

# WILLIAM MITCHELL

BY

JOHN E. STRYKER

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## FOREWORD

BY

DOUGLAS A. HEDIN  
EDITOR, MLHP

In an address to the Winona County Old Settlers' Association in August 1889, Associate Justice William Mitchell noted, "The fame of judges and lawyers, usually very limited even during their lives, fades away very rapidly after their decease."<sup>1</sup> He was reminiscing about old comrades in the Winona County bar that day but he may also have foreseen the inevitable decline of his own reputation. And so the question follows: was Mitchell's reputation "limited" at this stage of his life? What, in other words, were the views of his contemporaries?

For one response we turn to sketches of Mitchell that appeared in five books published between 1879 and 1904. The first (and shortest) appeared in 1879, during his first term as district court judge; the second and third in 1897, in the middle of his last term on the supreme court. The fourth appeared in early 1900, after his defeat and a few months before he died. The last

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<sup>1</sup> William Mitchell, "Reminiscences of the Establishment of the Territorial Court, Judges, Justices and Members of the Bar of Winona County" 8 (MLHP, 2013); published first in *Winona Daily Republican*, Friday, August 30, 1889, at 4; and republished in LaFayette H. Bunnell, *Winona (We-no-nah) and Its Environs on the Mississippi in Ancient and Modern Days* 495-510 (1897). All footnotes in this article are by the MLHP.

(and longest) by John Stryker appeared four years after his death. Almost certainly Mitchell either wrote or approved the first three. Despite this (and their repetitiousness), they show that his reputation was growing, not stagnating, during the last quarter century of his life.

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The first sketch appeared in a volume of *The United States Biographical Dictionary and Portrait Gallery of Eminent and Self-Made Men* devoted to prominent Minnesotans. It was published in 1879, six years after Mitchell was elected to the Third Judicial District Court in November 1873.

WILLIAM MITCHELL, judge of the third judicial district, and son of John and Mary Henderson Mitchell, is of pure Scotch blood, both parents being born in the old country, and connected with a long line of agriculturists.

William was born on the 19th of November, 1832, a few miles from Drummondville, in the county of Welland, province of Ontario; prepared for college at private schools in his native count); entered Jefferson College, Canonsburg, Washington county, Pennsylvania, in 1848, and graduated in 1853 After teaching two years in an academy at Morgantown, West Virginia, he read law with Edgar C. Wilson, of the same place, and was there admitted to the bar in the spring of 1857, settling in Winona during the same spring. Here he was in constant and successful practice until he went on the bench in January, 1874. He had held other offices long prior to that date — was a member of the legislature in the session which

was held in the winter of 1859-60, and subsequently was county attorney for one term. His judicial term runs for seven years, expiring with the year 1881. He was elected without opposition, and the selection was no doubt as good as could be made. The judge has thorough literary as well as legal culture, an abundance of broad common sense, and all the elements which constitute a first-class district judge. In moral character he stands in the front rank.

He is interested directly or indirectly with local enterprises calculated to build up Winona, among them the Winona and Southwestern Railway, of which company he is president. He is also president of the Winona Savings Bank.

Judge Mitchell was originally a republican; became dissatisfied with some of the reconstruction measures of the party during the administration of President Johnson, and since that time has been independent, acting largely, though not wholly, with the democratic party.

His religious leanings are toward the Presbyterian church, in which he was reared, but of which he is not a member.

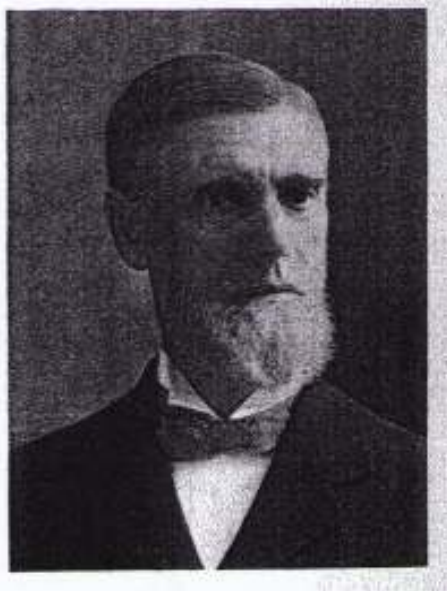
Judge Mitchell has been twice married: the first time to Mrs. E. Jane Smith, of Morgantown, West Virginia, in September, 1857, — she dying ten years later, leaving four children; the second time to Mrs. Frances M. Smith, daughter of Jacob D. Merritt, of

Dubuque, Iowa, in July, 1872,— two children being the fruit of this union.<sup>2</sup>

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The next sketch of Mitchell appeared in *Progressive Men of Minnesota*, ponderously subtitled, *Biographical sketches and portraits of the leaders in business, politics and the professions; together with an historical and descriptive sketch of the state*, published in 1897. The author is not listed, though it is probable that the subject himself wrote or proofed it.

William Mitchell, associate justice of the Supreme Court of Minnesota, resides at Winona, where he settled in the spring of 1857. He is the son of John and Mary (Henderson) Mitchell and is of Scotch ancestry, both parents having been born in Scotland.



He was born November 19, 1832, at Stamford, Ontario. He prepared for college at a private school in his native country and entered Jefferson College, at Canonsburg, Pennsylvania, in 1848, where he graduated in 1853. He taught two years in an academy at Morgantown, West Virginia, after which he read law with Edgar C.

Wilson (father of the late Eugene Wilson of Minneapolis) of the same place, and was there admitted to the bar in the spring of 1857.

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<sup>2</sup> *The United States Biographical Dictionary and Portrait Gallery of Eminent and Self-Made Men. Minnesota Volume 35-6* (1879).

Almost immediately thereafter he left Virginia for the West and settled in Winona, where he began the practice of law. He was in constant and successful practice until he was elected judge of the third judicial district of this state, and took his seat in January, 1874. He had held other offices, however, prior to that date, having been elected to the legislature for the sessions of 1859 and 1860, and subsequently was county attorney for one term. He was re-elected to the district bench in 1880, but resigned to accept a seat on the supreme bench to which he was appointed by Governor Pillsbury in 1881, when the number of justices was increased from three to five. He has thrice been elected to the supreme court without opposition, and has discharged the duties of that honorable and responsible position with such ability and integrity as to add each year to the esteem and respect in which he is held by the people of the state. He is a gentleman of thorough literary culture, as well as profound legal learning, a man of broad common sense and high character, possessing in a remarkable degree the qualities of mind which are essential to judicial eminence. His judicial opinions cover a wide range of subjects, and are studied with respect and approval in many of the courts and law schools of the county. It is said of Judge Mitchell, that no attorney appears before him without feeling that his arguments are being listened to with most patient attention to the end. Judge Mitchell has been interested in local enterprises in Winona County and contributed much to the growth and prosperity of that city. He has held the position of president of the Winona and Southwestern Railway, and also president of the

Winona Savings Bank. He was originally Republican, but becoming dissatisfied with some of the reconstruction measures of the party during the administration of President Johnson, he has since acted chiefly, though not in a partisan sense, with the Democrat party. He has been married twice. In September, 1857, to E. Jane Hanway, of Morgantown, Virginia. She died ten years later. In July, 1872, he married Mrs. Francis N. Smith, of Chicago. He has had six children. He was reared in the Presbyterian church and is an attendant of that church, though not a member.<sup>3</sup>

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The following sketch was included in *Saint Paul: History and Progress*, a commemorative book published by the Pioneer Press in 1897.

Hon. Win. Mitchell, well known and distinguished as one of the prominent jurists of the country, and for many years and at present one of the judges of the supreme court of Minnesota, was born in the town of Stamford, County of Welland, and Province of Ontario, Nov. 19, 1832. His parents, John Mitchell and Mary Henderson, were natives of Scotland. His early education was received in private schools and he was prepared for college at an academy in his native county. In 1848 he came to the United States, and the same year, at the early age sixteen years, he entered Jefferson College, Canonsburg, Pa., and was

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<sup>3</sup> Marion D. Shutter & J. S. McLain eds., *Progressive Men of Minnesota* 437 (1897) (misspelling in original corrected). Curiously, Mitchell did not include his profile in *Portrait and Biographical Record of Winona County* (1895).

graduated from that institution in 1853. After his graduation he was for two years a teacher in an academy at Morgantown, Va. (now West Virginia), and then engaged in the study of law in the office of Hon. Edgar N. Wilson of Morgantown, and was admitted the bar in March, 1857.

In April, 1857, a month after his admission, he came to Minnesota and located at Winona, in the practice of his profession. He was in constant and prominent practice until 1874. In the meantime he served in the second state legislature, in the session of 1859-60, and was consequently, for one term, county attorney of Winona county.

In the fall of 1873 he was elected judge of the district court of the Third judicial district, for a term of seven years and went on the bench in



HON. WM. MITCHELL

January, 1874. He was elected in the fall of 1880, and was in service in March, 1881, when he was appointed by Governor Pillsbury one of the judges of the state supreme court. He was regularly elected to that position in the fall of 1881, and by successive

re-elections he has served continuously ever since. His present term will expire in January, 1900.

Judge Mitchell has served in his high judicial position with the greatest acceptability. His profound and exhaustive knowledge of the law, his clear intelligence, and his broad spirit of fairness have combined to give him a most exalted reputation. His opinions have come to be regarded as weighty and standard authorities, and they have a wide range over the entire field of jurisprudence. Some of his decisions have been against the interests of the political party with which he is connected, but in such instances were as promptly and fully rendered as if they related to matters of an altogether different character. He has attained to such distinction among the lawyers and courts of the Northwest that there has long been a desire for his advancement and further preferment. He does a great deal of hard and exacting work, but is splendidly preserved, mentally and physically, and is capable of many more years of active and valuable public service. Originally a Republican, Judge Mitchell has been an Independent Democrat since 1867, but, as has been indicated, has always been generally in public favor, and always been elected to office by a non-partisan vote, and sometimes by a universal suffrage.

Judge Mitchell has been twice married. His first marriage was to Mrs. E. Jane Smith of Morgantown, Va., in September, 1857. She died in September, 1867, leaving three daughters, who are now Mrs. J. K. Ewing of Uniontown, Pa.; Mrs. Henry L. Staples of Minneapolis, and Mrs. Frank A. Hancock of Dubuque, Iowa. He was again married, in July, 1872, to Miss Frances M. Merritt, daughter of Jacob P.



Merritt of Chicago. She died in March, 1891, leaving one son, Wm. Dewitt Mitchell, who graduated at the law school of the Minnesota State University in the class of 1896, and is now in the law office of Messrs. Stringer & Seymour of St. Paul.<sup>4</sup>

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The next sketch of Mitchell was included in *Encyclopedia of Biography of Minnesota*, a hefty, two volume set written and edited by former Justice Charles E. Flandrau, and published in 1900. This piece likely was being prepared before the November 1898 election. A pre-election endorsement by the *St. Paul Pioneer Press* occupies most of it. That editorial quotes a letter from Harvard Law Professor James B. Thayer to a “leading lawyer of Minneapolis” praising Mitchell.<sup>5</sup> The letter was obviously solicited and distributed as part of the campaign to re-elect Mitchell. But he was defeated, though in the journalistic euphemism of the day, he “retired.”<sup>6</sup> The author of this

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<sup>4</sup> *Saint Paul: History and Progress*, 165-66 (1897).

<sup>5</sup> James Bradley Thayer (1832-1902), a Harvard Law School Professor from 1874 to 1902, wrote *A. Preliminary Treatise on Evidence* (1898), and influential articles on judicial review and constitutional law. Roger K. Newman, ed., *The Yale Biographical Dictionary of American Law* 540-41 (Yale Univ. Press, 2009).

<sup>6</sup> In November 1898, Mitchell came in fifth in a “top three” election:

John A. Lovely (R.).....	129,268
Calvin L. Brown (R.).....	107,523
Charles L. Lewis (R.).....	100,806
Thomas Canty (D. & Pop.)(inc.).....	99,002
William Mitchell (D. & Pop.)(inc.).....	89,527
Daniel Buck (D. & Pop.)(inc.).....	78,441
S. Grant Harris (Mid. Road Pop.).....	7,020
Josiah H. Temple (Mid. Road Pop.).....	5,019
Edgar A. Twitchell (Mid. Road).....	4,592

“Results of Elections of Justices of the Minnesota Supreme Court, 1857-2012” 31-2 (MLHP, 2010).

sketch repeated an observation about Mitchell in *Saint Paul: History and Progress*, three years earlier: “He . . . is splendidly preserved, mentally and physically, and is capable of many more years of active and valuable service in his profession.” Alas, that was not to be — he died on August 21, 1900.<sup>7</sup>

Hon. William Mitchell, the distinguished jurist who has for many years been one of the judges of the Supreme Court of Minnesota, was born in the town of Stamford, County of Welland, Providence of Ontario, Canada, November 19, 1832. His parents, John Mitchell and Mary Henderson, were natives of Scotland. His early education was received in private schools, and he was prepared for college at a private academy in his native county. In 1848 he came to the United States, and the same year, at the age of sixteen, he entered Jefferson College, Canonsberg, Pennsylvania, and graduated from that institution in the class of 1853. After his graduation he was for two years a teacher in an academy at Morgantown, Virginia (now West Virginia). He then engaged in the study of law in the office of Hon. Edgar M. Wilson of Morgantown, and was admitted to the bar in that place in March, 1857. In April, 1867, a month after his admission, he came to Minnesota and located at Winona in the practice of his chosen profession. He was in constant and prominent practice until 1874. In the meantime he served in the second State Legislature, in the session of 1859-60, and was subsequently, for one term, county attorney of Winona county. In the fall of 1873 he was elected judge of the

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<sup>7</sup> For his bar memorial, see “Proceedings in Memory of Associate Justice Mitchell,” (MLHP, 2011) (published first, 1901).

District Court of the Third Judicial District for a term of seven years, and went on the bench in January, 1874. He was reelected in the fall of 1880, and was in service until March, 1881, when he was appointed by Governor Pillsbury one of the judges of the State Supreme Court. He was regularly elected to that position in the fall of 1881, and by successive re-elections he has served continuously up to the present time. His term will expire in January, 1900, when he will leave the position which he has so long and so eminently filled. Upon the eve of his retirement it is but justice and truth to say that Judge Mitchell has served in his high judicial position with the greatest acceptability. His profound and exhaustive knowledge of the law, his clear intelligence, and his broad spirit of fairness have combined to give him a most exalted reputation. His opinions have come to be regarded as weighty and standard authorities, and they have a wide range over the entire field of jurisprudence. Some of his decisions have been against the interests of the political party with which he is connected, but in such instances were as promptly and fully rendered as if they related to matters of an altogether different character. He has attained to such distinction among the lawyers and courts of the Northwest, that there has long been a desire for his advancement and further preferment. He has done a great deal of hard and exacting work, but is splendidly preserved, mentally and physically, and is capable of many more years of active and valuable service in his profession. Originally a Republican, Judge Mitchell has been an Independent Democrat since 1807, but has always been elected to office by a non-partisan vote, and

sometimes by a universal suffrage. A distinguished lawyer of St. Paul, who was for many years on the Supreme Bench of the State says:

"I may here state that Judge Mitchell never made any effort in his own behalf when he was a candidate for judge, holding that it was unbecoming in a judge to do so, and the nominations and elections, therefore, came to him because of the estimation in which the people held him as a man and as a jurist. As a man, I do not exaggerate when I say that no one in our State has been held in greater esteem as a man of purity and high character. In point of ability, I think there has never been on the bench of our State his superior as a judge."

From an editorial in the "Pioneer Press" (Republican), November 2, 1898, we quote the following:

"Judge Mitchell was the one man on the Supreme Bench that could least be spared. He was put there originally by appointment of Governor Pillsbury seventeen years ago, both because of the high reputation he had gained as a District Judge, and also because he was a Democrat, it being the strong desire of Governor Pillsbury to satisfy the prevailing public sentiment in favor of a non-partisan judiciary. Appointed originally by a Republican Governor, he has been three times nom-

inated by the concurrent action of the state conventions of both parties and elected by the unanimous vote of the electors of all parties. And this not only because he has represented the principle of non-partisanship in the judiciary, but because of his exceptionally high standing and reputation as a judge; because he united the intellectual and moral qualities — the ability, learning and acuteness of a great jurist with the purity and unbending integrity of an honest man — which constitute the ideal judge. Without disparagement to other judges on the bench, it is safe to say that, in the general opinion of the bar, there is none of Judge Mitchell's associates on the bench, and none who have been nominated on either ticket, who could not be far better spared than he. . . . And Judge Mitchell's reputation as a judge extends far beyond the boundaries of his own State. No better proof could be afforded of the high estimation in which he is held as a jurist by lawyers throughout the country, or of the great respect entertained for his judicial opinions, than is afforded by the following letter received by a leading lawyer of Minneapolis soon after the failure of the Republican State convention to nominate him, from Professor Thayer, of the Harvard Law School:

“Cambridge, Mass. Sept. 2, 1898.— My Dear Sir: I am astonished to hear that there is doubt of the re-election of Judge Mitchell to your Supreme Court. I wish the people of Minnesota knew the estimate that is put upon him in other parts of the country, and there could be no doubt about it then.

“I never saw him and have no personal acquaintance with him. I know him only as a judge whose opinions, like those of all the judges in the country, reach me through the excellent law reports published in your State. In the course of my work at the Harvard Law School I have long had to search carefully through these reports for cases relating to my special subjects. In that way I have long recognized Judge Mitchell as one of the best judges in this country, and have come to know also the opinion held of him by lawyers competent to pass an opinion on such a question.

“There is no occasion for making an exception of the Supreme Court of the United States. On no court in the country to-day is there a judge who would not find his peer in Judge Mitchell. . . . Pray do not allow your State to lose the services of such a man. To keep him on the bench is a service not merely to Minnesota, but to the whole country and to the law. Your

State it is that is on trial now before the country. The question is: Can Minnesota appreciate such a man? Is it worthy to have him? I am not going to believe that a State which can command the services of one of the few judges in the country that stand out among their fellows as pre-eminent, that give it distinction, will refuse to accept those services. You lawyers of Minnesota must not let party politics work any such result. Surely the bar can prevent it if they will.

Always truly yours,  
J. B. Thayer."

Judge Mitchell has been twice married. His first marriage was to Mrs. E. Jane Smith, of Morgantown, Virginia, in September, 1857. She died in September, 1867, leaving three daughters, who subsequently became Mrs. J. K. Ewing, Mrs. Henry L. Staples, and Mrs. Frank A. Hancock. His second marriage was in July, 1872, to Mrs. Francis M. Smith, of Chicago. She died in March, 1891, leaving a son, Mr. William De Witt Mitchell, who graduated from the Law School of the Minnesota State University in the class of 1896, and is now engaged in the practice of his profession in St. Paul. <sup>8</sup>

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The fifth sketch appeared in the *History of the Bench and Bar of Minnesota* compiled by Hiram Fairchild Stevens and

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<sup>8</sup> Charles E. Flandrau, 1 *Encyclopedia of Biography of Minnesota* 147-49 (1900).

posthumously published in 1904. John E. Stryker, a St. Paul lawyer, wrote it. Though short, it is the first profile of Mitchell that went beyond the mere recitation of biographical data to discuss his thinking and, specifically, his willingness to re-examine precedent. Within the next decades, two lengthier and more deeply researched studies of Mitchell were published: Former Justice Edwin Ames Jaggard's chapter in the eighth volume of *Great American Lawyers*, a famous set edited by Dean William Draper Lewis, appeared in 1909, and William Lees' article in the *Minnesota Law Review* followed in 1920.<sup>9</sup>

Stryker's profile also appeared in the *History of the Bench and Bar of Minnesota* and we can assume that he wrote it as well. His career as a lawyer differed from Mitchell's. He seemed to have enjoyed trial work, an activity the Justice, when in private practice, did not prefer. He also concentrated his practice on patent, copyright and trademark litigation—called “intellectual property law” today — a specialty that did not exist when Mitchell practiced in Winona in the 1850s and 1860s. But he shared Mitchell's devotion to his community, in his case St. Paul.

#### JOHN E. STRYKER.

Among the members of the Minnesota bar, who are rapidly taking their places in the front rank, stands John E. Stryker, of St. Paul. Mr. Stryker was born at Catskill, on the Hudson, in the state of New York, on the 30th day of October, 1862. His father was John L.

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<sup>9</sup> Edwin Ames Jaggard, “William Mitchell,” (MLHP, 2008)(published first, 1909); William Lees, “William Mitchell,” 4 *Minnesota Law Review* 377-401 (1920).

And to interject a personal acknowledgment, Stryker's profile inspired my short article, “When Justice Mitchell Changed His Mind---Twice,” (MLHP, 2009) (published first in *The Hennepin Lawyer*, June 2006).



Stryker, descended from one of the old Dutch families of New York, and his mother, Mary Edwards, came from the famous Jonathan Edwards family, of New England. Though born in the east, Mr. Stryker very early in life became identified with the west. He first came to Minnesota as a boy in 1868, with his father, who then had large business and railroad interests here; and from that time his visits were of almost yearly occurrence until 1885, when he became a permanent resident of the state.



*John C. Stryker*

After a thorough preparatory course at Phillips Academy, at Andover, he entered Yale college, from which he graduated in 1883. His professional training was received at Columbia law school under the celebrated Dr. Theodore Y. Dwight. After completing the course in that institution in 1885, he was at once admitted to the practice

of his profession in the state of Minnesota. At this time, and before entering in earnest into practice, he concluded to round out his already broad and thorough education by travel and study abroad; and, accordingly, for a year and a half he traveled extensively in Europe and studied several branches of jurisprudence at the University of Berlin.

Returning to Minnesota in the latter part of 1886, he at once began the active practice of his profession at St. Paul, and soon took the rank at the bar to which his natural abilities and thorough training entitled him. Since that time his practice has been large and general in all the state and federal courts: but of late years, while still engaged in general practice, he has made a specialty of equity cases in the federal courts, including patent, trade-mark and copyright suits, to which his early inclinations and training naturally predisposed him.

During the years 1893 and 1894, Mr. Stryker served as assistant United States attorney for the district of Minnesota; and during that time had charge for the government of the important litigation growing out of the great railroad strikes of that time. He acquitted himself so well that when he resigned as district attorney, he was appointed special counsel for the United States in the notable case of the United States v. Pine River Logging and Improvement company. It was a case bitterly, stubbornly and ably contested by old and expert counsel, tried three times, three times appealed to the United States circuit court of appeals and once to the supreme court of the United States. The final result was a victory for Mr. Stryker and the collection by the government of \$104,000.<sup>10</sup> Since that time he has been retained as special counsel by the government in other cases and by numerous

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<sup>10</sup> Pine River Logging & Improvement Company v. United States, 78 Fed. 319 (8th Cir. 1897)(reversing judgment for defendant and remanding for new trial), 89 Fed. 907 (8th Cir. 1898)(after second trial and verdict for defendant, reversed and remanded for retrial), 105 Fed. 1004 (8th Cir. 1900) (affirming judgment for government after third trial), affirmed 186 U. S. 279 (1902) (Brown, J.).

manufacturing corporations in important patent and trade-mark suits.

Mr. Stryker has always been interested in, and ready to do his share for, the good of the profession, and has served successively as member of the executive committee, vice president and president of the Ramsey County Bar association.

Mr. Stryker was married December 4, 1889, at St. Paul, to Virginia L. Perrin, daughter of Col. Glover Perrin of the United States Army, and has an interesting family of five children, all born in St. Paul.

Though he has never sought public office, and, except as district attorney, has never held one, Mr. Stryker has always been a close student of, and keenly interested in, political affairs, as all citizens of his education and standing should be. Upon the fundamental ideas and doctrines of government, he has always been a democrat, and affiliated with the democratic party, though not as an extreme partisan. His temperament, education, character and patriotism are such that to him party success is a means rather than an end; and large questions involving the public good interest him more than mere party victories or personal advancement.

The professional growth of Mr. Stryker has not been forced; it has never been artificially stimulated by himself or anyone in his behalf. It has been, in keeping with his character, natural, steady and solid, based upon the personality, the attainments and the character of the man. Possessed already of a reasonable share of success and of a large and varied exper-

ience of men and affairs, blessed with good health and a splendid physique, rich in natural endowment, and in a broad and thorough training, he is still a young man at the threshold of his career, which promises useful and important service to the profession and the state."

Stryker died on Monday, February 5, 1940, at age seventy-eight. The afternoon *St. Paul Dispatch* carried his obituary:

John E. Stryker, Charter  
Chairman, Here 55 Yrs., Dies

John E. Stryker, chairman of the St. Paul Charter commission and a practicing attorney here for 55 years, died of pneumonia at 11:10 A. M. today at Miller hospital. He was 78 years old.

His death followed that of his wife, the former Virginia Pein, by a little more than two weeks. The couple celebrated their golden wedding anniversary December 4 and Mrs. Stryker died January 19.

Mr. Stryker, son of John L. and Mary Edwards Stryker, was born October 30, 1862, in Catskill, N. Y. He was educated at Phillips academy, Andover, Mass., Yale university, Columbia law school and the University of Berlin.

HELD IMPORTANT POSTS

Admitted to the bar in 1885, he began practicing in St. [Paul] and established himself as an outstanding authority on patent law. He was assistant United

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" Hiram F. Stevens, 1 *History of the Bench and Bar of Minnesota* 196-8 (1904).

States district attorney in Minnesota, 1893-1894, and special counsel of the United States from 1894 to 1902.

He was appointed to the charter commission in 1920, an office he held at the time of his death. Under his chairmanship, the commission developed the proposed city-manager charter and many amendments to the city's present charter.

He was a former president of the Ramsey County Bar Association and a member of the American and Minnesota Bar Associations. He was active up to the time he was taken ill a week ago.

#### LEAVES 3 CHILDREN

Surviving are two sons, John E. Stryker Jr., who was associated with him in practice, and Captain William Byrd Stryker, in the medical corps at Corregidor, Philippine Islands; one daughter, Mrs. James Gray, wife of Dispatch-Pioneer Press columnist and dramatic critic, and nine grandchildren.<sup>12</sup>

The following sketch is the first of what may someday be called "Mitchell studies." The Justice, it is true, is interesting in his own right, but his career and rulings may also encourage and be the sources of broader and more ambitious research into judicial behavior, opinion styles, court procedures and elections for judgeships in the state in the nineteenth century. John Stryker was the first to write about William Mitchell in this way. □

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<sup>12</sup> *St. Paul Dispatch*, February 5, 1940, at 5 (Photograph and funeral arrangements omitted; two misspellings corrected).

## WILLIAM MITCHELL.

BY JOHN E. STRYKER.

No name is more intimately associated with the development of law in the state of Minnesota than that of William Mitchell. No name suggests more pleasant recollections or inspires greater pride in the judiciary of the state. For twenty-six years, from 1874 to 1900, Judge Mitchell sat upon the Minnesota bench, and during that time no man contributed more to elucidate the principles which are the foundation of our jurisprudence. With true instinct as to what the law ought to be, with deep knowledge of its history and reason, with a firm grasp of the facts in the case before him, with love of justice as his ruling passion, with close and logical thought, he framed his decisions and clothed them in clear language, which was a demonstration of his conclusions.

The history of a strong man so intimately associated with a great department of government during the formative period of a commonwealth is alike interesting and instructive.

The father and mother of William Mitchell were natives of Scotland. At the time of his birth his father was a farmer, residing at Stamford, county of Welland, in Ontario, not far from Niagara Falls. The subject of this sketch was born on the 19th day of November, 1832. His elementary education was obtained at private schools in Canada, and in 1853 he graduated from Jefferson College at Cannonsburg, Pennsylvania. For the two years following he was a teacher in the academy at Morgantown, Virginia, where he studied law, and in 1857 was admitted to the Virginia bar. The same year he came to Minnesota and settled in Winona. The citizens of that town early learned to appreciate his worth and ability, and, as a

consequence, [66] his practice rapidly grew; he was elected to the second legislature of Minnesota and was also county attorney for Winona county. During the years of his practice in Winona, Mr. Mitchell was successively in partnership with Eugene M. Wilson, Daniel S. Norton, afterwards United States senator, and Lieutenant Governor W. H. Yale. His first term as judge of the third judicial district of this state began in 1874, and he was re-elected in 1880. When the membership of the supreme bench was increased from three to five, Judge Mitchell was, in 1881, appointed by Governor Pillsbury as a member of that court. At the succeeding election, as the nominee of both political parties, he was chosen for that office; by the same non-partisan unanimity he was re-elected in 1886 and again in 1892.

Unfortunately for the state, at the election of 1898 judicial offices had been dragged into politics. Judge Mitchell was re-nominated by the democratic party and also received three hundred votes in the republican convention, but failed to secure the nomination of the latter party, and at the election which followed, Minnesota lost its greatest judge.

As a young man William Mitchell was a republican, but becoming dissatisfied with the reconstruction measures of that party he joined the democrats, and, while never a radical, continued to affiliate with them until his death.

Physically Judge Mitchell was tall and slight, with a thin, clear-cut face illuminated and distinguished by deep-set, dark eyes. In manner he was kind, gentle and unassuming but always dignified. His charity and courtesy were unfailing, his hand ever ready to succor the weak or encourage those who were striving to rise. These traits were noticeable not only in his private life but also in his relations to attorneys, particularly the inexperienced, practicing in his court.

Judge Mitchell was twice married, first to Jane Hanway, at Morgantown, Virginia, in September, 1857. She died in 1867, and in 1872, he married Mrs. Frances M. Smith, of Chicago, a daughter of Jacob D. Merrit, of Dubuque. Four children survive, Mrs. J. K. Ewing, Jr., of Uniontown, Pennsylvania; Mrs. Frank A. Hancock, of St. Paul; [67] Mrs. H. L. Staples, of Minneapolis, and William D. Mitchell, of St. Paul, an able young attorney in active practice as a member of the firm of How, Taylor & Mitchell.

Perhaps the most characteristic quality of Judge Mitchell's mind was his power to illuminate the subject under consideration. In his opinions neither the ultimate facts nor the legal premises and conclusions were ever left in doubt. 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.

To consider the judicial opinions of Judge Mitchell in such manner as to do justice to his reputation is difficult because his fame does not rest upon one group or class of cases.

Epoch-making cases like those which have frequently engaged the attention of the federal supreme court are rarely brought before a state court, and 'it is the uniform high standard of Judge Mitchell's opinions in clearness, logic and learning rather than any supremely great decisions which made him eminent; therefore, to select particular opinions for comment is perplexing and may be of little value. Yet, his public life was that of the judge, and certain traits of his character are so plainly stamped upon some of his decisions that they will be mentioned, though others more notable and quite as characteristic might be selected by another.



Judge Mitchell's first reported opinion is in the case of *State vs. Young*, 23 Minn. 551. At the time of this decision its author was still on the district bench, and he was honored by the governor of the state by being called upon to sit in the supreme court in place of one of its judges, disqualified by reason of being of counsel in the court below. The case turned upon a point concerning which the courts are still irreconcilable, viz.: the sufficiency of parol authority to fill a blank in an instrument under seal. It was said that the former distinction between sealed and unsealed instruments had, with changing conditions, become arbitrary and meaningless. By holding that the penal sum might be inserted in a bond after its execution by the sureties, Judge Mitchell made this, his first reported case, a leading one, [68] often cited by the more progressive courts which follow precedents only so long as reason for them remains.

A characteristic unusual in so great a judge was entire absence of egoism and pride of opinion. When convinced that he had reached an erroneous conclusion he never hesitated to reverse himself. An early instance of this refreshing reasonableness is found in the dissenting opinion in *Parke vs. Hush*, 29 Minn. 434, where Judge Mitchell refused to concur with his brethren in sustaining a previous decision written by himself, in *Pamperin v. Scanlan*, 28 Minn. 345. And the same unprejudiced fairness was peculiar to his work until the end of his career.

The constitutional decisions of Judge Mitchell are marked by a just appreciation of the independent duties and powers of the several departments of the government.

The case of *Rippe v. Becker*, 56 Minn. 100, involved the constitutionality of an act to provide for the erection of a state elevator, and the law was held unconstitutional because not within the police power of the state but in violation of the

constitutional provision, prohibiting the state from contracting any debt for works of internal improvement and from being a party in carrying on such works.

The conservatism of the judge, as well as the democracy and modesty of the man, is made apparent by the closing paragraphs of the opinion in that case, which are as follows:

"The time was when the policy was to confine the functions of government to the limits strictly necessary to secure the enjoyment of life, liberty and property. The old Jeffersonian maxim was that the country is governed the best that is governed the least. At present, the tendency is all the other way, and towards socialism and paternalism in government. This tendency is, perhaps, to some extent, natural, as well as inevitable, as population becomes more dense, and society older and more complex in its relations. The wisdom of such a policy is not for the courts. The people are supreme, and, if they wish to adopt such a change in the theory of government, it is their right to do so. But in order to do it they must amend the constitution of the state. The present constitution was not framed on any such lines.

"It is always a delicate as well as an ungracious task to declare invalid an act of a co-ordinate branch of the government, and should never be done, except in cases free from reasonable doubt. But the legislature is not the people, any more than are the executive and judiciary. Like them, it is a branch—doubtless the most important one—of the government, and, equally with them, subject to the limitations imposed

by the constitution; and, whenever it has clearly transcended those limitations, it is the duty of the judiciary to so declare. The act now under consideration seems to us so clearly in violation of the constitution that it is our bounden duty to so hold."

In *Lommen v. The Minneapolis Gaslight Co.*, 65 Minn. 196, the court sustained the constitutionality of the then existing struck jury law, and in his opinion, distinguished by learning and vigor of statement, Judge Mitchell considered the limitations upon the history of the right to trial by jury. He held that questions of policy and expediency are wholly for the legislature, which is limited only by express provisions of the constitution, the courts not being at liberty to declare an act void merely because, in their judgment, it may be opposed to the spirit of the constitution.

The same reluctance to encroach upon the legislative and executive authority is shown in the opinion in *Moede v. The County of Stearns*, 43 Minn. 312, where it is said:

"There is no country in which the distinction between the functions of the three departments of government is more definitely marked out on paper than in the United States, and yet there is none in which the courts have assumed so often to review, in advance of actual litigation involving the question, the acts of co-ordinate branches of the government. It has become the fashion to invoke the courts by direct action, or through some remedial writ, to review almost every conceivable act, legislative, executive, or ministerial, of other departments; and courts have been so often inclined to amplify their jurisdiction in that respect that they have not unfrequently converted themselves into a sort of

appellate and supervisory legislative or executive body. Such a practice is calculated to interfere with the proper exercise of the functions of executive and legislative officers or bodies; to obliterate the distinction between the powers and duties of the different departments of government; and, above all, to bring the courts themselves into disrepute, and destroy popular respect for their decisions. It may be very convenient to have in advance a judicial determination upon the validity of a legislative or executive act. It would often be equally so in the case of acts of a legislature. But we think the courts will best subserve the purposes for which they are organized by confining themselves strictly to their own proper sphere of action, and not assuming to pass upon the purely legislative or executive acts of other officers or bodies until the question properly arises in actual litigation between parties. It is but fair to the learned district judge to state that this question does not appear to have been raised or called to his attention on the trial in the court below."

A line of decisions in which Judge Mitchell applied to the inland lakes of the state the common law principles relating to navigable waters and riparian rights he considered among his best contributions to the public weal. On this subject, perhaps, the most important case is *Lamprey v. State*, 52 Minn. 181, the opinion in which exemplifies the breadth of view and perspicuity of its author in brilliant fashion.

Many other noteworthy opinions might be selected from the more than fifteen hundred which Judge Mitchell contributed to fifty-two volumes of Minnesota reports, commencing with *Fenno v. Chapin*, 27 Minn., 519, and ending with *State ex rel.*

*Zaske v. Matter*, 78 Minn. 377, but space will not permit. In number of opinions this represents a greater amount of judicial labor than has ever been performed by any judge of the Minnesota or federal supreme court, and when the painstaking care, learning and conclusive logic of the work is considered, it constitutes an imposing monument more significant than any of marble or bronze.

The reputation of Judge Mitchell extended far beyond the limits of Minnesota. His opinions always received the most careful and respectful attention from courts and lawyers alike. The supreme court of Massachusetts (*Burney v. Children's Hospital*, 169 Mass. 57), cites *Larson v. Chase*, 47 Minn. 307, in which Judge Mitchell wrote the opinion, as a well-considered case and adopts his reasoning. The learned authors of *Sherman and Redfield on Negligence*, referring to a question on which the courts of last resort of the country were not harmonious, say:

"The best statement of this rule, and the reasons for it, is in *Morse v. Minneapolis, etc., R. Co.*, 30 Minn. 465. The rule has been repeatedly enforced in New York, although never with a statement of reasons approaching to the clearness of Judge Mitchell's opinion in the Minnesota case."

During the political campaign of 1898 Professor Thayer, of the Harvard Law school, wrote to a friend in Minnesota as follows:

"I am astonished to hear that there is doubt of the re-election of Judge Mitchell to your supreme court. I wish the people of Minnesota knew the estimate that is put upon him in other parts of the country, and there could be no doubt about it then. I never saw him, and have no personal acquaintance with him. . . . I have long recognized Judge Mitchell as one of the

best judges in this country, and have come to know also the opinion held of him by lawyers competent to pass an opinion on such a question. There is no occasion for making an exception of the supreme court of the United States. On no court in the country to-day is there a judge who would not find his peer in Judge Mitchell. . . . Pray do not allow your state to lose the services of such a man. To keep him on the bench is a service not merely to Minnesota, but to the whole country and to the law. Your state it is that is now on trial before the country. The question is: Can Minnesota appreciate such a man? Is it worthy to have him? I am not going to believe that a state which can command the services of one of the few judges in the country that stand out among their fellows as pre-eminent, that give it distinction, will refuse to accept these services. You lawyers of Minnesota must not let party politics work any such result."

On the 21st day of August, 1900, William Mitchell died beside one of Minnesota's crystal lakes, which he loved as he loved all nature in her pure and beautiful forms. His death came as a deep and personal sorrow to all his friends, and every right-minded person in the state was his friend. To his associates and those who practiced before him, the lasting and inspiring memory of the unselfish, sympathetic, loyal man will always remain blended with that of the great and upright judge.<sup>13</sup> ■

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<sup>13</sup> Hiram F. Stevens, *supra* note 11, at 65-71 (italics added). An engraving of Mitchell appears at the beginning of this volume.

