

PROCEEDINGS

IN MEMORY OF

ASSOCIATE JUSTICE MITCHELL.

On the afternoon of October 2, 1900, in the chamber of the house of representatives at the state capitol, Hon. James A. Tawney presented to the supreme court, then in session, in behalf of the Winona and State Bar Associations the following memorial of Associate Justice Mitchell, who died August 21, 1900, and moved that the same be spread upon the records of the court:

MEMORIAL.

William Mitchell, who for forty-three years was a member of the Minnesota Bar, for seven years was judge of the Third judicial district, and for nineteen years was an Associate Justice of this court, having been called away by death, the members of the Winona and state Bar respectfully submit the following, as a testimonial of their esteem and affection for him while living, and as a tribute to his memory now that he is gone.

We honored him for his noble and dignified character; we loved him for his fraternal spirit. In all the relations and duties of life he aimed at what was true and pure and good. His large intellectual gifts and liberal culture gave him prominence and power. His fine social qualities, uniform courtesy, and kindness won the favor of all who knew him. His spotless integrity and conscientious fidelity in the discharge of duty won their confidence. It falls to the lot of few men to be as universally respected as was Judge Mitchell.

That he was a great lawyer and a great jurist, great in legal learning, and great in those qualities of mind and character essential to judicial eminence, is the uniform testimony of the Bar of the state. In his large and invaluable contribution to the judicial literature of the state and nation, he has shed undying lustre upon the Bar, and the courts, with which he was directly related. In losing him Minnesota has lost one of her brightest ornaments—one of her most distinguished and valuable citizens,

We ask, therefore, that this brief memorial be preserved in the records of this court, together with such other proceedings as may occur in connection therewith.

Hon. James A. Tawney then addressed the court as follows:

"May it please the Court:

"Having presented this Memorial I should rather leave undone that which I am about to do, were it not for the solemn debt which the living owe to the dead. Not because I do not take pleasure in acknowledging my personal debt to the distinguished dead we honor to-day; not because I do not dwell with joy upon his extraordinary virtues; nor is it because I feel that any words of mine will exaggerate the beauty of his life, and the beneficence of his influence. Not for any or all, of these causes, do I hesitate to speak, but because he was my personal friend in that sense which makes it difficult to speak. Excepting my father, there is no living man to whom I owe so much as to Judge Mitchell.

"This tender, loving husband, father, and friend lived close to the hearts of all who knew him well, and were every one for whom he did some noble service to speak the thoughts that

arise in his heart. Judge Mitchell's name would live to-day in a symphony of grateful eulogy. In the hearts of all who knew him best he will always be remembered the soul of gentility, of nobility, and manliness. He was justly esteemed as a judge, a citizen, and a man. He had strong, pure affections that bound him to his country and to his friends like bands of steel. He

" 'Best seem'd the thing he was, and join'd
Each office of the social hour
To noble manners, as the flower
And native growth of noble mind.
* * * * *
And thus he bore without abuse,
The grand old name of gentleman.'

"The story of the life of William Mitchell is a simple tale of struggle and progress. He grew in purity and power of personality as he grew in influence and usefulness in the commonwealth. Born in Canada in 1832, he was graduated from Jefferson College at Cannonsburg, Pennsylvania, in 1853; he taught two years in Morgantown Academy of West Virginia; he was admitted to the Morgantown bar in 1857. Soon thereafter he moved to Winona, Minnesota, and entered upon a successful practice, and upon a long career of public usefulness, suddenly terminated at its zenith by the touch of death. He was elected to the second legislature of Minnesota for 1859 and 1860; he was elected county attorney for Winona county and served for one term; he also filled various other municipal offices with great credit, and was elected judge of the Third judicial district of the state in 1874 and re-elected in 1880. He was appointed to the supreme judiciary of the state by Governor Pillsbury in 1881, and for nineteen years was one of the central figures of this important tribunal. When the people of the state departed from the policy of a nonpartisan judiciary instituted by Governor Pillsbury, Judge Mitchell's place in January, 1900, was filled by another, and the state lost one of its brightest minds.

"From the foothills of obscurity he rose among the mountain peaks of fame. Exquisite and yet tremendous he moved unobtrusively among men, seeking everywhere with singleness of purpose that noble realm, where, across the ages, the friends of justice and of God hold silent converse with each other and their Great Original. His parents were born and educated in a land where the heather grows over the granite, and no nobler union of sturdy principles and gracious manner ever sprang from a Scottish home

"Many men have sought by tongue and pen to express their deep sorrow at his irreparable loss, and their profound sense of his great worth, but no one, whose words I have heard or read, has noted one of the most beautiful traits of his exquisite personality—the Christian gentleness and becoming modesty of his manner.

"Judge Mitchell was a lawyer of profound scholarship. It would be difficult to portray his great legal and literary attainments, his swerving loyalty to the principles he loved, or the justice with which he applied those principles to human life; but it would require volumes of narrative to convey any impression that would approximate the truth of the affability of his bearing, the kindness of his manner, and the charity of his life. It is not necessary in this presence that I should dwell upon the great legal learning, or upon the fine literary ability with which he expressed his opinions and graced the literature of this court. Of all this, and more, you are profoundly assured, while others, whose knowledge and ability peculiarly qualify them, will speak. No judge ever strove more faithfully to apply the principles of truth and justice to the

common contests of human life, and but few have succeeded as he did. He was a great analyzer of complex practical situations. No general saw with more unerring insight the critical moment in battle than he saw the central question at issue, whether of law or fact, in any legal controversy to which his attention was called. His thought flew to the essence of the matter like an arrow to its mark, and his heart ever turned toward justice like a planet toward its sun. He loved the problems of equity and justice as the poet loves beauty, as the philosopher loves truth, and coupling with this passion, as he did, keen powers of analysis, and a sense of logical consistency, it is not difficult to understand the peculiar judicial cast of his mind.

"To this passion for justice between man and man is traceable his patience and disinterestedness, as well as his almost unerring in sight. No lawyer ever argued a case before him without feeling that Judge Mitchell listened attentively to the end. Love suffereth long and is kind, said the Great Teacher. There can be no doubt that the patience exhibited continually by great jurists, by great scientists, and great practical heroes everywhere is the immediate fruit of some disinterested passion or another. An intense interest in some impersonal thought-relation or equally impersonal ideal sustains human effort, and renders men oblivious to circumstances which annoy those of less devotion.

"Judge Mitchell was a man of sound legal judgment. Men always judge soundly of that toward which they turn with intense disinterested passion. Ambition—that last infirmity of noble minds—undoubtedly stimulated, but never debased him. He devoted much time and effort to tasks which could never bring him individually any adequate return.

"My first acquaintance with him was in 1877 as a teacher of a Bible class in one of the Sunday schools of Winona. As a teacher, a lawyer, or a judge he always took a deep interest in young men, and assisted not only me but more than one youth with whom he came in contact in this way, in the attainment of an education; but no sense of personal obligation was ever occasioned either by the fact or the manner in which his aid was thus bestowed. He served as president of infant enterprises in the city of Winona when they were too feeble to give him strength in return. He visited the sick, cared for the weak and helpless, and always displayed in all personal relations a thoughtfulness and charity rarely found in those who hold justice so dear.

"It is not possible for human eyes to see what lies beyond the grave, but this we know: That he experiences to-day the consequences, whatever they may be, of having lived justly, loved mercy, and walked humbly with his God.

"As I close a sense of my personal loss comes over me and fills me with regret. I know of no sincerer compliment which the living pay the dead than their sorrow, and as for Judge Mitchell—with all my heart I wish he were living still. There was, there is, no simpler, gentler, manlier man."

Hon. Thomas Wilson then addressed the court as follows:

"Judge Mitchell's father was a farmer. While he and his family lived comfortably and well, they lived plainly, for that comported with their tastes and views of propriety; and, besides, they had but a limited amount of this world's goods. William was therefore early taught frugality and plain living, and he never forgot the example and lesson.

"As was usual at that time with that class of people—his parents were both natives of Scotland and Presbyterians—the clergyman was a good scholar, and he aided William to lay the foundation of his education, especially in the languages. William afterwards pursued his studies in Jefferson College, Pennsylvania. When he graduated he at once commenced the study of the

law with the Honorable Edgar Wilson, a prominent lawyer of Morgantown, Virginia, and while studying law he taught some advanced classes in an academy in the same town.

"Having finished his law studies, early in 1857 he removed to Winona, where he continued to reside until he removed to this city about eight years ago. Almost immediately on his coming to Winona, I had the good fortune to become intimately acquainted with him, and thereafter, until his death, unless one or the other was absent from home, a week rarely passed in which we did not spend more or less time together. Our intimacy was never for a moment interrupted, and happily, between our families there was also the closest friendship. While I was on the bench, he practiced before me, both in the district court and in this court. After I left the bench we very frequently met at the bar as opposing counsel, and all the while he was on the bench I practiced before him. I therefore can speak knowingly of him as a man, as a lawyer, as a judge, and as a citizen.

"Nature endowed him with much more than ordinary ability. He had a good literary education, was a thoroughly educated lawyer, and, beyond that, had wide general information. He was constantly seeking knowledge. Unlike most people, he did not take a vacation for physical rest; on the contrary, except when he was fishing, he kept going from place to place to learn what he could about the country, its inhabitants, resources, and institutions. He was a keen and accurate observer, and had a very retentive memory. He loved nature in all her forms and aspects. His love of trees shrubs and plants, especially flowers, was almost a passion. While he lived in Winona, in addition to such as he could find at home, he was accustomed to get from other states, and to import, rare plants, bulbs, and seeds, the cultivation and growth of which he greatly enjoyed.

"He was pure and simple hearted as a girl. While he lived comfortably and surrounded himself and his family with whatever might in any way add to their comfort, enjoyment, or improvement, he always lived modestly. He intensely disliked ostentation or unseemly display of wealth, learning, or superiority of any kind, and hated all forms of guile or duplicity. He did nothing to be seen of men. Considering that he was not a wealthy man, he was a liberal giver, especially to those who were in need; but in his giving he let not his left hand know what his right hand did.

"He sincerely sympathized with and prized the classes who earn their bread by the sweat of their brow. Nothing aroused his ire more than an attempt to oppress or wrong them, or excited his contempt more than a word or act intended to belittle them. By his life he showed his belief in that sacred fundamental truth, that the greatest good of the greatest number is the proper foundation of morals, legislation, and political action. While he recognized the fact that the best interests of society and of every class require, and that it is the duty of the state to see to it, that there be rendered to Caesar the things that are Caesar's—that the person and property of every citizen, irrespective of his wealth or rank, be sacredly protected at all hazards—he never forgot that the protection of the poor, the weak, and the defenseless is the first duty of the state.

"As a father he was fond, tender, and kind; but showed his feelings by acts rather than by words. He was a true friend, and a most interesting and attractive companion. He had a fine vein of humor, an almost inexhaustible fund of anecdote and information, and an abnegation of self that was at times embarrassing to his associates, for it required constant watchfulness—sometimes emphatic protest—to prevent him from giving them the preference in everything and the best of everything.

"He was not a member of any church, but he attended and contributed to the church of his fathers, and he had no toleration for any one who spoke disrespectfully of religion.

"I here venture to refer to what may be considered a weakness, for his reputation does not require that aught should be hidden; it needs no eulogy but the truth. He was not an optimist or a very hopeful man; he did not dream of, or hope for, any great social or political reformations. He was not a bold or masterful man. In great crises he would not have been a leader. He did not willingly meet—on the contrary, if he reasonably could, he avoided—a conflict. When wronged, even by falsehood or treachery, he was prone to forgive and forget, or, when that was not possible, to hold his peace rather than expose or 'denounce the malefactor. For some such (as it seemed to me) weaknesses, I sometimes chided him, for between us there was no enforced ceremony. In our intercourse we were accustomed to speak with a freedom that would have been inadmissible had either entertained the least doubt of the unfailing friendship of the other. In these respects it is probable that I, not he, was wrong. If these were not, I never discerned in his character a fault or weakness. A more upright man, a better citizen and neighbor, a more kind master or a more genuine and lovable friend, I never knew. There was no base alloy in his nature. His hands were clean, his heart was pure; he had not lifted up his soul to vanity nor sworn deceitfully. It need hardly be said that his neighbors and acquaintances loved and honored him. He had no foes but such as good men must expect.

"He never liked the ordinary, practice of the law. He was not an orator, or a master of those arts which make men notably successful advocates or trial lawyers. He was very strong at the bar, but the foundation of his strength was his superiority as a lawyer and his confessedly high character. I hardly know whether he merited more praise as a judge on the circuit or on this bench. I think—and I believe those whom I see before me who used to practice before him on the circuit will agree—that he was almost perfect as a *nisi prius* judge.

"The judicial bench is holy ground. 'Honesty,' as applied to a judge, means more than when used in the ordinary transactions of men. To be an honest and good judge, a man must be devoid of pride of opinion, regardless of either popular commendation or condemnation—uninfluenced by the desire to be consistent—must, for the time, forget all enmities and friendships, and also himself, which is above the reach of the ordinary man. David Dudley Field, in one of his addresses, did not exaggerate when he said: 'To have the power of forgetting, for the time, self, friends, interests, relationship, and to think of doing right toward another, a stranger, an enemy perhaps, is to have that which man can share only with the angels and with Him who is above men and angels.' Measured by even this high standard, Judge Mitchell was not found wanting. As a judge he seemed to be absolutely without pride of opinion—to be oblivious of everything but the demands of justice. He was not only willing, but anxious, to discern and correct any mistake—if mistake there was—in any judgment or opinion that he had rendered. It was a pleasure to listen to his trial of a case without a jury, or his charge to a jury. He listened patiently, and he so clearly and with such manifest fairness stated the real issues—eliminating all that were irrelevant—that no jury of ordinary intelligence could misapprehend the questions which they were to try; nor could any attorney or party feel that he had not been justly treated.

"It is hardly necessary in this presence to speak of him as a member of this court. Every citizen, and especially every lawyer and judge who is jealous for the reputation and honor of the state and its courts, must be proud of the fact that his opinions have been so often quoted and commended by the ablest jurists throughout the country as models of learning and ability. That he was appreciated at home, is shown by the fact that for more than a quarter of a century he was kept continuously on the judicial bench—having been twice elected in a judicial district, and three times in the state, and once appointed by a Republican governor, both the district and state

having a large majority against him. politically; and by the fact that, at the Republican nominating convention preceding the last general election, over three hundred of the delegates voted for his nomination, notwithstanding the most strenuous efforts of the politicians who, considering the judgeship a mere political asset, insisted that no one not belonging to the party should be considered.

“His standing abroad is shown by the following excerpt from a letter of Professor Thayer—eminent not only as a professor in the Harvard Law School, but also as an attorney and legal author— written to a friend of his in this state two years ago, when it became known that an effort would be made to defeat Judge Mitchell's nomination and election. Prof. Thayer wrote:

" 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 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.'

"In a recent edition of one of our ablest law books, the authors, referring to a question on which the highest courts of the country were irreconcilable, say:

"The best statement of this rule, and the reasons for it, is in *Morse v. Minneapolis*, etc. E. Go., 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.¹

"I might multiply such references, but it is unnecessary. His opinions are his best monument.

"He was in every sense a model citizen of a republic. At a time when wealth, acquired suddenly and sometimes by questionable-means, is flaunted in the face of honest men by its vulgar possessors—when that which is so often heralded as liberality or charity is merely a sounding brass or tinkling cymbal, an effort to advertise or glorify the donor when honest worth is so often superseded by self-asserting ignorance, what an object lesson and inspiration such a

¹ Shearman and Redfield, *Negligence* (5th Ed.) § 60c, note 3 [Reporter].

life is to those who unselfishly aim to serve their state and benefit their race! What a contrast it is with the life of those whose sordid aims all end with self! What a reproof to the demagogue who seeks promotion by disingenuous appeals to ignorance, passion, and prejudice! Who can measure or foretell its influence on those who follow after, for example, acquires authority when it speaks from the grave.

"Our friend was not quite sixty-eight years old. Though some live and work longer, it is still as a rule true that the days of our years are three score years and ten. Most men, perhaps all, before they reach that limit, have some premonition that the afternoon of life is nearly gone. Lowell, on his sixty-eighth birthday, thus beautifully expresses this truth:

" 'As life runs on, the road grows strange
With faces new, and near the end
The mile-stones into head-stones change.
'Neath every one a friend.'

"Not a few of Judge Mitchell's early friends had taken their departure within the last two or three years. He not infrequently spoke of this to me. He was not unmindful of the fact that as to him the sun would soon set. His life work—the work for which he was so peculiarly fitted—was done. For the last few months his physical strength was waning; the hills were beginning to get rugged and steep; the light to wane, and the shadows to deepen and lengthen. The last walk I took with him he spoke of his failing strength. Though he was surrounded and cared for by a lovely, loving, and loved family, he saw that they were following him with anxious, almost tearful eyes, and he was not the man to delude himself with the hope that their anxiety or fears would grow less, or his strength greater. Under such circumstances, what could an old man do but die? And death came as he hoped it might at the last come to him—suddenly.

"While his going away took out of my life much of the little sunshine that is left, I would not be so weak and selfish as to call him back if I could. Having been absent from the state, I did not see him for nearly two months before his death, and the first news of his illness was a telephone message that he was dying, followed in a few minutes by another, that he was dead.

"Some tears fell down my cheeks, and then I smiled
As those smile who have no face in the world
To smile back on them. I had lost a friend,'

"I condole with his family and friends; but at the same time congratulate them. I know that the loss of his presence and companionship cannot be expressed by any words; but when the keenness of the pang is past, with what pride and pleasure will they remember the beauty and simple grandeur of his life. What a heritage for his children!"

Hon. Daniel A. Dickinson then addressed the court as follows:

"May it please your Honors:

"Before this court of supreme jurisdiction, of which for nearly nineteen years William Mitchell was a member, appears to-day, with one mind and heart, an unusual assemblage of the bar of the state, to offer a tribute of esteem and love, and to express our appreciation of his eminent virtues and his great service to the commonwealth. This is fittingly done in the formal

memorial which has been presented to your Honors, that it may be inscribed in the enduring records of this court. The language of that memorial, and that which is spoken here to-day, is not a merely customary, conventional expression of just appreciation of the character and services of a jurist distinguished in his time for eminent ability, learning, mental vigor, and the highest qualifications for the office which he filled so long. While he was thus justly esteemed throughout our own state, and wherever, beyond our borders, the common law prevails and the decisions of this court are consulted, the large circle of those who had intimately known William Mitchell in social life, in the law-making branch of our government, at the bar, on the bench of our court of general jurisdiction, and of this highest tribunal of the state, and especially those who were closely associated with him in the labors and familiar intercourse of daily life, acquired for him a personal attachment which has rendered his death an individual bereavement. And so we are here to express, not merely eulogium of the dead, but a widely-felt personal sorrow for his death.

"Few men, and probably none, have rendered greater or more enduring and beneficent service to the state. Few, either here or elsewhere, have been in all respects better qualified, by natural endowments, mental and moral, and by education, experience, and habit of life, for the discharge of the duties of the high office to which he was called in the prime of his manhood, and to which he devoted, with constant, strenuous, forceful study, thought, and action, about one-half of the period of his life labors. Passing over his distinguished service in the years which preceded his coining into this court, that which he rendered here for almost nineteen years is beyond our power fully to measure or estimate. He never sought display; and the results of his work are not a mere monument, a structure of no practical or beneficent use, save as a memorial of what he achieved. The results of the years of his patient, tireless, earnest, honest work here are wrought into, and constitute an important part of, the grand structure of the law of this state and country, a temple of justice, wherein dwelleth righteousness. And while we cannot measure and define the extent of what he thus contributed to the benefit of his own time and of future ages, we know that few here, or elsewhere, have wrought better or contributed more to make that structure what it is today. He, far more than most jurists, by daily patient research among the often confused and even contradictory declarations of the expounders of the law, brought forth, as pearls from ocean's obscure depths, the clear legal principles which should control human action. No well-sounding legal proposition, though familiar and current as true coin, was accepted by him without test, whether expressed in the decisions of this or other courts, or in argument at this bar, if wanting in the true ring of reason and right. We can all recall how often he challenged some widely current declaration of the law, and after painstaking examination demonstrated its fallacy. And such demonstrations, expressed in the decisions of this court, have been time and again accepted in other courts as true statements of the law. No labor was too great if he could thereby discover the truth and do justice.

"It is fitting on this occasion that I, who was associated with Judge Mitchell for more than twelve years in this court, should testify, as I now do, not only in behalf of myself, but of three of his associates no longer living, Gilfillan, Berry, Vanderburg—for I know they would desire such acknowledgment to be made if they could speak here to-day—the great assistance which we all derived from his wise counsel in the deliberations of this court.

"The executive appointment of Judge Mitchell to this court, his repeated re-election by the people without party division, and the unanimous sentiment of the bar, attest the general sense of his fitness for the highest judicial office. Though he could not but be conscious of the esteem in which he was held, he was absolutely without affectation, ignoble pride, egotism, or

apparent sense of the general estimate of his worth. He was quick to acknowledge, and if possible to correct, his own mistakes—for all judges and all courts do make mistakes (If it were not so we should not find in the reports of every jurisdiction tables of overruled cases.) His sense of justice and right was a strong, even so dominant a quality of his mind that he sought every way of escape from such application of fixed legal principles as might result in hardship or wrong in the individual case. He was affable, courteous, genial, sincere, and manly always, everywhere and toward all. In characters as strong and positive as Judge Mitchell's there is often manifest some quality of mind or heart falling below the standard of real excellence—some defect which, on an occasion like this, we would cover with a mantle of charity. But neither your Honors, nor we of the bar who have known Judge Mitchell most intimately during all the years past, can recall anything detracting from the general symmetry and beauty of his life and character, anything wanting in purity, strength, breadth, nobility of purpose and action, or in any of the qualities which justly earned for him the highest esteem of all who knew him, and a high place, for all time, among the eminent jurists of this country."

Hon. Thomas Canty then spoke as follows:

"Your Honors:

"Judge Mitchell was a bright jurist of quick perception, great capacity for work, and a wonderful facility and felicity of expression. His opinions will always stand as amongst the best written in the English language.

"He was a simple, modest, learned gentleman, with a heart full of the milk of human kindness. He was a great lover of justice, but he also loved to temper justice with mercy. Neither long years on the bench, nor the rush of business, nor the vast labors thrown upon him ever stifled in the least his sympathy for the wronged; and whenever a case arose in which through the ignorance of the party, the blundering of his attorney, or the misconception of the court below, injustice was done to the poor and unfortunate, and there seemed to be no way by which the supreme court under the law and its rules of practice could remedy the wrong, Judge Mitchell always worked and worried and strove to find a way. While he was constantly engaged in the work of bringing criminals to justice, he was too kind-hearted to prosecute those who wronged him and violated his confidence.

"Judge Mitchell was a man singularly free from prejudice, bias, and bigotry, and it always pained him to discover that any judge in his judicial duties was influenced by anything of the kind. He had no pride of opinion. If he came to the conclusion that a decision in which he had participated was wrong, he was always ready to overrule it or grant a re-argument.

"He was a scholarly man of wide reading and possessed a large fund of general information. He was well versed in the ways of society, and was always welcomed by its votaries, but he cared nothing for the ordinary whirl of society; there was too much sham and subterfuge in it to suit him. He always liked to meet his and was a genial and companionable man.

"Judge Mitchell had done much to give this court a standing with the bench and bar of this country and England; and his opinions, running through more than 50 volumes of the *Minnesota Reports*, will stand as a monument to his memory long after all the granite monuments now in the world have crumbled to dust and drifted away."

Hon. Charles E. Flandrau then addressed the court as follows:

"If your Honors please:

"It being my desire that the testimony of the oldest practitioner of the law in the state, and a member of the first supreme court of the state, to the excellencies of the late Judge Mitchell should go on record in these memorial proceedings, I have prepared a brief, but none the less heartfelt, tribute, which with the permission of your Honors I will present.

"It is with reluctance that I attempt to say anything on this occasion, because of my inability to rise to the deserved heights of eulogy demanded by the subject under consideration, and because the speakers who have preceded me have exhausted the language of panegyric in presenting the virtues of our deceased friend. I cannot add to his universally-acknowledged reputation as a man, a lawyer, and a judge. In each and every relation that he bore to his fellowmen in life, he was as near perfect as it falls to the lot of man to be. I feel that to have been chosen from the members of the bar of the state, as one to portray his characteristics for perpetuation in the record of this court, is more honor to me than anything I can add to his fame, much as I loved and esteemed him.

"Judge Mitchell passed a large portion of his life on the bench, actively engaged in administering the law among his fellowmen, in adjusting their many and complicated differences and misunderstandings. I have known him intimately from his first elevation to the bench to his retirement only a short time ago, and I cannot; recall a single instance in which his judgments have not been approved by those best fitted to decide as model expositions of the law, clothed in scholarly, lucid, and eloquent diction.

"To be a good and just judge, a man must be endowed with many, if not with all, the virtues of mind and disposition. He must have good practical sense, experience, and understanding; a clear and quick perception of facts, with the power of logical arrangement and application of them to the matter in hand, aided and guided by a thorough knowledge of the law in point. He must be absolutely impartial and free from prejudice. He must be patient to listen and to learn. He must be courageous and firm without obstinacy, but tempered with mercy. His life conduct must be so exemplary as to preclude the possibility of wrong doing or wrong thinking. Judge Mitchell possessed all these attributes in an eminent degree. In his death Minnesota mourns the loss of one of her most beloved and distinguished citizens."

Hon. William J. Hahn then addressed the court as follows:

"We can do ourselves no greater honor as men than to pause and approvingly contemplate the pure, conscientious, patriotic, high-minded character of a departed friend. We can, as lawyers, offer no better evidence of our appreciation of the highest and best aspirations of our profession than by giving public voice to our sense of loss when death invades the ranks of our profession, and removes one of its honorable and justly honored members. We can, as a part of one of the great subdivisions of our governmental machinery, perform few more commendable and helpful duties than registering in the archives of the court a brief memorial of the worth and public services of some great, fearless, spotless judge who has gone to his reward. We are here at this time to thus honor ourselves; to proffer testimony; to discharge that obligation.

"In this rushing, grasping, sordid age of materialism in which we live, it is refreshing and inspiring to contemplate the life and character of one whose gaze was fixed on higher things than the mere acquirement of wealth and honor; whose ears were open to more harmonious sounds

and nobler strains than the din and turmoil of selfish achievements; whose voice was heard in gentler tones and sweeter accents than the fierce cry of personal victory; whose heart throbbed with warmer impulses and more embracing motives than earthly gain or kindred ties; whose soul yearned for higher achievement and more enduring fame than mere success or passing applause; whose life was actuated by manlier ambition and truer purpose than social distinction or personal renown.

"It is such a life and character we are here to reflect upon. Gentle, kind, modest, considerate, sympathetic, helpful, and yet strong, firm for the right, persistent in duty, unyielding in principle in every fiber of his being, in every emotion of his heart, in every impulse of his soul, a shining example of God's exalted handiwork, a noble man.

"As a lawyer few men have added as great luster to the bar of this state either by marked ability, fearless performance of professional duty, keen and quick perception of controlling principles; high-minded and courteous demeanor, honorable and fair conduct toward court, jury, and opposing counsel, as did Judge Mitchell. Cogent, vigorous, terse, clear, effective, obliging, polite, honest, he was my beau ideal of a lawyer. No court ever listened to him without being enlightened. No jury was ever addressed by him without being thereby helped in the performance of its duty. No opposing counsel ever met him in the heat and stress of a legal contest, without carrying away with him a truer view of the proper and possible amenity which should characterize the conduct of the profession.

"He was not content to devote his faculties to the mere accretion of wealth or to the selfish pursuit of his own interests and the interests of his individual clientage, important and sacred as they were. He also felt it to be his duty as a lawyer to exercise a salutary sway in the fashioning and moulding of our jurisprudence and laws, and to exert a healthy and conservative influence on the community in which he lived, through the clients whom he advised, the juries whom he addressed, and the citizens with whom he mingled. He took a broad view of what, as a member of the legal profession, was due from him to the state. He acted upon the theory that, as a citizen, his obligations were commensurate with his opportunities, and these, by reason of his training, learning, and ability, were greater than those of any other class of citizens. To the discharge of these obligations, the embracing of these opportunities, he devoted his faculties with the same conscientious estimate of his calling as in the performance of his more immediate professional service. It was because of this and of his sweet, blameless character that his death was regarded by the citizens of Winona, where he lived so long, as a personal loss.

" 'Only the actions of the just,
Smell sweet and blossom in their dust.'

"But it is as a judge that William Mitchell will be longest and most universally remembered and revered. It was in that exalted and sacred place, in the full gaze of his brethren at the bar and the community at large, that all the elements of his high character, all the solidity and brilliancy of his natural gifts and individual acquirements, all the clearness and keenness of his logical mind, found full opportunity for their display and exercise.

"With a vast business experience; an extensive and varied practice at the bar; a profound knowledge of the science of the law, and a mind peculiarly fitted to apply such knowledge to the varied and ever changing circumstances and conditions of a highly progressive people, coupled with a kindly considerate disposition, and naturally fair and honest operation of mental processes which he possessed in a remarkable degree, he was especially fitted for the discharge of the

weighty responsibilities devolving upon a man occupying a position on the bench.

"I knew him intimately. I was honored by his friendship. For twenty-six years it was my privilege, from time to time, to stand before him as an advocate either in the district or supreme court. No man, in my judgment, has occupied a judicial position in this state, in state or federal court, who possessed the qualities of an ideal jurist in any greater degree than Judge Mitchell. I never knew a man so utterly devoid of pride of opinion as he. I never appeared before a judge more eminently fair, more clear headed, with a more discerning and discriminating judgment, with a vaster fund of common sense, with a surer intuition of what the law, ought to be, more genial and affable, than he. In my opinion there is no mental quality, moral requirement, or dispositional tendency which can be named, or required in the ideal judge, which was not found in his make-up. I think it may be truly said that he was regarded by the bar as being one of the ablest and clearest-headed judges who ever sat upon this bench, and with equal truth that but few men in this state are or were so generally esteemed by laymen or lawyers, and but few who had or have the unbounded confidence and esteem of our citizens as he.

"How often have each one of us, in arguing some case in this had a query propounded by him in that kindly way of his, that showed beyond peradventure that he had clearly grasped the real and controlling point in the case. A question not to embarrass, but to help; asked not to display his own discernment, but to aid in the solution; submitted not as indicating his own unalterable view, but with the evident desire to overcome and remove if possible, what at the time occurred to him as an objection. And in endeavoring to answer such question, I think I am warranted in saying that counsel invariably felt that what he had to say was addressed to a mind as free from bias, or preconceived notions, and as open to conviction and conversion as if the same had proceeded from some other source. And when he put upon paper the ultimate conclusion of this court in cases assigned to him, there never was any doubt in the mind of any lawyer as to what the court had determined, or any lingering suspicion that any material fact in the case had been suppressed or warped, or any position of counsel misunderstood or evaded to meet the exigencies of the decision. Clear, luminous, forceful, judicial was the tone, matter, and manner of his opinions. In them and by them he has erected for himself a monument 'more enduring than brass and more lasting than the Egyptian Pyramids.'

"Quietly, peaceably, and largely unrecognized, he conscientiously and well performed his public duties. Loved as a man, admired as a lawyer, revered as a judge, he has in the very height of his well-won praise been gathered to his fathers.

" 'God's finger touched him and he slept.'

"For us who remain his life will be a benediction; his character an exaltation; his example an inspiration.

Hon. M. B. Webber then addressed the court as follows:

"May it please the Court:

"I certainly cannot hope to add anything to the eloquent words already uttered, in commemoration of the life of William Mitchell; and except for the sense of duty that impels me, I should have preferred to remain a respectful and silent listener in this hour of eulogy. The accidents and vicissitudes of life, which play so controlling a part in the career of each of us, led me to an acquaintance with Judge Mitchell while I was yet preparing for the bar, and his

condescending kindness and consideration of me challenged my admiration, and won my esteem, and I shall ever revere his memory. Under him I was admitted to the bar, and began my practice at Winona, while he was yet judge of the Third judicial district, and although the interim was brief before his elevation to this bench, it was ample for me to learn his worth as a citizen, a man, a friend, and a judge. Like the rocks, the trees, and the fields where we roamed as children, our first efforts, victories, and defeats in our profession, are indelibly stamped upon our memories, and I shall ever remember the patient forbearance and kindly offices of Judge Mitchell, his counsel and encouragement in my first feeble efforts at the bar, and his words of consolation in defeat, when defeat was hard to bear.

"There is a passage in one of Lucian's Dialogues where Jupiter complains to Cupid that he had never been beloved; and Cupid advises him to lay aside his aegis and his thunderbolts and to place a garland on his head, and to walk with a soft step and assume an obsequious deportment. Jupiter replies that he is unable to "resign his dignity; then Cupid tells him he must leave off desiring to be loved. It was one of Justice Mitchell's traits of character that endeared him to all, that he was always approachable, and while he never doffed dignity to don vulgar familiarity, he was the same to all men, at all times. Liberal in his views, unobtrusive in his convictions, plain, unostentatious, he came near to the common people, who never questioned when he had spoken. His best eulogy is indeed the speech of his neighbors. From the humble abode of the laborer, as well as from the more pretentious mansion of the banker or merchant prince, come alike expressions of admiration for his life, and sincere regret at his sudden demise.

"I would avoid the tendency on occasions like this to fulsome Praise, for nothing would be more distasteful to the deceased could he hear, yet,—'Praising what is lost makes the remembrance dear.' Justice Mitchell was fortunate in his reputation. A man's character is builded by himself; it cannot be created nor destroyed by another. 'But reputations are the sport of circumstances, or the prey of malice, often beyond the control of the possessor and as often fictitious and unjust.' But the deceased, in a marked degree, enjoyed a reputation: that was unsullied as his character. Hence his sudden death, stricken down with his faculties still unimpaired, came as a sudden shock and irreparable loss to the community where he so long lived. After all, perhaps to him, thug taken in the very zenith of his fame, it were better than a lingering death. 'For whether in mid-sea, or, among the breakers of the farther shore, a wreck at last must mark the end of each and all.' No words, of ours here to-day can build for Justice Mitchell a monument one half as lasting as he has constructed for himself in the records of this tribunal, which will, be read and quoted when eulogy shall have been forgotten.

"Occasions like this are accustomed to impress me with much emptiness; the words of eulogy here uttered to-day come late to him of whom they are spoken, and can console but little those who mourn his sudden demise; and perhaps all of value that in them lies is whatever of inspiration to better things is found in his modest, plain, simple, rugged, and stainless life. Memorial exercises would be not only an idle ceremony but a mockery, if they were merely to afford an opportunity for public expression of sorrow for the dead, and extolment of their virtues. Commemorating thus publicly the distinguishing qualities, whether of character or intellect, or both combined, furnishes an incentive to emulation by the living, making better citizens, better men and women. They at least tend to contribute to the fashioning of a higher order of society and stimulating in youth ambitions to loftier purposes and the achievement of higher ideals.

"The life of Justice Mitchell may well furnish an example, and he will long live in memory.

"The dead are like the stars by day,
Withdrawn from mortal eye,
But not extinct, they hold their way
In glory through the sky.' "

Hon. William H. Yale then addressed the court as follows:

"William Mitchell and myself came to Minnesota in the early spring of 1857, and we lived as neighbors and friends for more than forty years. For several years, and until he was called to the bench, we were partners in the practice of the law, both of us having been admitted to practice in the year 1857, while Minnesota was a territory. I think, therefore, that it is not egotism on my part if I claim that, by reason of my greater opportunities during the forty-three years since April, 1857, I came more thoroughly to know and understand Judge Mitchell, in all of his various relations to the bar and to the people, than perhaps any member of this court.

"While all members of the bar practicing before this, the highest judicial tribunal in the state, had the greatest respect for Judge Mitchell, as an able, impartial, and conscientious jurist, the members of the bar of the Third judicial district, where he lived and practiced as an attorney for the first seventeen years of his residence in Minnesota, are more competent to speak of his character and many excellencies as a practicing attorney and counsellor.

"Judge Mitchell never attempted to be an orator, but every district judge before whom he appeared had the utmost confidence in his sterling integrity, his keen powers of analysis, and the eminent fairness with which he treated all questions of fact or law. His courteous and generous treatment of opposing counsel and his pleasing manner of questioning witnesses, not only those on his own side but the witnesses opposed, as well, won for him the confidence and good will of all the people in his district. In his arguments and addresses to juries he never attempted by any specious sophistry to mislead or deceive, never attempted any flowery flights of eloquence, but simply stated the facts as given by the witnesses on the trial, with fair and temperate comment as to his ideas of the merits of the case, in such a forcible and unpretentious manner that it was very difficult for counsel opposed to eradicate the strong impressions he had made on the minds of those jurymen.

"While district judge, his courteous and kindly treatment of the members of the bar who appeared before him, especially the younger members, made them his friends, and helped to smooth over the rough places in their practice of law.

"In the city of Winona, where Judge Mitchell had spent more than forty years of his life, the people of all classes not only respected him for his many sterling qualities, but they had learned to love him. He had enshrined himself in their hearts. And I do not think I state it too strongly when I say that they not only respect, but cherish his memory, more than that of any other man who ever lived in that county.

"As a citizen Judge Mitchell never pandered to the prejudices and weaknesses of the people, but ever stood firm for the right. In all matters pertaining to the welfare and upbuilding of the city where he made his home, he gave of his time and energies toward the accomplishing of what he believed would be for the best interests of his fellow townsmen and neighbors, freely and lavishly, but not ostentatiously. In the legislature of 1859 and 1860, he was one of the representatives from the county of Winona. In that legislative body he was known by his colleagues, and especially by those who were on the house judiciary committee, to be not only a hard and untiring, but a judicious worker. The state was then in its infancy; the inhabitants a

heterogeneous people, scattered over a large extent of territory. They had come from the eastern, middle and northern states with a fair sprinkling from nearly every nation in Europe. The future prosperity of the state was largely dependent upon the kind of laws with which we started. To assimilate the views of the New Englander with the views of the southern and western members was no easy task, but it was accomplished. And the bulk of our city, town, and county regulations framed at that session of the legislature is the law under which we now live. The few members of that legislative body who are still living will freely testify that William Mitchell, then a young man, was one of the most tireless, indefatigable, and successful workers of that lawmaking body.

"Fifty years ago but a mere handful of white people had ever lived within our borders. To-day a population of nearly two millions causes Minnesota to stand in the front rank of that glorious galaxy of states which make up this great American republic. I think sometimes that we forget the lasting obligations we are under to those early settlers of Minnesota who fashioned our laws, and marked out the policy of our state, on such broad and lasting foundations. To few if any among the pioneers of Minnesota is greater credit due than to our deceased brother, Judge William Mitchell.

"As lawyer, as jurist, as citizen, in all and in every capacity he was called upon to act, he performed life's duties fearlessly, conscientiously, and wisely; and during all his mature years led a blameless life, and maintained a pure and incorruptible character.

"This court and the members of this bar all feel that we have sustained an almost irreparable loss; but we have this consolation that we can join with the people of the whole state in pointing with pride to the stainless and unsullied reputation which Judge Mitchell has left behind him as a legacy to the people of the state of Minnesota."

At the conclusion of these addresses the following responses were made upon behalf of the court:

ASSOCIATE JUSTICE COLLINS then said:

"Gentlemen of the Bar:

"The appointment of Judge Mitchell to the position of associate justice, in 1881, brought to a tribunal which had from the beginning been extremely fortunate in its membership, a man who, probably above all others whose names had been mentioned, was regarded as the best equipped for the place, and his work here for more than eighteen years fully justifies me in asserting that this, estimate of his ability and fitness was amply and fully warranted.

"The first opinion written by him as associate justice was in the case of *Fenno v. Chapin*, filed April 28, 1881, and published in 27 *Minnesota* at page 519, and his last opinion was written in *State ex rel. Zaske v. Matter*, and was filed December. 15, 1899, reported in 78 *Minnesota* at page 377.

"He enjoyed, while district judge, the distinction of being called by the governor to sit in 1877 as a member of this court, and of writing an opinion at that time in an important case, *State v. Young*, 23 *Minnesota* 531. But one other judge of the district court, the Honorable Samuel Lord long since deceased, has been so honored. In the almost nineteen years of service, Judge Mitchell wrote, as has been stated, over 1,500 opinions—more than any of his predecessors or colleagues have written and many more than have been prepared by any of the justices of the supreme court of the United States, although several have served a greater number of years than

did Judge Mitchell.

"It was his fortune to be a member of this court when the business before it had grown to be extremely burdensome. He saw the calendar increase from 108 cases at the April term in 1881 to 358 at the October term in 1895, an increase in fourteen years of 250 cases a term. During the period of time referred to I find that the paper books and briefs, as bound and filed in the State Library, constitute 809 volumes, averaging 800 pages to a volume. The amount of labor performed by Judge Mitchell in the examination of these files is not easily comprehended, even from these figures, but no member of this court ever gave more thorough study to the printed record in each case than did he.

"Socially Judge Mitchell was extremely attractive. His early education was liberal, and in his mature years he broadened it by a persistent reading habit, continuing to the day he was stricken down. There were few subjects worthy of consideration in which he had not taken interest, and, upon all the topics which from time to time were brought to the surface of the swiftly-moving current of daily events, he promptly and thoroughly advised himself and became familiar. While not averse to society, he never mingled in it freely or with entire satisfaction to himself. He much preferred his books, the presence of a few intimate friends, and above all association with the members of his own family. He was a great lover of nature and never happier than when he was taking a few days recreation in the woods, within easy reach of an inviting body of water. I never knew Judge Mitchell as a practicing attorney, and for that reason cannot speak of him in that capacity from personal knowledge. Others have done that, and their words of praise come from the lips of those who met him at the bar and in the sharp contests that we find there, contests in which the true nature and character of all men of our profession are brought out and developed, and their worth and merit exhibited to their fellow men, who as a rule measure and determine honestly and fairly. With his clear legal mind, his ability to seize upon the pivotal points, his capacity for professional work, his conciseness of statement, which in itself was always a powerful argument upon the merits of a case, and above all his fairness in any controversy, he must have been an adversary to be feared as well as honored, in any legal battle.

"I was associated with him in the work of this court from November, 1887, to the end of 1899, a little more than twelve years. I do no injustice when I say that not one of his predecessors or colleagues surpassed him in learning or ability, and not one has been or will be held in greater esteem by the people of this state, or by the professional men who have been brought in close relation and; almost daily contact with the members of this court. His patience and courtesy as an official were proverbial, and it was rarely that his equanimity became at all disturbed. He despised unfair practices, and pretenders and frauds sometimes found this out in a way well calculated to be remembered and perhaps to remedy and reform. His acute legal perceptive qualities, and his clean cut: logical reasoning, are to be found all through the opinions prepared by his hand, and now adorning the pages of the 52 volumes of reports in which they are perpetuated, time-enduring evidences of the) professional skill and ability of a man who, in my opinion, as a justice of this court has had no superior among the many distinguished men who have occupied like positions in the courts of the northwestern states.

"Of the close relations which existed between our friend and his colleagues I need say but little. They were always of the most satisfactory character. No one could be intimately associated with Judge Mitchell and not be impressed with his commanding ability, his simple unaffected ways and his perfect character. No one could serve with him on the bench without appreciating his genial qualities, his general information, his capacity for work, his natural vigor

of mind, and the ease and promptitude with which his mental-faculties were exercised. His conclusions upon the legal propositions involved in a case were never hastily reached, nor from mere cursory, incomplete examination. They were almost invariably correct and, in consultation, maintained with vigor and effectiveness but never with any air of consciousness of his own superb mental attainments, or with pride of opinion. Unaffected, genial, anxious to be of assistance and always surpassingly helpful, a more companionable associate in the labor of this court could not be imagined.

"The messenger of death came very suddenly, but it found him ready, for his whole life had been one of preparation for that which lies beyond. His friends should be thankful that to one whose deportment as he went in and out among men had been so tranquil, and whose life work had been so patiently and perfectly performed, there came not days of lingering painful disease, but a peaceful passing to the eternal sleep.

"And now to the memory of a man whose days were filled with honor and usefulness, and whose life abounded with right thought and good deeds, we must say the last words of reverence and affection. Not many men of our personal acquaintance have performed their parts in life more modestly or worthily, and not many have gone hence of whom their fellow travelers upon earth could wish to speak in more eulogistic words, and few have gone from among us to whom we could have been more reluctant to say the final farewell."

CHIEF JUSTICE START then said:

"Gentlemen of the Bar:

"Your memorial is a just and merited tribute to the learning and worth of Justice Mitchell, and aptly expresses our own estimate of his character and public services. He was a great lawyer and a great judge, but he was more, he was a great man. His life was an open book with no sealed or impure pages. He was a modest man. His sail was never bigger than his boat. His manner was direct, simple and unaffected. He was a man of the best abilities and of the weightiest character. His mental grasp was clear and incisive, his impulses honorable, his aims lofty, and his love of justice and truth supreme. To those who did not know him intimately he may have seemed untender, but in fact he was a man full of 'the gentilest humanities,' as loving and as tender as a woman. He however seldom expressed his regard for others in words, but he did so by his gentle, unobtrusive, and kindly services to them. Like Cordelia he could not heave his heart into his mouth, for his love was richer than his tongue. He never prated of duty and conscience, but he was absolutely loyal to both, and fearlessly did that which he believed to be right regardless of consequences to himself. He achieved success without elation, and accepted defeat with equanimity. His simplicity of character, his practical and sturdy common sense, his profound knowledge, his genial humor, and his tactful kindness made him a delightful companion and a most valued friend.

"I first met Judge Mitchell thirty-five years ago, and for a quarter of a century we were intimate friends. The longer I knew him the greater was my respect and friendship for him. I shall ever cherish his memory with reverent affection.

"The period of his judicial career was twenty-six years, approximately, seven years as district judge and nineteen years as a justice of this court. He discharged the duties of judge of the Third Judicial district with promptness, great ability, rare discretion, absolute fairness, and to the entire satisfaction of the people and bar of his district. His high character, great abilities as a jurist, and the magnitude and value of his services to the state have been extolled by you with

generous appreciation, but without exaggeration. My associates and myself sincerely and gratefully concur in all that has been here said in commendation of him and his judicial work, which has enriched American jurisprudence.

"It is proper that your memorial should be recorded in the records of the court, there to remain a perpetual testimonial to the virtue and work of a public-spirited citizen, a just and fearless judge, and a good man, William Mitchell. It is so ordered, and that the court now adjourn as a further tribute of respect to his memory."