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OPINIONS IN ORDINARY CASES

AND

OPINIONS IN CASES DENYING LEAVE TO APPEAL

HABEAS CORPUS CASES

EDWARD H. HAMMOND

STATE REPORTER

JAMES E. BENDALL, JR.

*Assistant State Reporter**

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* Cases reported by him have his initials at the end of the paragraphs of the syllabi prepared by him.

In Memoriam

On Friday, April 22, 1955, at a session of the Court of Appeals, the following memorial services were held in honor of the Honorable Walter J. Mitchell, a former Associate Judge of this Court and former Chief Judge of the Seventh Judicial Circuit.

HONORABLE C. FERDINAND SYBERT, Attorney General.

MAY IT PLEASE THE COURT:

We meet here today to pay tribute to the memory of a distinguished lawyer, journalist, legislator, jurist and former member of this Honorable Court, Judge Walter J. Mitchell. I announce formally to your Honors the death of Judge Mitchell on March 10, 1955.

Judge Mitchell's life is a notable example of the indelible mark imprinted upon the record of community and State history when an intelligent and capable gentleman of high character dedicates himself to public service. The mere recital of the career of this honored citizen will bear out that appraisal.

Judge Walter J. Mitchell was born on March 16, 1871, at his family home, "Thainston", in Charles County, Maryland, where he resided throughout his entire life. Descended from a line of illustrious Southern Maryland ancestry, he was the son of William Hebbard Mitchell and Emily E. Mitchell. He was a member of The Society of The Cincinnati, his great-grandfather having been General John Mitchell, who served in the Revolutionary War. Judge Mitchell acquired his education at Charlotte Hall School, from which he entered the University of Maryland Law School, Baltimore, receiving his law degree in 1894.

On January 18, 1899, Judge Mitchell was married to Florence Campbell Jenifer, of the distinguished Baltimore County family of that name. Mrs. Mitchell and five children survive.

Judge Mitchell began the practice of law at La Plata, Maryland, immediately upon admission to the Bar and he and the late W. Mitchell Digges practiced under the firm name of "Mitchell & Digges" until Judge Digges was elected to the Bench in 1923. Upon Judge Digges' death in 1934, Judge Mitchell was appointed by Governor Albert C. Ritchie as Chief Judge of the Seventh Judicial Circuit, in which capacity he served also as a member of this Honorable Court until reaching retirement age on March 16, 1941.

His first public office was by appointment from Governor Edwin Warfield, who named him to head the Maryland Shell Fish Commission, forerunner of the present Tidewater Fisheries Commission, in 1908. As evidence of the high regard of his fellow Charles Countians for him, he was elected to the Maryland Senate in 1917 and re-elected for three additional terms. He served as Majority Floor Leader in the Senate and was elected President of that body in 1931 and again in 1933, serving until tendering his resignation in October, 1934, upon his appointment to the Bench. Upon his retirement from the Bench, he returned to his law office in La Plata and remained active in the practice of law until stricken on January 14, 1955. He died on March 10, 1955.

In addition to his political and legal activities, he purchased in 1897 two weekly newspapers in Charles County, the old Port Tobacco Times and the La Plata Crescent, which he combined into the Times Crescent, a weekly which he edited and published until his appointment to the Bench in 1934. The Times Crescent was turned over at that time to his son, James C. Mitchell, an attorney, who was associated with his father and who still owns the Times Crescent.

In 1908 Judge Mitchell helped organize the Banking Institution in La Plata now known as the County Trust Company of Maryland, which at that time was a branch of the old Eastern Shore Trust Company. He served as a member of its Board of Directors from the time of its organization until the date of his death and retired

from the position of President upon his elevation to the Bench.

Judge Mitchell's life as a lawyer and his career upon the Bench were marked by outstanding public service. His knowledge of the law was thorough, his judgment sound and impartial, his temperament even and judicial. His written opinions reflect all these splendid qualities.

With all of his honors, his long experience, his accumulated public service, Judge Mitchell's life was of great value to his State. It is an example of unselfish devotion to duty, of which his family, and indeed all of the people, may justly be proud.

Therefore, on behalf of the Bar of this State, I move, your Honors, that an appropriate minute be recorded that will make lasting record of Judge Mitchell's distinguished service, and mark our deep respect to his memory.

HONORABLE MILLARD E. TYDINGS, of the Harford County and Baltimore City Bars, and a former Senator of the United States.

MAY IT PLEASE THE COURT:

In the Orphans' Court of Charles County, the material things which Walter J. Mitchell had accumulated during a full and eventful life were disposed of. However, over the long span of years that marked his activity in the political and civic life of his County, Southern Maryland, and of his native State, Walter Mitchell bestowed upon the people he served many enduring and intangible gifts of greater value than any property he devised or bequeathed—for these intangible gifts were of such a nature that they could never be adequately measured in the coin of the market place.

One of the finest of these intangible gifts to his people was the example of an unblemished life—a life adorned with the highest quality of leadership, a fidelity to lofty ideals, a tolerant understanding of the strength and weaknesses of his fellows, a fine grasp of the law and a righteous wisdom tempered by mercy in its application, and a deep appreciation of the eternal verities that

ever make government the servant and not the master of the people.

He was a seeker after permanent rather than temporary progress, believing that good is never more effectually performed than when it is produced by slow and well considered degrees. No laggard in taking the offensive where evils cried out for reform, he opposed change for the sake of change only. He never willingly surrendered the heritage of his ancestors until both means and methods were assembled proving the worth of the proposed change.

As a legislator he was three dimensional in his concept of government, insisting that the best of the past be kept to meet the needs of the present and fit the vicissitudes of the future. During the early administrations of Governor Albert C. Ritchie, I remember clearly his authorship and advocacy of the educational equalization fund which gave to Maryland Counties having few tax resources additional monies with which to improve and make more nearly uniform the opportunities of the public school system. He was in the forefront of many of the reforms which were enacted during the early administrations of Governor Ritchie — the fewer election laws, the reduction of the real estate tax, more and better highways and roads, and welfare legislation for the benefit of the sick and the injured, the maimed and the disabled.

Because of his leadership in these fields, even though belonging to the minority party, Charles County returned him again and again to the highest office in its gift.

In the best sense of that much abused word, he was a gentleman. In any group he was a genial companion, a thoughtful adviser, and a devoted friend. Few men loved their native heath more than he; and being devoted to it he dedicated much of his life to improving the lot of the people of his native County and section of Maryland.

It was fitting that at the very peak of his powers he became a member of this distinguished institution—the Court of Appeals—the highest court in the State of

Maryland. Here he continued his fine service to the people of this State.

Walter Mitchell was the kind of friend who was constant even though not frequently seen; who was eternally loyal even though far away.

He sought after, found and lived by the true values of life. The counterfeit that so often passes for fame and success did not appeal to him. This being so, it was but natural that he found contentment in the place where he was born. Here he lived his entire life; here he surveyed the changing world from his Olympus in Charles County. The ever increasing tempo of modern existence, the inevitable change carried everywhere throughout our land on the wings of invention, discovery and industrialization was insufficient to lure him from the wholesome fundamentals upon which his life was patterned.

Endowed as he was with ability, character and with such an outstanding record of service, he was for many, many years the first citizen of Charles County.

Now that he has passed on into the great beyond, he will be sorely missed by his host of friends. As I wrote to one of his devoted admirers some time ago, I like to think that as the years unfold we will nevertheless from time to time hear the counsel of his gentle voice and on some occasions, I am sure, we will feel the reassuring pressure of his friendly hand.

I have the honor to second the motion made by Attorney General Sybert that an appropriate minute be recorded concerning Judge Mitchell's distinguished life and service.

WILLIAM A. GUNTER, Esq., of the Allegany County Bar.

MAY IT PLEASE THE COURT:

Upon an occasion such as this, dedicated to the precious memory of one of the former members of this Court, who shortly before the ides of last March filed his answer to the stern and inevitable summons of death, we so often find that words, no matter how fulsome or

well-chosen, cannot possibly properly express that which is in our hearts.

Walter Jenifer Mitchell, country lawyer for 54 years, Maryland legislator for 16 years, Maryland jurist for 7 years, is dead. As a Judge during that 7-year period, he listened carefully and patiently to the arguments of counsel in some 1500 cases in this Court. As a member of the Senate of Maryland for a 16-year period, he participated in the passage of some 10,000 Acts of the General Assembly of Maryland. During his more than half century of the active practice of law, Walter Mitchell was a typical country lawyer. The country lawyer, like the country doctor, has great opportunities to serve his fellowman. He not only espouses their cause before courts and juries, but in his office and in their homes he becomes their trusted counsellor and friend. He exerts a far-reaching influence for good, and his example is often an inspiration. For 54 years Walter Mitchell filled just such a position in his beloved Charles County. Although of distinguished lineage, he loved the common people and was happiest when engaged in the task of working out their problems. No hour was too late for him to hear a request, no case was too small and no client too humble to give his full attention if he felt the cause was just.

I learned to know and love this humble, honest man when we were fellow legislators in the Senate of Maryland. The fact that he was the Majority Floor Leader with plenty of votes and I the Minority Floor Leader with very few votes, never caused him to bear down arrogantly on the opposition. That spirit of humility and of compassion he showed for his Democratic colleagues, he also graciously bestowed on his Republican brethren. Once he understood the purpose and meaning of proposed legislation, and thereafter gave you his decision on how he felt about it, his word was then his bond and there was no later receding or double-talk, regardless of the later activities of any pressure group. You could always count on Senator Mitchell.

Little wonder then that such a Democrat came back, and back, and back again to the Maryland Senate for

so many terms from a normally Republican County and remained there until his elevation by the late Governor Ritchie to a seat upon the bench of this court. And little wonder then that at a later date he was elected to the Chief Judgeship of his circuit, without any opposition from any other member of the Bar.

As I look back and try to learn the underlying reason for the success of this remarkable country lawyer, I conclude that his greatest asset was the humility of the man. "Humility—that low sweet root from which all heavenly virtues shoot." This virtue of humility evidence itself in his very voice—always low and soft-spoken, never belligerent; and in his eyes—almost tearful, never snapping; in his faculty for patient listening—never interrupting, never orating; and in his dress as the Senate's Presiding Officer—always in a simple business suit, never in a morning coat—always an ordinary slouch hat, never a topper.

Yes, Walter Mitchell was just as content to ride in a Model-T Ford as in the latest model Cadillac; and in fact seemed to prefer an old suit of clothes to a new one.

It is easy to understand why Senator Mitchell with his sense of humility and his keen sense of quiet humor always maintained the Number One place in the hearts of all his fellow Senators, the legislative agents, the members of the Executive Branch of our Government and the general public who frequented the State House when the General Assembly was in session.

And so it is thus more readily understood that even when he had passed the age of four-score years, in the quiet of his home with his wife and children and friends around him he felt that "old friends are best". "King James used to call for his old shoes—they were easiest for his feet."

It may be trite to say of Walter Mitchell that in him we found a man that was just as common as an old shoe; but it is true. After all, he was just a common man, and he loved the common people, who were his friends.

I do not consider that my remarks on this occasion would be complete unless I made some short reference

to Walter Mitchell's family life. To those of us who were accorded the privilege to come within the sacred domain of his domestic life, there was again revealed that soft and gentle shade of his nature that found its haven of happiness in home and loved ones, for it was there that he lavished his purest gifts and where in the happy companionship of his idolized and idolizing wife and children he enjoyed the solace and contentment of the ideal home life. And it was his delight and pleasure to spend the tranquil hours under their tender and understanding care and comradeship. No wonder then that the life and the works of such a man as Walter Mitchell proved himself to be should so indelibly impress themselves upon those of us who knew him best and loved him most.

Walter Mitchell has been taken away from us and our hearts are saddened, but there is some solace for each and every one of us in the undeniable fact that he did not have to wait until this memorial occasion, when his eyes are closed in death, to know and to feel what we felt and how we felt about him. To those of us who are left, let us upon every occasion remember his virtues, emulate his attainments and strive to adhere to the traditions of excellence which it was his joy to help maintain while on the Bench and at the Bar, so that when this Court and our lower courts in years to come shall meet on occasions similiar to this, may we, who have traveled the long road, merit a recompense in some degree like unto that which our comrade, Walter Jenifer Mitchell, has so deservedly earned. And how can we attain that end? Follow, as Walter Mitchell followed, the mandate of one of the Minor Prophets, Micah, who queried: "And what doth Jehovah require of thee, but to do justly and to love kindness and to walk *humbly* with thy God?"

LEROY PUMPHREY, Esq., of the Prince George's
County Bar.

YOUR HONORS:

From other speakers you are getting biographical sketches of Judge Mitchell and as repetition is neither

interesting or desirable I will seek to avoid it as much as possible and content myself with giving you a few personal glimpses of the man with whom I maintained a friendship.

In the five Southern Maryland counties only Anne Arundel and my own Prince George's are populous, the other three are not. During the last few years Charles County has experienced an orderly growth but its population is still small. Here was the field of activity of the man whom we honor today. In the town of LaPlata, its County Seat, there is an old wooden, two story building. On the ground floor of this building two country lawyers maintained their office and practiced their profession together. This office did not look like some we see today, especially those in the cities where the floors are prettily carpeted, drapes at the windows, fine furniture and costly equipment. In the office we are speaking of there was no carpet on the floor and often mud tracks could be seen where clients from the fields had made them. There were no drapes at these windows and no costly or showy furniture. There was an airtight stove in the room as well as chunks of wood with which it was heated. They did not need to lure clients to this office—they came. However unimpressive this may have seemed to strangers it is a well known fact that both of these men became members of this, our highest Maryland Court. W. Mitchell Digges came here in 1923, served until the time of his death in 1934 and Walter J. Mitchell succeeded him. This writer attended Judge Digges' funeral and after the body had been lowered in the grave and we were about to leave the little country cemetery a colored man came over and said that Senator Mitchell wanted me to come to his home. Knowing that he was distressed by the death of his kinsman and long time associate I sent back word that I would come to see him in the next few days. In just a minute or so the messenger returned and said that I was to come to the home right now. When I arrived there I found a group of about twenty-five persons, among whom were the then Governor Ritchie, the Governor to be, William Preston Lane, and others of distinction.

Luncheon was served and soon thereafter I observed Senator Mitchell and Governor Ritchie in a corner of the room engaged in earnest conversation. Senator Mitchell called me over and said that the Governor was offering him the judgeship. The Governor spoke up and said "Yes, I am and I want him to take it but he says he does not want it". I then said that our Court of Appeals was so highly regarded all over our country that I could not understand any lawyer not wishing to become one of its members. He replied that he was not a scholar like Judge Digges; that he knew how to handle the affairs of his county people but if he accepted this appointment and it became his turn to write the opinion in some large and involved case that came up from the city he might not be equal to it. This was no pretended humility because it is well known that he disliked pretention in any form and was entirely free from it. I reminded him that he had proven himself a competent lawyer and the possessor of an unusual amount of good judgment and practical sense; that he would make a good judge and we would all want him to take it. A few days later and after others had urged him, he did accept the appointment. Some two years later I asked the late Judge Johnson, of this Court, how Judge Mitchell was getting along on the Court of Appeals. I was pleased when he answered in almost the same words I had used the day I urged him to accept the appointment. Judge Johnson said that if the Governor had searched the State he could not have found a man who possessed a greater amount of good judgment and common sense, along with his legal attainments, and these were the attributes necessary to make a successful judge. In his law practice he worked very hard. Indeed this was inevitable because he would not turn away a client because the matter involved was small and the fee would be of the same proportion. He spared no effort in behalf of his clients and those who opposed him learned of his resourcefulness. Yes, he was an able and successful lawyer.

In his newspaper you could see the efforts of the same strong man. Not many county weeklies carry outstanding editorials. This was not the case with the "Times

Crescent". His editorials reflected a real grasp of political and governmental matters. It was in politics that he was perhaps at his best. He was a real partyman and no one was permitted to doubt it. He loved his party and sometimes his arraignments of the opposition were terrific. However, when he finally offered himself as his party's candidate for the State Senate he won the election notwithstanding the fact that his party was greatly in the minority in that county. Here was proof that the people, regardless of political affiliation, trusted him and believed in his ability to secure their best interests.

There came a time, however, when he was greatly alarmed about some things that were happening in Washington and saddened because they were being done in the name of the party he loved and had fought for through the years. He was a real American and with all his heart he believed in the Government the forefathers had established. In some of these strange things that were being done he thought he saw careless hands, if not unholy ones, laid upon the genitals of freedom and opportunity; a chipping away of the foundation stones upon which rested our form of government; a form of government that had produced a standard of living for its people that has been referred to in other countries as one of the "seven wonders of the world". Because he knew that to some extent I shared his view in the matter he would talk with me about it every time we met. It really cast a shadow over the evening of his life. Now he is gone and the people of his county, together with all of Southern Maryland, feel that in the forest a great oak has fallen. We cannot see men of this type depart their scene of activity without experiencing deep thought. We wonder why they labored so hard and clung to great ideals and purposes if they are all to end with them in the short span of mortal life. What becomes of their great attainments and the wisdom acquired through years of rich experience? Is it like the pitcher that is broken, its contents spilled upon the ground and forever lost? Our faith and our reasoned hope cries out that such cannot be the case. We know not where or how yet everything

within us argues that there must be something further where these ideals and attainments can be used. If The Father deigns to touch with the spirit of life the cold and pulseless heart of the acorn causing it to burst forth from its prison walls of earth and develope into a mighty oak, will He leave neglected in the earth the soul of man that was made in the image of his Creator? If He stoops to speak to the rose bush, whose withered petals float upon the breeze, the sweet assurance of another spring-time, will He withhold the words of hope from the sons of man when the frosts of winter come? If these material things, mute and inanimate, can never die, will the imperial spirit of man suffer annihilation after it has paid a brief visit, like a royal guest, to this tenement of clay? Let us rather believe that He who works in mysterious ways to fulfill his Devine Purpose will preserve these attainments and accomplishments for our later and better understanding when He has gathered together His believing children and given immortality to mortals.

HONORABLE EDWARD S. DELAPLAINE, Esq., Associate Judge, Court of Appeals.

GENTLEMEN OF THE BAR:

The Court sincerely appreciates the wonderful tributes that have been deservedly paid to Judge Mitchell. As Chief Judge Brune has said, only two members now sitting on this Court, Judge Collins and I, served here with Judge Mitchell; but, as you have stated, he was widely known, highly respected, and generally beloved in this State.

Judge Mitchell served under the ancient judicial system by which the Chief Judge of the Circuit became *ex officio* a member of the Maryland Court of Appeals. He came here as the Chief Judge of the Seventh Judicial Circuit, which was composed of St. Mary's, Calvert, Charles and Prince George's Counties.

When he took his place on the bench, he was a lawyer with broad professional experience and political laurels. He was by nature quiet and retiring, and his friendliness and fairness endeared him to all of his colleagues.

Judge Mitchell's opinions appear in twelve volumes of the Maryland Reports, running from 168 Maryland to 179 Maryland. During his tenure of office he wrote about one hundred opinions. But that, of course, was only a part of his duty. During that period he took part in the settlement of approximately one thousand cases.

Up until the latter part of the administration of Chief Judge Ogle Marbury, the Judges read their opinions to their colleagues at night sessions beginning at 8 o'clock and concluding at 10 o'clock. It was a long day, and it was always a pleasing experience when the former President of the Senate, who had been chosen by acclamation to move for adjournment at night sessions, raised his hand and thereby indicated to Chief Judge Carroll Bond that the hour of 10 had arrived. In recent years the opinions have been read for an hour or more after the adjournment of the afternoon session in the court room.

For several years this Court, following a practice in some other States, has allowed the deputies and their assistants in the Clerk's office to take ample time to make the necessary corrections in the opinions before filing them, even if several days are required. But in Judge Mitchell's day all of the opinions that were read during the evening were regularly filed on the following day. It is probable that Judge Mitchell read his first two opinions on the night of February 5, 1935, as they were filed on February 6.

For some years there prevailed a tradition that a new member of the Court ought to gain experience promptly by getting particularly lengthy and complicated cases for his first assignment. Judge Mitchell, with his usual good fortune, escaped such a tradition. His first two cases were not complicated or difficult.

His first opinion was in the case of *City of Baltimore v. Hanover Shirt Co.*, 168 Md. 174. In order to encourage industrial growth in Baltimore, the Mayor and City Council had adopted an ordinance exempting from taxation all personal property used in connection with manufacturing. The State Tax Commission decided that the shirt company was entitled to an exemption from taxation under that ordinance. The City appealed to the Balti-

more City Court, and that Court affirmed the decision of the Commission. The City then appealed to the Court of Appeals. The City argued that, while the materials were stamped and cut in Baltimore, the actual work of making the shirts was done outside the city limits. In his first opinion Judge Mitchell held that the company was engaged in such a business as to entitle it to an exemption.

The other opinion filed on February 6, 1935, was in the case of *Hutson v. Hutson*, 168 Md. 182. That case was likewise a comparatively simple one. A complainant had entered a suit in the Circuit Court of Baltimore City alleging that he had conveyed certain real estate, through a straw man, to himself and a woman who he thought was his wife but who he afterwards found out was not his wife, as she was married to another man. The Circuit Court annulled the deeds and restored the property to the complainant, and Judge Mitchell affirmed that decree.

As time went on, Judge Mitchell was confronted with many cases with different degrees of intricacy and difficulty. As a great part of his life had been spent in the law office, the newspaper shop, the court room, and the State House, he had not been afforded the opportunity to devote much of his time to research in the law. However, he had gained a broad knowledge of human nature from the practice of law and in politics, and his opinions showed increasing insight and thoroughness.

It was natural that Judge Mitchell, having been a distinguished member of the State Senate, should take a special interest in statutory construction. One of his thorough opinions was written to construe the Fair Trade Act. That opinion was delivered in the case of *Schill v. Remington Putnam Book Co.*, 179 Md. 83, on January 3, 1941, near the close of his judicial career. The question in the case was whether the Fair Trade Act applied to copyright books. This Act deals with contracts relating to the sale of commodities "in competition with commodities of the same general class produced or distributed by others." It was argued in that case that books are not commodities within the contemplation of the Act.

Judge Mitchell quoted the statement of Chief Justice Marshall in *Grant v. Raymond*, 6 Pet. 218, 8 L. Ed. 376, that the framers of the Federal Constitution, desiring to promote the progress of science and the useful arts, had conferred upon Congress the power to secure to authors and inventors the exclusive right to their writings and discoveries. He then said: "Time has not dimmed the wisdom and justice of that comment, and the Fair Trade Act is but evidence of the legislative intent to reaffirm it, and give to it practical effect in this State at this late date."

Judge Mitchell's final opinion was filed on March 5, 1941, in the case of *Gent v. Kelbaugh*, 179 Md. 343. This suit was instituted by the Mercantile Trust Company of Baltimore as trustee to construe the will of a testatrix who had died about a decade before. Cases dealing with testamentary trusts, as you know, usually require painstaking study, but although Judge Mitchell was near the end of his judicial career, he gave his usual careful attention to the details of the case and wrote an exhaustive opinion that covers more than ten printed pages in the Maryland Reports.

Judge Mitchell took his full share of the burden of the work on this Court. He won the affection of all those with whom he labored. His experience was broad and his work stands as a monument to him. Having sound common sense and a judicial temperament, he capably fulfilled his duties and gained a host of friends. He passes into the history of this State with the respect and the gratitude of his fellow citizens.

CHIEF JUDGE BRUNE:

The tributes which are so well deserved and which have been presented here today in memory and honor of Judge Mitchell will be recorded in the minutes of this Court, and preserved in the Court's permanent records, and, as a further mark of respect to the memory of Judge Walter J. Mitchell, the Court of Appeals of Maryland now stands adjourned.