " W. PROSSER, SELECTED TOPICS ON THE LAW OF TORTS 216 n.76 (1954).
135. 67 Minn. 94, 69 N.W. 640 (1896).
136. *Id.* at 97, 69 N.W. at 641.
137. *Id.*
have foreseen the particular results which did follow.\textsuperscript{138}

This classic statement still is the basis for jury instructions on the issue of proximate cause.\textsuperscript{139}

\section*{Defenses to Negligence Actions}

Despite the rather liberal sound of Justice Mitchell's rule on proximate cause, Minnesota law in the nineteenth century barred all recovery by a plaintiff who was concurrently or contributorily negligent.\textsuperscript{140} In addition, a plaintiff's prior knowledge of a danger often prevented recovery on the ground that the plaintiff had assumed the risk of the danger.\textsuperscript{141} Since Justice Mitchell sat on the Minnesota court, these defenses have undergone considerable change. With the advent of workers' compensation,\textsuperscript{142} the defense of assumption of the risk has been all but eliminated from the workplace. Likewise, under the comparative fault statute,\textsuperscript{143} a person's concurrent or contributory negligence bars recovery only when the negligence of the party seeking recovery exceeds that of the party sought to be charged.\textsuperscript{144} With respect to these developments in the law, Justice Mitchell's opinions have continuing historical value.

In cases of concurrent negligence, Justice Mitchell stated that no party had a right of recovery from another unless the other's acts were willful and intentional:

[W]hen the negligence of the two persons is contemporaneous, and the fault of each operates directly to cause the injury, neither can recover from the other. . . .

. . . Where the defendant's acts are wilful and intentional, the negligence of the plaintiff, if any, is no longer deemed in

\textsuperscript{138} Id.

\textsuperscript{139} Dwello v. Pearson, 259 Minn. 452, 455-56, 107 N.W.2d 859, 861-62 (1961) ("We now reaffirm that the doctrine of the Christianson case is still the law of Minnesota . . . ."); see MINNESOTA PRACTICE JIG II, 140 G-S at 113 (2d ed. 1974).

\textsuperscript{140} See, e.g., Twist v. Winona & St. P.R.R., 39 Minn. 164, 39 N.W. 402 (1888); Griggs v. Fleckenstein, 14 Minn. 81, 14 Gil. 62 (1869); Schell v. Second Nat'l Bank, 14 Minn. 43, 14 Gil. 34 (1869).


\textsuperscript{142} Act of Apr. 24, 1913, ch. 467, 1913 Minn. Laws 675 (current version at MINN. STAT. ch. 176 (1980)).

\textsuperscript{143} MINN. STAT. § 604.01 (1980) (originally enacted as comparative negligence statute, Act of May 23, 1969, ch. 624, 1969 Minn. Laws 1069, effective for trials commencing after July 1, 1969).

\textsuperscript{144} See id.
law a proximate cause of the injury. In such cases the wilful and intentional acts of the defendant are deemed the sole proximate cause, and the negligence of the plaintiff only the remote cause . . . of the injury.\textsuperscript{145}

Justice Mitchell recognized that when a defendant's negligence had occurred after a plaintiff's, and the defendant had time to realize the danger, the plaintiff could recover if "the defendant might, by the exercise of care, have avoided the consequences of the plaintiff's negligence."\textsuperscript{146} These two exceptions to the contributory negligence bar, when a defendant's act is willful or when a defendant had the "last clear chance" to avoid injury to a plaintiff, apparently were applied by Justice Mitchell to moderate the harshness of the common law.

In \textit{Wright v. City of St. Cloud},\textsuperscript{147} Justice Mitchell discussed the burden of proof necessary to establish the defenses of contributory negligence and assumption of risk. The jury in \textit{Wright} had found that plaintiff knew of the risk she took because she walked on an icy sidewalk when she had a reasonably convenient alternate route. Justice Mitchell stated that as a matter of law plaintiff was guilty of assumption of risk, or contributory negligence:

\begin{quote}
Under such circumstances she was not in the exercise of reasonable care, but must be presumed to have taken her chances, and having done so, and an injury having resulted, she cannot recover from the city. No different rule as to contributory negligence, or assumption of risks, whichever it is called, is to be applied from that which would be applied to any other case; and, if the plaintiff had exercised half as much care for her own safety as she exacts from the city for the safety of travelers, the accident would never have occurred.\textsuperscript{148}
\end{quote}

As with the standard of reasonableness against which the conduct of defendants is measured, the standard of care sufficient to overcome allegations of contributory negligence or assumption of risk also was that of a reasonable person in light of all the circumstances. In this regard, Justice Mitchell stated:

\begin{quote}
The fact that a person attempts to travel on a highway after he has notice that it is unsafe or out of repair, is not necessarily negligence. This depends on circumstances. He cannot, of course, heedlessly or recklessly run into danger. But when he
\end{quote}

\textsuperscript{145} Fonda v. St. Paul City Ry., 71 Minn. 438, 451, 74 N.W. 166, 170 (1898).
\textsuperscript{146} \textit{id.}
\textsuperscript{147} 54 Minn. 94, 55 N.W. 819 (1893).
\textsuperscript{148} \textit{id.} at 98-99, 55 N.W. at 820-21.
knows that a highway is out of repair, whether he ought absolutely to refrain from attempting to pass over it, or whether he would be justified in making the attempt, using such a degree of care in so doing as would be adequate and commensurate with the condition of the road, is a question of fact to be determined from all the circumstances of the case. Even if plaintiff's servant knew that this crossing was out of repair, he was not bound to anticipate all the perils to which he might possibly be exposed, or to absolutely refrain from pursuing his usual course on account of risks to which he might possibly be exposed. Some risks are taken by the most prudent of men, and the plaintiff would not be debarred from recovering for his injury, if his servant adopted the course which prudent men would ordinarily pursue under like circumstances.

Previous knowledge of the unsafe condition of this crossing was a circumstance to go to the jury on the question of contributory negligence; but it should be submitted to them, together with all the other facts of the case, for them to determine whether, with such knowledge, plaintiff's servant exercised ordinary care in attempting to drive over this defective crossing, and whether in proceeding he used ordinary care to avoid injury. If the risk was such that men of ordinary prudence, having knowledge of the defect, would not, under the circumstances, have attempted to pass over it at their own risk, then plaintiff's servant had no right to attempt to pass it at the risk of the defendant. But if such persons would have believed it reasonably safe to attempt the passage in the manner adopted by plaintiff's servant in this case, plaintiff could recover, notwithstanding such previous knowledge of the condition of the crossing.¹⁴⁹

The ordinarily prudent person included children. Minority, however, lowered the standard of ordinary prudence. In discussing the willful misconduct of a ten-year-old boy, Justice Mitchell said:

Children may be liable for their torts or punished for their crimes, and they may be guilty of negligence as well as adults. The law very humanely does not require the same degree of care on the part of a child as of a person of mature years, but he is responsible for the exercise of such care and vigilance as may reasonably be expected of one of his age and capacity; and the want of that degree of care is negligence. The fact that he may

¹⁴⁹ Kelly v. Southern Minn. Ry., 28 Minn. 98, 101-02, 9 N.W. 588, 589-90 (1881) (emphasis in original), overruled on other grounds, Morse v. Minneapolis & St. L. Ry., 30 Minn. 465, 16 N.W. 358 (1883).
not have the mature judgment of an adult will not excuse a child from exercising the degree of judgment and discretion which he possesses, or for disregarding the warnings and orders of his seniors, and heedlessly rushing into known danger. . . . [E]ven a child is bound to use such reasonable care as one of his age and mental capacity is capable of using; and his failure to do so is negligence.150

To be of adult years, to understand the dangers around one, and to "voluntarily" encounter those dangers was the bane of persons injured in the course of their employment. Assumption of risk in the workplace was a defense difficult to overcome. In Anderson v. C.N. Lumber Co.,151 an employee cut his hand when he attempted to unclog a conveyor belt near an unguarded saw in a shingle mill. Justice Mitchell implied that when a danger was open and obvious in the workplace, an employer owed an employee no duty to warn the employee of the danger or to protect him from it.152 When the employee was injured from such a danger, regardless of the negligence of the employer, the employee was considered to have assumed the risk of the injury. No recovery from the employer was to be had. Justice Mitchell stated:

[I]t conclusively appears that the unguarded condition of the saws and the risks incident thereto were so perfectly plain and obvious to the senses of any man of ordinary intelligence that it must be held that the plaintiff either actually knew and appreciated them or ought to have done so, if he had exercised any sort of reasonable care, and hence that he cannot recover because either of contributory negligence or the kindred doctrine of assumption of risks.153

The workers' compensation statute has abrogated the defenses of contributory negligence and assumption of risk for injuries arising out of and in the course of employments covered by the statute.154

**New Tort Claims**

Many causes of action considered commonplace today developed during the last quarter of the nineteenth century. The rapid growth of the period precipitated an increase in the number and

152. See 67 Minn. at 82, 69 N.W. at 632.
153. Id. at 81, 69 N.W. at 631.
nature of tort claims, giving the courts occasion to recognize relatively novel causes of action. In Aldrich v. Wetmore, an 1893 decision, Justice Mitchell recognized a right of action for a private nuisance. The defendant in Aldrich was engaged in construction work on his property but had so disrupted the use of the public street and sidewalk in front of plaintiff's property that plaintiff could no longer operate his business. Noting the elements of both a public and private nuisance, Justice Mitchell said:

A nuisance may be at the same time both public and private, public in its general effect upon the public, and private as to those who suffer a special or particular damage therefrom, apart from the common injury. The public wrong must be redressed by a prosecution in the name of the state; the private injury by private action. . . .

. . . .

It is not the number who suffer, but the nature of the right affected, which determines whether an action will lie. If the nuisance merely affects the rights enjoyed by citizens as a part of the public, as, for example, the right to travel a public highway, the only redress is by proceedings in the name of the state, although only one man has been actually prejudiced. If, on the other hand, the right interfered with is a private one, as where one suffers damage in person or estate by reason of the nuisance, an action will lie, whether the number of those who have suffered is one or one hundred.

In the case of Larson v. Chase, Justice Mitchell broke from common-law precedent and held that a close relative of a decedent had property rights in the decedent's corpse. In Larson, decedent's wife sought damages for the "unlawful mutilation and dissection" of the body of her husband. The English common-law rule, as stated by Lord Coke, was that a corpse was not property; hence there could be no property rights in it. Lord Coke had premised this rule in part on the etymology of the word "cadaver," which, translated from its Latin roots, means "flesh given to worms." Justice Mitchell questioned whether the etymology of a word was a sound basis for a rule of law and held that plaintiff in Larson "had the legal right to the custody of the body of her husband for the purposes of preservation, preparation, and burial, and can

155. 52 Minn. 164, 53 N.W. 1072 (1893).
156. Id. at 171-72, 53 N.W. 1073-74.
157. 47 Minn. 307, 50 N.W. 238 (1891).
158. See id. at 309-10, 50 N.W. at 239.
maintain this action, if maintainable at all."\textsuperscript{159}

\textbf{CONCLUSION}

Justice William Mitchell, perhaps more than any other judge, helped to lay the foundation of the common law in Minnesota. Justice Mitchell wrote sound opinions of enduring quality that are still cited and quoted frequently by the Minnesota Supreme Court. His deliberate, unpretentious writing style and his keen legal analyses have made his opinions models of appellate review. The people of Minnesota are indebted to Justice William Mitchell for his unequaled contribution to Minnesota law.

\textsuperscript{159} \textit{Id.} at 309, 50 N.W. at 239.