

DR JAMES MITCHELL

by

C. E. SMITH

Newcastle History Monographs No. 1

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THE COUNCIL OF THE CITY OF NEWCASTLE
NEW SOUTH WALES, AUSTRALIA

1966

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MITCHELL, JAMES, 1792-1869

The Author

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DR JAMES MITCHELLIntroduction

Interest in Dr James Mitchell has been aroused by the Newcastle Public Library's acquisition of the Merewether Estate archives. These archives, dating from 1824 to 1961, concern the history of coalmining and land surface development in the areas of Merewether and Rothbury. They include private papers of Dr Mitchell, his son David Scott Mitchell, and son-in-law Edward Christopher Merewether. The preparation of a historical introduction to a preliminary inventory of the archives has involved research into the lives of these three people and their relatives the Scott family. This paper, concerning Dr Mitchell, is a by-product of that research and is primarily intended to assist the further research that the subject deserves.

While the name of David Scott Mitchell is well known to users of the Mitchell Library in Sydney, that of his father Dr James Mitchell is not so well known. Yet the father has his own claim to fame as a medical practitioner, landowner, company promoter, benefactor; and financier of the nineteenth century. He was a non-resident pioneer of the Newcastle district and a figure, albeit minor, in the history of the colony of New South Wales. Apart from anything else, it was his accumulation of wealth through business enterprise that gave his son by inheritance the means to engage in book collecting and the beneficence which subsequently founded the Mitchell Library.

The life of James Mitchell falls into several phases:

1. 1792-1822, Early life;
2. 1822-1833, Medical career in the Rum Hospital;
3. 1833-1843, Marriage, business ventures and dismissal from the Colonial Medical Staff;

4. 1843-1851, Bank of Australia and Coal Inquiry;
5. 1851-1865, Business enterprise;
6. 1865-1869, Wolfskehl and the Great Will Case.

Early Years, 1792-1822

Not a great deal is known about the early life of James Mitchell. He was born in Fifeshire, Scotland, in 1792¹, the fourth son of David Mitchell, farmer, and Margaret Mitchell née Low.² At the age of 18 he entered the medical department of the British Army³ and in 1813 at the age of 21 qualified at Edinburgh as a Licentiate of the Royal College of Surgeons.⁴ His subsequent nine years of active service took him to Spain, America, the Netherlands, the West Indies⁵ and Australia. He was present at several engagements which took place towards the end of the Peninsula War, and served in the American War including the Battle of New Orleans. From America he returned with his regiment, the 48th, to Europe and was on the hospital staff at Brussels during the Battle of Waterloo.⁶ As Assistant Surgeon of the 48th Regiment he visited Australia twice before being posted here in 1821, in August-September 1817 with the transports Matilda, Lloyds and Dick,⁷ and with the Neptune which arrived in Sydney from England on 15 July 1820.⁸ He arrived in Sydney for the third time with the 48th Regiment on 7 November 1821, by the John Barry.⁹

Medical Career, 1822-1833

Mitchell's medical career was interrupted briefly by his switch to farming. Eight months after his third arrival in Sydney, on 5 July 1822, he wrote¹⁰ to the Colonial Secretary, Lord Goulburn, seeking a grant of land and stating that he wished to be placed on half-pay and to become a settler. Three weeks later he wrote again¹¹

stating that he had the means to bring 2,000 acres into cultivation. Consequently he was granted two lots of 2,000 acres, one¹² in the County of Camden, known by the native name of Barragalong, now Burragorang, and the other¹³ in the County of Durham at Glendon Brook near Singleton.

These grants brought him into closer association with some of his friends who were to play an important part in his life. His land at Burragorang was close to the Macarthurs', and in the Singleton district his land was near to that of Robert and Helenus Scott¹⁴ and that of Dr James Bowman.¹⁵ When Robert and Helenus Scott arrived from England in March 1822¹⁶ he arranged for them to visit the Macarthurs at Camden,¹⁷ no doubt for the purpose of allowing the Scotts to receive advice and guidance on farming before they settled on their land grants which they managed jointly and named Glendon. Mitchell himself visited the Macarthurs at Camden periodically and procured samples of wool for them.¹⁸ The compliment was returned on at least one occasion when John Macarthur told Mitchell, 'I send you by the Package Boat two bushels of seed corn for Bob Scott'.¹⁹ The circle of acquaintances was consolidated in 1823 when Mary, the daughter of John Macarthur, married Dr Bowman.²⁰

Notwithstanding his farming interests, Mitchell resumed medical practice in June 1823 when he was appointed Assistant Surgeon of the Colonial Medical Staff²¹ and was posted to the Sydney Civil Hospital which he described as 'the most important medical establishment in New South Wales'.²² The surgeon in charge at the time was Dr James Bowman. Mitchell took charge of the hospital during 1825,²³ although it was not until 1 January 1829 that he was officially appointed²⁴ as Surgeon on a salary of £273.15.0 p.a.. This

he received in addition to his 'auxiliary pension' on half-pay, 6/- a day, and free quarters in the hospital.²⁵

As Assistant Surgeon, Mitchell figured in the Sudds-Thompson case which caused a commotion at the time and which was utilized by the opponents of Governor Darling to embarrass the Governor²⁶ and by the advocates of an elective council to further their cause.²⁷ Two soldiers, Joseph Sudds and Patrick Thompson, believed that a convict's life was preferable to a soldier's life, and deliberately committed a theft in order to be convicted. They were sentenced to seven years' transportation to a penal settlement, and Governor Darling intervened to impose a severer punishment that would deter others from taking the same course. He varied the sentence to seven years' work with the Blue Mountain road gangs, and ordered the two soldiers to be drummed out of their regiment with spiked iron collars fitted around their necks. Sudds died a few days later, whereupon the attacks upon Governor Darling began. In an inquiry held by the Executive Council three years later,²⁸ Mitchell gave evidence that he had assisted in the post-mortem conducted on Sudds' body and found that Sudds had 'died from inanition in conjunction with all the distressing passions connected with his unfortunate position'. He believed also that the wearing of irons around the neck had not caused the death of Sudds, and that Governor Darling did not know about Sudds' state of health at the time of the sentence. The Governor was completely exonerated by a Select Committee of the House of Commons nine years after Sudds had died.²⁹

Simultaneous performance of hospital duties and farm management, however, did not deter Mitchell from developing other interests. It is known, for instance, that he was present at a meeting in Sydney in 1826 to form the

Sydney Banking Company,³⁰ and in 1828 he was one of the chief speakers at a meeting of the Bank of Australia.³¹ He became an original member of the Australian Subscription Library on its foundation in 1826³² and a committee member of its successor, the Australian Library and Literary Institute in 1832.³³ In 1833 he became a director of the Bank of Australia.³⁴ It is said that he was developing a good private practice as a medical practitioner also.³⁵ His diversity of interests is further revealed by the explorer Allan Cunningham in naming the Mitchell [Namoi] River after him:

As a compliment to the medical officer to whom I am so much indebted for the valuable detail of barometrical observations he had taken for me in Sydney³⁶ during my absence on this journey in the interior.

The extent of Mitchell's association with the Hunter Valley in this period is not yet fully known, but there are indications that his interest in the area was growing. The Colonial Secretary's Office consulted him in 1828 about details of Dr Stephenson's land reserve on the Hunter River, and he replied that the land was being developed and cleared under the superintendence of Robert Scott, J.P., of Glendon.³⁷ In 1831 Helenus Scott of Glen-
don advertised³⁸ the Hunter River Sweepstakes, including the information that J. Mitchell had already lodged an entry. Sir Edward Parry of the Australian Agricultural Company wrote³⁹ from Port Stephens to Mitchell in 1833 seeking further advice about Sir Edward's little daughter whom Mitchell had been treating.

Information about this period of Mitchell's life is indeed fragmentary, but is sufficient to establish his growing authority in the Hunter region and his connexion with early Australian farming. Probably he already em-

ployed an agent to attend to his interests in the region, as he is known to have done later, and through communications from the agent and his own visits he would have been kept informed about the region. It is likely that Robert and Helenus Scott were his agents, a supposition that is all the more interesting because Helenus's son Robert was later to serve in the same role for Mitchell's son-in-law E.C. Merewether in respect of the Burwood Estate.⁴⁰

Marriage, Business Ventures, and Dismissal from Colonial Medical Staff, 1833-1843

Mitchell was married in St. James Church, Sydney, on 22 August 1833,⁴¹ to Miss Augusta Maria Scott, the daughter of Mrs Augusta Maria Scott and the late Dr Helenus Scott, and sister of his friends Robert Scott, Helenus Scott, Patrick Scott, Captain David Charles Frederick Scott and Alexander Walker Scott. Mrs Scott and her daughter had arrived in Sydney from England on 20 August 1831, aboard the Australia.⁴² The wedding ceremony was performed by another of Mitchell's friends, the Venerable Archdeacon, later Bishop, William Grant Broughton, and was witnessed by Mrs Scott, her sons Robert, Helenus and Alexander Walker, and by Dr James Bowman.⁴³

Three children were born of this marriage. Augusta Maria Mitchell was born on 9 August 1834; David Scott Mitchell on 19 March 1836; and Margaret Scott Mitchell on 4 June 1840.⁴⁴ The first two were born in the officers' quarters of the military hospital in Macquarie Street, Sydney, which now form the central building of Parliament House.⁴⁵ Naming of the second and third children indicates Mitchell's attachment to the Scotts, an affection which was further revealed at a later date, 1860, when he leg-

ally assumed the compound name Scott-Mitchell,⁴⁶ although he did not proceed to use it.⁴⁷

His troubles at the hospital began when Dr John Vaughan Thompson took charge of the Colonial Medical Department on 1 April 1836 and succeeded Dr Bowman.⁴⁸ Whereas Mitchell and Dr Bowman had worked together harmoniously, Mitchell and other surgeons resented Thompson's interference in established practices. Later Mitchell was to complain that Thompson's new orders reorganized the service in such a way as to have no beneficial object, to prove 'injurious to the public service and to insult him and to give him duties incompatible with his status as colonial surgeon'. He complained to the commanding officer to this effect on 13 March 1837, invoking Thompson's counter charges of disobedience. As a result, Mitchell was suspended from duty by Colonel Snodgrass. He was reinstated by Governor Bourke after a court of inquiry had been held, but the Governor refused to direct that Mitchell's charges be brought before a court martial, and criticized Mitchell for making the charges. Disagreement between the two doctors continued to fester until 9 August 1837, when Thompson issued an order making Mitchell personally responsible for 'exterior duties' at the gaol, hulk, Hyde Park convict barracks, carters' barracks, at Goat Island, and in the iron gangs. Mitchell insisted that these duties were too much in addition to his other work, and claimed that the exterior duties had previously been performed by the Assistant Surgeon. In early September of 1837 he refused to attend a flogging at Hyde Park barracks and again was suspended from duty. The court of inquiry, which tried him for disobedience, found him guilty and on 26 September 1837 his name was removed from the list of colonial surgeons.

The esteem with which Mitchell was held in the community was shown the next day when well-wishers subscribed the sum of £200 for a service of plate to be presented to him 'in acknowledgement of his highly valuable professional services'.⁴⁹

Mitchell successively appealed to Governor Bourke and Lord Glenelg against his dismissal, but in vain. He published a pamphlet⁵⁰ setting forth his version of the case, and invoked a reply by Dr Thompson in the form of a letter to the Colonist. On account of this letter Mitchell was able to sue Dr Thompson for libel and win £100 damages, plus costs.⁵¹ His efforts to vindicate himself continued for three years, with the assistance of such friends as Dr Bowman and Bishop Broughton. Finally, in October 1841, the Colonial Office accepted the recommendation of Governor Gipps that Mitchell be reinstated for one day and allowed to resign.⁵²

During this period, although highly concerned with his dismissal, Mitchell was increasingly active in the acquisition of land. Amongst his acquisitions⁵³ were several lots of 640 acres or more in the counties of Durham, Northumberland and Gloucester, for which he generally seems to have paid five shillings per acre, the minimum price under the Ripon Regulations. Some 1,800 acres in the County of Northumberland purchased at this price⁵⁴ are of special significance in that they formed the nucleus of Burwood Estate.⁵⁵ The Burwood Estate was expanded later by both Mitchell and his successor, E.C. Merewether, and proved to be the most valuable of Mitchell's eventual landholdings. The area included all of the present-day suburb of Merewether and parts of surrounding suburbs. In addition he acquired most of what are now known as Stockton and Fern Bay.⁵⁶ The full extent of his landholdings through-

out the State is not yet known, but it is established that he owned 1,300 acres near Gosford;⁵⁷ a house in Cumberland Place, Sydney;⁵⁸ a house in Hutchinson Street, Surry Hills;⁵⁹ a house in George Street, Sydney;⁶⁰ land at Woronora River, Hunters Hill, Mrs Darling's Point and Cooks River;⁶¹ land at Jack the Miller's Point;⁶² and, as mentioned earlier, land at Burragorang and Glendon Brook.

The house which he occupied in Cumberland Place was built in 1823 by Robert Campbell of Campbell's Wharf. It was bought from Campbell by Mrs A. M. Scott and eventually bequeathed to her daughter Mrs Mitchell.⁶³ Here Mitchell developed a private practice and conducted his business affairs which involved him in visits to Newcastle.⁶⁴

Apparently he had acquired a reputation for land dealings by this time, for Dr Bowman wrote to him⁶⁵ on 24 October 1837 from Ravensworth near Singleton concerning land which he was to purchase for Dr Bowman. In the same letter Dr Bowman related that people in Newcastle supported Mitchell in the matter of his dismissal.

Mitchell acquired land in order to profit from leases of subdivisions; he paid off the purchase price from rents received. He appears, therefore, to have been one of the few Australian rentiers, although exploitation of land by non-resident owners was common practice in England. His land in the Rothbury region was cut up into farming lots,⁶⁶ and portions of the Burwood Estate were utilized for farms and rented cottages.⁶⁷ A tweed factory which he had erected on his land at Stockton was also leased.⁶⁸ One of his two agents in Newcastle was W.P. Boyce, who managed the Burwood Estate and collected rents; the other was H. Harper, who managed the Burwood Wharf, in addition to shipping coal and producing coke.⁶⁹ While Mitchell engaged in

land acquisitions in order to make profit, he was at the same time promoting the development of the Newcastle district.

Another source of income seems to have come from money-lending, a common practice at that time. Some of the persons who borrowed money from him were Robert and Helenuus Scott, John Bingle, Bishop Broughton, and Mr Justice Burton.⁷⁰ In 1843, William Purves, then a schoolteacher at Port Macquarie and later a Presbyterian minister at Maitland and Moderator of the Presbyterian Church, apologised for delay in repaying a loan and ironically, in view of the failure of the Bank of Australia, added that 'I hope you do not suffer much in the present times'.⁷¹

Mitchell's original source of capital to engage in land acquisitions and business is not clearly established. In 1822 on retiring from the army he had the means to bring 2,000 acres of land into cultivation,⁷² and by 1841 Governor Gipps was able to remark that he was generally supposed to be in easy circumstances and had an extensive private practice.⁷³ In the intervening period he had embarked on an extensive programme of investing in land and business. It is perhaps significant that he began to invest more heavily after his marriage, the suggestion being that he may have acquired access to more capital through his wife or her mother.

His business investments and activities during this period were numerous. He bought shares in the Commercial Banking Company,⁷⁴ the Australian Gas Light Company,⁷⁵ and in the Australasian Steam Navigation Company.⁷⁶ He commenced constructing a tweed factory at Stockton,⁷⁷ became a director of the Australian Gas Light Company,⁷⁸ was appointed as Deputy Chairman of Directors of the Sydney

Ferry Company,⁷⁹ and continued as a director of the Bank of Australia.⁸⁰

The association of Mitchell with the Australian Gas Light Company merits elaboration because he was not a founder of that company, although it is frequently asserted that he was.⁸¹ Research by the company⁸² has revealed that he was not associated with the formative meetings, not elected to the Provisional Committee to obtain the Act, not an original shareholder and not one of the first directors. On the other hand he was undoubtedly important in the development of the company. He bought 20 shares for £60 from Lachlan McAlister on 19 August 1839 and was elected as a director on 18 December 1839. On the retirement of George Barney in November 1843 Mitchell was appointed Chairman of the Board and Chairman of the Committee of Works, positions which he held until his death in 1869. He was therefore associated with the direction of the company before it lit the streets of Sydney and under his direction as Chairman the company developed considerably.

In addition to all his other activities of this time, Mitchell began to develop a greater interest in public affairs. He was a foundation member of the Australian Club when it was formed on 29 May 1838,⁸³ and was elected to the club's committee at the first general meeting on 8 September 1838.⁸⁴ On 31 January 1840 he became a trustee of the club.⁸⁵ In the same year he helped to call a meeting at the Royal Exchange for the purpose of raising funds to promote immigration.⁸⁶ Thus it was that he became a member⁸⁷ of the Central Committee of the Australian Immigration Association, and shortly afterwards was elected Treasurer of that Committee.⁸⁸ He was also concerned with

the establishment of ragged schools in Sydney, and in 1840 received an advance of £500 from Bishop Broughton on behalf of the Society for the Propagation of Christian Knowledge, for the purpose of founding a school.⁸⁹ At a public meeting in 1841 he and his friends, William and James Macarthur, were amongst those appointed to a committee to oppose dismemberment of the Colony.⁹⁰ In 1838 he supported a cultural movement in Newcastle by taking out shares in the Newcastle Mechanics' Institute.⁹¹ He was appointed as a magistrate of the Territory in 1842.⁹²

Bank of Australia and Coal Inquiry, 1843-1851

A setback to Mitchell's business career occurred with the failure of the Bank of Australia in 1842-3. A severe drought had occurred in the years 1837-9,⁹³ with consequent effects on the economy in general and on the wool industry in particular:⁹⁴

The Bank of Australia was forced to admit difficulty in December 1842, when Hart [of the Bank of Australasia] rescued that bank ... exacting in return an undertaking that the Australia would withdraw from ordinary banking, restricting itself to mortgage banking.⁹⁵

Over the next few years the Bank of Australia and the Bank of Australasia were involved in a series of manoeuvres and litigation concerning this undertaking.⁹⁶ Owing to a mistake the Bank of Australasia advanced more money to the Australia than agreed upon, and subsequently the Australia repudiated the original undertaking. The Australasia took the matter to court, with the result that the Supreme Court held two lengthy hearings during 1845. In the first trial, which lasted ten days, the jury failed to reach agreement, and in the second trial, over twenty days, the verdict was so inconclusive as to prompt the Australasia to appeal to the Privy Council. The appeal

was heard in December 1847 and judgement was given on 15 February 1848, awarding the Australasia the full amount of the debt, interest on the original loan, and costs of the Sydney trials.

The Australia did not finally close until July 1851 as it took some time to repay the debt of £222,689 to the Australasia. 'The Australia shareholders took defeat with a good grace, expressing the unanimous opinion that every exertion should be made to pay.'⁹⁷ In fact the colonial shareholders bore the brunt of the burden because the shareholders in England were not so responsive. Colonial shareholders each had to contribute an amount equal to his shareholdings; assets were disposed of by lottery; and remaining properties were sold by auction.

Mitchell's part in these proceedings, and their effects on him, have not been fully traced. In 1845 Governor Gipps informed Lord Stanley⁹⁸ that:

The Bank of Australia having been founded on the joint stock principle, every shareholder in it is liable for the debts of the Bank to the full amount of his property. No attempt to levy on the property of any shareholder has yet been made, but the state of apprehension, in which the shareholders live, is most distressing. They are about 176 in number, and a list of them is herewith.

The accompanying list shows that Mitchell held shares to the value of £1,680. He was not appointed in June 1848 to the Australia's committee⁹⁹ to realise on assets and to assess the shareholders, and he retired as a director in the following month.¹⁰⁰ Neither did the lottery committee include him,¹⁰¹ and the lists¹⁰² of property offered in the lottery do not specify any land as having been his. Precise information about what property he did dispose of, and how the disposal was effected, remains to be learned.

It does appear, however, that he did dispose of much of his property in this period. One view¹⁰³ is that:

Dr Mitchell was a shareholder [of the Bank of Australia], and the liquidator of the Bank claimed and took all his property and sold it for the benefit of the Bank creditors, but there was in his Estate a property of forest land, said to be up the coast. The liquidator considered this so worthless that he decided to leave him this untaken. This property was in the Newcastle District and turned out afterwards to be the valuable coal property of the Mitchell Estate inherited by the late David Mitchell and the source of his accumulated wealth.

This statement has not so far been corroborated. That it is not entirely correct is evident from the fact that Mitchell retained his home in 'fashionable Cumberland Place', Sydney, in addition to his extensive properties in and around Newcastle. There is no evidence, however, that he continued to hold other of his former properties. It may well be that he realised on such of his land as would bring a suitable price at the time, while retaining his home to live in and his land in the Hunter Valley because its value was deflated by the Australian Agricultural Company's monopoly of coalmining. This supposition suggests that he parted with his land elsewhere before the monopoly was broken in 1847.

Seemingly inconsistent with financial difficulties associated with the failure of the Bank of Australia are other business dealings of his at the time. Despite losses elsewhere he was consolidating his land holdings in the Hunter Valley by acquiring some of A. W. Scott's land which was mortgaged to him.¹⁰⁴ He was engaged in smelting copper on the Burwood Estate;¹⁰⁵ opened the Burwood mine about 1850;¹⁰⁶ and was leasing a successful tweed factory at Stockton. Early in the 1840's he became a director of the Hunter River Steam Navigation Company.¹⁰⁷

The only suggestion of business failure affecting him, apart from banking, occurred with his voting for the dissolution of the Sydney Ferry Company in 1843.¹⁰⁸

Construction of his tweed factory at Pirate's Point or Stockton began in 1840 and took three years to complete.¹⁰⁹ The building was equipped with the latest machinery available from England, then leased to Robert Fisher and Alexander Donaldson under an agreement requiring rent to be paid in tweed. Business flourished and by 1844 production reached 800 - 1,000 yards of cloth per week.¹¹⁰ By 1850 nearly 300 workers were employed and production had reached 70,000 yards of tweed and 800 yards of flannel per year. Significantly for the subsequent history of coalmining in the area, two of the weavers brought out from Scotland to work in this factory were James and Alexander Brown who were later to establish the firm of J. and A. Brown. The success story of the factory, however, ended in mystery and disaster. On 2 July 1851 the factory was destroyed by fire and an inquiry afterwards attributed the fire to arson. It is not known who the culprits were or what prompted them to act in such a manner. Loss was assessed at £26,000.

Further evidence of Mitchell's enterprise and initiative comes from another of his Stockton ventures. Not far from the tweed factory he attempted to establish a vineyard, but this attempt did not succeed.¹¹¹

In the face of this seemingly contradictory evidence it would appear that Mitchell's fortunes were revived by exploitation of coal resources from his 'worthless' Hunter River land. The Government had granted the Australian Agricultural Company a monopoly of coalmining in 1828. Notwithstanding, several private mines were

opened up in the early 1840's, notably the Reverend L.E. Threlkeld's mine at Coal Point, Lake Macquarie, and James Brown's mine at Maitland. The assertion¹¹² that coal was being mined in Mitchell's Burwood Estate in the early 1840's has not been verified and is not supported by the evidence of the 1847 Coal Inquiry. At some stage William Donaldson began mining in a tunnel at Happy Valley within the Burwood Estate, and was followed by James Brown and Nott with workings in the Victoria Tunnels vicinity. William Donaldson was joined in 1849 by his brother Alexander when the latter gave over the lease of the tweed factory at Stockton to Robert Fisher, but when coalmining actually began on the Burwood Estate is not known.

In 1845 the Australian Agricultural Company prompted the Government to close down Brown's Maitland mine because it was winning too much business with river steamers. The Legislative Council appointed a Select Committee on 28 May 1847:

To inquire into the nature of the agreement made by the Government with the Australian Agricultural Company, respecting the working of coal; the expediency of taking measures for obtaining from the Company, for the benefit of the public, the advantages thereby conceded to them; and the terms of compensation, if any, which should be granted to them for relinquishing any right to which under their agreement with the Government, they may be entitled.¹¹³

Mitchell had taken over the salt works established by William Donaldson at Smelters Beach in the Burwood Estate for conversion to copper smelting works.¹¹⁴ In evidence at the Coal Inquiry he stated that the reservation on his Burwood land grant was hindering his plans to smelt copper. To facilitate the transport of ore to the works, he had a tunnel dug through a hill and found that the tunnelling was expedited by the presence of a coal seam fol-

lowing the course of the tunnel.¹¹⁵ Consequently he had two to three thousand tons of coal taken from his own land and stacked on his land, and was unable to use the coal in the smelting works because of the reservation. Together with others he gave evidence that the Australian Agricultural Company's monopoly was inflating the price of coal and hindering the development of Newcastle.

In August of 1847, before the Select Committee submitted its report, the A. A. Company announced that it surrendered all privileges in respect of coalmining, without entailing any charge upon the Colonial Funds.

The various tunnels from which coal was hewn in the Burwood Estate were connected by wooden tram lines which converged at The Junction in Burwood Estate.¹¹⁶ Because land between The Junction and Newcastle was owned by the A. A. Company, coal had to be carried in carts from The Junction in a roundabout route. In 1847 Mitchell obtained permission from the Company to construct a railway over their land, but they specified that it should not be used for the purpose of carrying coal.¹¹⁷ It was not until 1850 that a special act of parliament, Mitchell's Tram Road Act, gave him right of way.¹¹⁸ The railway terminated at Newcastle Harbour where the Government in 1849 permitted him to occupy Crown land for wharfage purposes.¹¹⁹ Protests against this Act were made during 1851 by the A. A. Company to the Colonial Office in England,¹²⁰ but without avail.

One of the riddles concerning this period of Mitchell's life involves a proposal to erect a church on his land at Stockton. On 20 September 1845 Bishop Broughton wrote to him¹²¹ from Gresford saying:

With reference to your proposal for the erection of a church at Stockton I beg to say that my arrangements

will be as follows ... the first stone might be laid on the 29th [November], the day before Advent Sunday and St Andrew's Day, and the Church be called St Andrew's Church.

In a further letter dated 1 December 1845,¹²² the Bishop advised that the ceremony of laying the foundation stone would be postponed to 6 December because building arrangements had not been completed in time. Apparently the ceremony was held but the church was never erected.

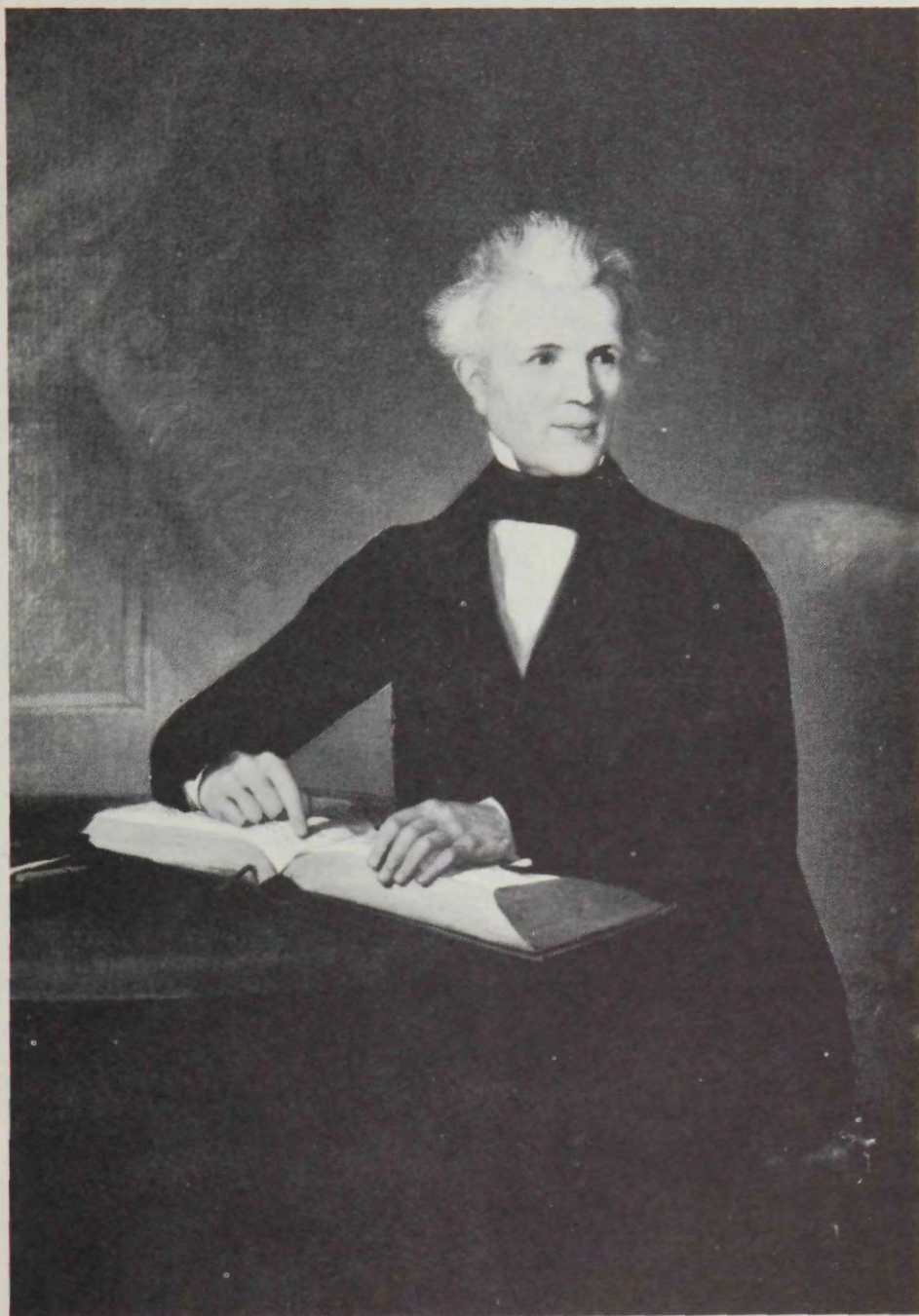
The foundation stone was rediscovered in 1890, when it was 'dug out of the sand, aged and moss-covered', during the erection of the present St Paul's Church on the same site.¹²³ A stone set in the exterior wall of St Paul's is inscribed:

To the glory of God and in memory of the blessed Apostle St John this stone originally laid by Bishop Broughton in the year 1841 was relaid by Bishop Camidge of Bathurst in the year 1890 Arthur Edward Selwyn being Vicar General of the Diocese William Fenton James incumbent.

The incorrect date of 1841 could have been due to difficulty in reading the original inscription. Early church records cannot be traced now and may not have been available in 1890.

An unconvincing explanation¹²⁴ is that the church was never built because the people moved away from Stockton after the tweed factory was burned down. The factory was not burned down until six years after the foundation stone was laid and was employing nearly 300 people in that time.

It is problematical too whether Mitchell's own financial position could have caused the delay. He may have been donating the cost of the building as well as the land, and in spite of varying fortunes associated with the failure of the Bank of Australia and further business enterprise, he would appear to have been able to afford the cost of building a church at least by 1851. A likely



DR JAMES MITCHELL

FROM AN 1854 PAINTING BY MARSHALL CLAXTON IN THE MITCHELL LIBRARY, SYDNEY



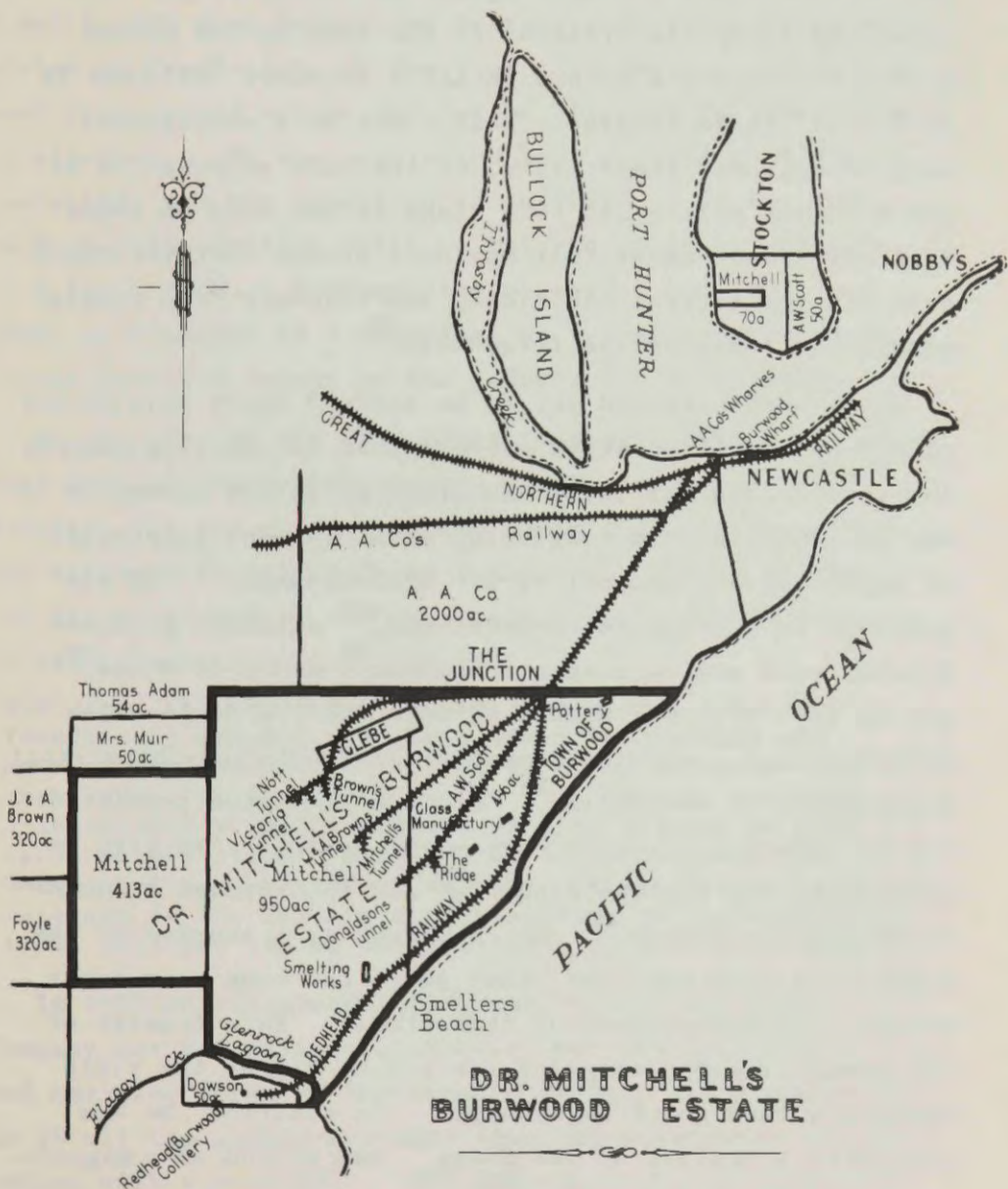
MRS AUGUSTA MARIA MITCHELL

FROM THE PHOTOGRAPHIC COLLECTION OF MRS. ANNIE ROSE SCOTT COWEN



DR MITCHELL'S HOUSE, CUMBERLAND PLACE, SYDNEY

FROM PHOTOGRAPHS OF BUILDINGS CONDEMNED, MITCHELL LIBRARY, SYDNEY



explanation is offered by Professor Douglas Pike of the Australian National University who has suggested verbally that Mitchell may not have agreed to Bishop Broughton's terms regarding the transfer of the land as the church site. The Bishop's second letter 1 December 1845 says in part that 'It is requisite that there be a conveyance, with an approved clear title, of the land proposed to be given as the site'. At this stage it can only be added that any disagreement that may have arisen over the church site did not prevent the Bishop and Mitchell from continuing their longstanding friendship.¹²⁵

While much more has yet to be learned about this period of Mitchell's life, it is evident that fluctuating success in business did not lower his prestige in the community nor prevent him from continuing with his many interests. If anything, his medical career was enhanced. He was gazetted as a competent medical man,¹²⁶ attended professionally such men as Bishop Broughton¹²⁷ and a Dr Jones,¹²⁸ and in 1844 became a member of both the New South Wales Medical Board¹²⁹ and the Committee of the Medico-Chirurgical Association of Australia.¹³⁰ His social status permitted him to attend a levée at Government House,¹³¹ to sign an address to Sir William Manning,¹³² and to organize a dinner to Mr Justice Burton.¹³³ He continued as a trustee of the Australian Club until at least 1847, and some time later became a Vice-President of that Club.¹³⁴ As a trustee of the Australian Subscription Library he signed the title deed to a land grant in Sydney.¹³⁵ In addition, he was appointed a Justice of the Peace¹³⁶ and served as a magistrate at a licensing session.¹³⁷ Clearly he enjoyed the status of a prominent and respected citizen.

Business Enterprise, 1851-1865

Mitchell added to his business interests when he was

elected on 4 August 1852 to the position of Director of the Australian Mutual Provident Society a few years after the Society was formed.¹³⁸ He served as a director until 7 April 1858 when he retired by rotation, there being a by-law of the Society at the time that the senior director each year should retire and not be eligible for immediate re-election. He was re-elected to the Board on 4 February 1859 and was appointed as chairman on 25 May 1860; he held this position until he retired again by rotation on 3 April 1865. Subsequently he served, in 1865 and 1866, as a member of a committee of members appointed to investigate and report on the affairs of the Society.

At the time of his second retirement in 1865 the annual meeting unanimously passed a vote of thanks to Mitchell for his conduct in the chair and for the important services he had rendered the Society during almost the entire period of its existence. The mover of the vote of thanks mentioned that Mitchell:

Had been connected with the Society almost since its foundation, and had all along taken the warmest and most active interest in its welfare and concerns. His experience, as a medical man in this colony, and his acquaintance with the effects of this climate on European constitutions, had made his attendance at the Board meetings peculiarly valuable, while his strong interest in the welfare and prosperity of the Institution,¹³⁹ entitled him to the gratitude of all the members.

In 1853 he organized the Newcastle Coal and Copper Company for the purpose of taking over his coalmining and smelting works in the Burwood Estate, and transferred to it all the rights acquired from the Government in connexion with his wharf.¹⁴⁰ The Company took over his tram lines and tunnels, and proceeded to construct others.¹⁴¹ Its chequered career was terminated in 1864 when labour troubles and excessive capital outlay impelled the share-

holders to dissolve the Company.¹⁴²

Mitchell's role in relation to the Newcastle Coal and Copper Company is not clear. By a clause in the original agreement¹⁴³ he acquired the Company's property after dissolution, and four months later he had the Company operating again. During the life of the Company his agent, John Llewellyn Morgan, who collected rents for him from the Burwood Estate, had simultaneously served as manager for the Company in matters respecting coal sales and the construction of the Redhead Railway.¹⁴⁴ Sir Roger Therry afterwards complained to James Macarthur about the matter.¹⁴⁵

In the year 1853 he became one of the original proprietors of the Hunter River Railway Company, which was formed to construct a railway from Newcastle to Maitland. This enterprise was taken over by the State Government in 1855.¹⁴⁶

Again his career suffered a setback, or so it seemed to him, when in 1865 the Government resumed the Burwood wharf. He complained:

In the year 1849, with the permission and authority of the Government, I constructed a wharf on the land immediately to the East of the A. A. Company's wharf, and having erected thereon shoots for the shipment of coal, and subsequently obtained an act of the local legislature empowering me to construct a railway through the lands of the A. A. Company to connect my mines with this wharf, I enjoyed full possession and use of this wharf until the year 1865 when the Government resumed the land for public purposes, and charged me 1/- per week and 1d. per ton on all coal shipped. I pay these charges, but under protest.¹⁴⁷

An event which was to prove significant in the life of Dr Mitchell occurred on 11 April 1860 when his elder daughter, Augusta Maria, married the Clerk of the Executive Council, Edward Christopher Merewether.¹⁴⁸ Shortly afterwards Merewether became the General Superintendent

of the Australian Agricultural Company, and it was not long before Mitchell was on better terms with the Company. Merewether and his wife in fact took up residence on portion of the Burwood Estate in a house named The Ridge. In succeeding years Merewether proved to be both friend and consultant to his father-in-law, eventually taking over the management of the Burwood Estate.¹⁴⁹

Honours accrued for Dr Mitchell during this period.

Having been:

An original member [of the Australian Subscription Library] on its foundation in 1826, and of its successor the Australian Library and Literary Institute 1853-69, [he] was a member of nearly every committee during the 37 years 1832-69, became President in succession to Sir Charles Nicholson in 1856, and managed the library's affairs for 13 years till his death 7 months before it was taken over by the Government and made into a Free Public Library in Sept. 1869.¹⁵⁰

He had also been a member of the New South Wales Medical Board since 1844, and became President of it in 1852.¹⁵¹

Because he was President of the Medical Board, he became ex officio a Trustee of the Australian Museum in 1853, and remained so until his death.¹⁵²

In 1855 he became a member of the Legislative Council and likewise retained that position until his death.¹⁵³

There is no evidence to suggest, however, that he was keenly interested in politics; rather does he seem to have undertaken parliamentary duty from a sense of civic responsibility, presumably having been invited to stand because he was a leading public figure. Another position which he attained in 1857 and kept for life was that of Senior Fellow of St Paul's College at the University of Sydney.¹⁵⁴ From as early as 1855, perhaps earlier, until 1864 or later he was Vice-President of the Australian Club.¹⁵⁵

On his death, the Council of St Paul's College record-

ed the tribute that the late Dr James Mitchell had been a 'constant friend and supporter, a zealous and sufficient member of the Council and a munificent benefactor to the College'.¹⁵⁶

Further evidence of his beneficence comes¹⁵⁷ from the Garrison Church at Millers Point close to where he lived at Cumberland Place:

It would seem clear that Dr James Mitchell was very active in the affairs of Holy Trinity Parish, Sydney. He was a member of the building committee chosen to see to the erection of Chancel and Vestry. On the completion of the Chancel he offered to put in the East window on behalf of his wife as a memorial to her parents. It is certainly one of the most beautiful in Australia—quite celebrated. The glass seems to have been procured from C. Clutterbuck Esq., of Stratford Essex, England and cost £100. The inscription runs: 'In memory of Helenus Scott Esq., and Augusta Maria his wife by their affectionate daughter. MDCCCLX'.

The second window which is somewhat obscured by the organ was apparently given by members of the Mitchell family. The inscription runs: 'In memory of James Mitchell Esq. and Augusta Mary [sic], his wife'. No date is given.

Wolfskehl and the Great Will Case, 1865-1869

The last years of Mitchell's life were marked by his association with a German confidence trickster named William Ernest Wolfskehl. In a will made shortly before his death Mitchell favoured Wolfskehl and the shocked family contested the will in a famous trial that became known as the Great Will Case. The doctor's son-in-law Edward Christopher Merewether and son David Scott Mitchell were particularly active in collecting evidence to assist the family's Counsel.¹⁵⁸

The period began inauspiciously for Mitchell. Following the Government's resumption of his wharf land, which incensed him, further irritation was provoked by Canon Fletcher of Christ Church Cathedral who demanded payment

of rent for that portion of the Glebe crossed by the doctor's railway line. Settling of the dispute involved the services of E. C. Merewether as arbitrator for Mitchell, John Bingle as arbitrator for Canon Fletcher, and William Keene as umpire. Rent was fixed at £18.5.0 p.a. when agreement was reached.

In July of 1866 Mitchell unsuccessfully offered the A. A. Company a lease of the Burwood colliery and coal lands in the neighbourhood of Newcastle. Shortly afterwards the Municipal Council imposed a rate assessment of £74.13.7 on land occupied by the doctor's railway and staiths; he appealed against this assessment and succeeded in having the rates reduced to £32.13.7.¹⁵⁹

Mitchell first met Wolfskehl about April 1865 and was considerably impressed by him despite misgivings on the part of E. C. Merewether and other members of the family. Wolfskehl claimed to be a doctor who was expecting large sums of money from Germany. He claimed also to have had experience in the manufacture of glass and porcelain. It transpired subsequently during the hearing of the Great Will Case that all these claims were false, but in the meantime Mitchell's confidence and faith in him were not shaken sufficiently to prevent a business partnership from being formed.

Their first project was to establish a glass and porcelain factory in the Burwood Estate. This proving unsuccessful, they turned to the formation of the Burwood and Newcastle Smelting Company. An engineer named Maurice Thomas was engaged for a period of ten years from 1 May 1866 and the Burwood smelting works at Smelters Beach were completely renovated under his supervision.¹⁶⁰ Coal for the smelting works came from Mitchell's Burwood

Coal Company, which had a railway passing the door.¹⁶¹ Copper ore was to be obtained from the Currawong mine near Goulburn, but supplies proved to be insufficient and unsatisfactory, with the result that smelting ceased nine months after it started in September 1866.¹⁶² Thomas continued in employment, effecting repairs and improvements to the works and site. In November 1868 Mitchell sent him to Adelaide to procure ore. The ore he obtained was never landed at Newcastle owing to the death of Mitchell and the uncertainty about payment for it.

Mitchell and Wolfskehl were two of the four directors of the Currawong Copper Mining Company. Wolfskehl held the greatest number of shares, about one third, in his own name and in the name of his brother, but only paid calls and then with money from the Burwood Coal Company.

Concurrently with the smelting and mining projects, Mitchell continued to lease portions of the Burwood Estate. As a rentier he incidentally contributed to the development of the Newcastle district. The first tannery in Newcastle was established at Flaggy Creek within the Burwood Estate by William Mills in 1866.¹⁶³ Pottery making, which had been undertaken previously at Burwood Pottery, was resumed by Mr. Welham a month later.¹⁶⁴ Later in the same year manufacture of firebricks, tiles, etc., commenced at the Burwood Fire Clay and Brick Works established by Hughes and Drury.¹⁶⁵ A band of fireclay was said to run parallel with coal strata through the entire length of the seam in the Burwood coalmines.¹⁶⁶

Mitchell died at his home in Cumberland Place, Sydney, on 1 February 1869, after several months' illness. He was buried at Rookwood Cemetery with a private funeral. The Legislative Council paid him the customary honour of

adjourning at 4 p.m. on 3 February 1869 to 4.40 p.m. on 4 February 1869.¹⁶⁷ Mr. Owen stated in the Council that Mitchell had been highly regarded as an M.L.C., a private citizen, and as a member of the medical profession.

To the family's grief were soon added worry and stress when it was learned that Mitchell, unbeknown to them, had made another will a month before his death investing Wolfskehl with entire control over his estate. It was decided to contest this will on the grounds that Mitchell had not been of sound mind and had been suffering from undue influence from Wolfskehl at the time of making it. A previous will made in 1841 was sought to be upheld in its stead.

The Great Will Case, as newspapers described it, was heard in the Supreme Court of N.S.W. over nine days in May 1869 and was sensational even apart from the nature of the case. The Attorney General himself defended Wolfskehl, assisted by Mr Darley and instructed by Messrs Daintry and Chapman; and Sir James Martin, Q.C., Mr Gordon and Mr Fisher, instructed by Messrs Norton and Barker, appeared for the family before Mr Justice Hargrave and a jury of twelve.¹⁶⁸ The court at first prohibited publication of the proceedings.¹⁶⁹ It was announced that there would be fifty witnesses on one side and forty on the other.¹⁷⁰

E. C. Merewether testified in court that he had consistently distrusted Wolfskehl and had tried to caution Mitchell against him. Against Merewether's better judgement he had invested and lost money in the glass and porcelain factory, the Burwood and Newcastle Smelting Company, and later in the Irrawang Company formed by Mitchell and Wolfskehl for some vague purpose concerning copper. The

triple partnership of the Irrawang Company had dissolved in September 1868 with no assets except an unsighted 70-80 tons of copper. In addition, Merewether testified that his wife had rejected her father's offer to buy her £100,000 worth of shares in the Burwood Colliery and the smelting works on condition that she became a partner with Wolfskehl.

Evidence was submitted by the defence to the effect that Mitchell had been 'fast sinking into a state of senile insanity', symptoms of which were failing memory, incoherence and distracted attention coupled with sudden and brief spells of sleeping. It was demonstrated clearly that he placed irrational faith in Wolfskehl, of which the ventures in glass and porcelain manufacture, the Burwood and Newcastle Smelting Company, and the Currawong mine were but incidents. He had advanced nearly £25,000 to Wolfskehl.¹⁷¹ James Hannell, M.L.A., first Mayor of Newcastle, wrote to Merewether¹⁷² and said that:

I must premise my statement by saying that my acquaintance with that gentleman [Dr Mitchell] extended over a long period of time. I have had business transactions with him and I purchased the Ship Inn and other property from him. I have also had frequent conversations with him in reference to his claim against the Government for resuming possession of the coal staiths at Newcastle and I have always found him exceedingly shrewd, sharp and intelligent, well capable of taking care of his own interests in every respect ... In the month of November last he called upon me ... to settle the claim of the Council for arrears of rates for which he was being sued by us, in that occasion I found it impossible to obtain from him an intelligible or coherent reply.

Wolfskehl was variously described in testimony assembled by Merewether and D. S. Mitchell as a scoundrel, forger, vagabond, 'mauvet sujet' [sic], an ill-reputed swindler, plausible adventurer and 'certainly not a doctor'. The family's attitude towards him is indicated by D.S. Mitchell

in his statement¹⁷³ that 'There was only one place where I would make an appointment to meet him, viz, at the foot of the gallows, he being to mount the same immediately'.

The jury found for the Mitchell family upon all three points: first, that it was not the will and testament of James Mitchell; second, that when the will was made, the testator was of unsound mind; and third, that the will was obtained by undue influence.¹⁷⁴ Subsequently Judge Hargrave awarded costs against Wolfskehl and decided not to grant probate.

Wolfskehl wrote a long letter to the Empire¹⁷⁵ stating why he had not given evidence before the Supreme Court, how the judge was in error in his handling of the case, and that he intended to appeal against the Court's decision. To the relief of the Mitchell family, however, he did not proceed with the appeal.

Having won the case, and being freed of the threat of appeal, the Mitchell family still had other troubles to overcome before they could benefit from the Court's decision. Dr Mitchell had died owing considerable sums of money, and his creditors now took action through the Colonial Courts to recover their debts from his estate. A receiver and manager of the estate was appointed in the person of Mr Charles James Stevens,¹⁷⁶ who was authorized to receive claims and to raise moneys on mortgage of the testator's estate. Stevens succeeded in paying off the debts by November 1869, when he transferred the sum of £10,279 to the trustees of the will, D. S. Mitchell and E.C. Merewether. With this action Stevens was discharged from his duties as receiver. The original trustees had been D. S. Mitchell, Helenus Scott, and A. W. Scott, but the Scotts disclaimed responsibility on 16 October 1869

and Mrs Mitchell appointed Merewether in their place on 6 November 1869.

The estate of the Hon. Dr James Mitchell, M.L.C., comprised £10,279 in cash handed over by the receiver, and over 45,000 acres of land in and around Newcastle.¹⁷⁷ Following the death of his widow in 1872, this land was shared amongst his three children.¹⁷⁸ Mrs Augusta Maria Merewether and her husband received the whole of the Burwood Estate; Mrs Margaret Scott Quigley and her husband received land at Stockton and Teralba; and David Scott Mitchell received the Hexham Estate and land in the Rothbury area, mainly the latter. Cash adjustment of values was made, the Merewethers paying D. S. Mitchell £11,000 and Mrs Quigley £12,000, and D. S. Mitchell paying Mrs Quigley £4,000. E. C. Merewether, and later the trustees of his estate, managed D. S. Mitchell's land for him as well as the Burwood Estate.

An obituary notice in the Sydney Morning Herald¹⁷⁹ contained fitting tributes to Dr Mitchell:

[His death] terminated a long and useful career ... Long after Mr Mitchell's position ceased to be that of an officer directly connected with either the Imperial or the Colonial Government his valuable experience was frequently placed at the disposal of the authorities; his application, energy, and intelligence being deservedly appreciated ... [he] was, throughout his whole career, distinguished by his anxious desire to promote - as far as in him lay - the due development of the resources of this country ... Considering his great age - in activity, in cheerfulness, in conversational powers, and in devotion to business, Mr Mitchell was (until very recently) far superior to many much younger men; so much so, that it was somewhat difficult to realise the fact that he was personally familiar with scenes which have long since become mere matters of history.

The name of Dr Mitchell is commemorated in the Newcastle district by Mitchell Streets in the suburbs of

Merewether, Stockton, Tighes Hill and Teralba, by Mitchell Park in Merewether, and Mitchell's Flat near Singleton.

James Mitchell has not received the recognition to which his long list of accomplishments entitles him. Arriving in Australia as a young Army doctor in his late twenties, he had already seen active service in such historic engagements as the Battles of New Orleans and Waterloo, yet he went on to distinguish himself in many different spheres of activity. As a doctor he was in charge of the Rum Hospital for several years before being dismissed because of a clash of personalities and because of his adherence to principles. He went on to develop a successful private practice and attained the high post of President of the New South Wales Medical Board. As a landowner he acquired, by free grant and by purchase, over 45,000 acres in the Newcastle district. Through his profit-making motives as a rentier he was responsible for considerable early development of that district. As a company promoter and financier he was associated with companies such as the Australian Gas Light Company, the Australian Mutual Provident Society, the Newcastle Coal and Copper Company and the Hunter River Railway Company. As a benefactor he was concerned mostly with the Church of England in its proposed church at Stockton, Garrison Church, and St Paul's College at the University of Sydney. In addition, he served in such public positions as President of the Trustees of the Free Public Library of Sydney, Director of the Australian Museum, and Member of the Legislative Council of New South Wales. Truly he was a man of great 'application, energy, and intelligence'.

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13. H. Dangar, Index and directory to map of the country bordering upon the Hunter River; the lands of the Australian Agricultural Company; with the ground-plan and allotments of King's Town, New South Wales, London, 1828, p.16.
Mitchell is shown as receiving, on 15 August 1822, a grant of 2,000 acres being allotment no.4 in the Sedgefield Parish, County of Durham, with an annual quit rent of £2 and amount of quit rent redemption £40.
14. Ibid, loc. cit. Robert Scott, J.P., on 24 April 1822 was granted 2,060 acres being allotment no.5 in the Sedgefield Parish, County of Durham, with an annual quit rent of £2.1.2½ and amount of quit rent redemption £41.4.2.
Helenus Scott, on 24 April 1822 was granted 2,090 acres being allotment no.6 in the Sedgefield Parish, County of Durham, with an annual quit rent of £2.1.9½ and amount of quit rent redemption £41.15.10.
15. Ibid, p.18, James Bowman, J.P., acquired three lots of land in the Ravensworth Parish, County of Durham. On 4 June 1824 he was granted 2,560 acres in allotment 6, with no quit rent. On 17 May 1825 he purchased 5,000 acres in allotment 7, with an annual quit rent of £5 and amount of quit rent redemption £100. On 17 May 1825 he was granted 4,600 acres in allotment 8 with an annual quit rent of £46 and without quit rent redemption.
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148. Merewether Estate archives. A1, Family papers.
149. Ibid. A13, Wills and related papers.
150. H.C.L. Anderson, *op. cit.*.
151. Australian Encyclopaedia, 6, p.p.109-110.
152. Australian Museum, Sydney, Minutes of meetings of Trustees. In the Museum.
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154. St Paul's College, University of Sydney, Council minutes. In the College.
155. Australian Club, Sydney, Rules and regulations for the government of the Australian Club ... with ... list of members, 1855, 1857, 1859 and 1864.
156. St Paul's College, University of Sydney, Council minutes, 20 February, 1869.
157. A. Yuill, Rector of the Parish of Holy Trinity, to the author 15 October 1965.
158. Wolfskehl papers, Merewether Estate archives, A1. This collection of letters, notes and newspaper cuttings about Wolfskehl, Mitchell and the Great Will Case was assembled by E.C. Merewether and D.S. Mitchell. It provides the fullest record available of J. Mitchell's life in this period and is the main source of information for the following account.
159. Newcastle Chronicle, 13 October 1866.
160. Ibid., 5 September 1866.
161. Ibid., 29 September 1866.
162. Ibid., 5 September 1866.
163. Ibid., 25 August 1866.
164. Ibid., 19 September 1866.
165. Ibid., 17 November 1866.
166. Ibid.
167. S.M.H., 4 February 1869.
168. Newcastle Chronicle, 18 May 1869.
169. Australian Encyclopaedia, 6, p.p.109-110.
170. Newcastle Chronicle, 4 May 1869.
171. S.M.H., 14, 15 and 18 May 1869.
172. James Hannell to E.C. Merewether, 29 April 1869, Merewether Estate archives. A1, Wolfskehl papers.
173. D.S. Mitchell to E.C. Merewether, 10 August 1869, Merewether Estate archives. A1, Private correspondence of D. S. Mitchell.
174. Newcastle Chronicle, 25 May 1869.
175. Empire, 1 June 1869.
176. Newcastle Chronicle, 25 May 1869.
177. N.S.W., Registrar-General's Department, Deed of partition dated 25 May 1872, book 130 no.712 on 20 July 1872.

--- Re-registered deed of partition dated 25 May 1872, book 144 no.354 on 20 August 1874.

The deed was re-registered at the instigation of the Australian Agricultural Company which was seeking a lease of portion of the Burwood Estate from E.C. Merewether for coalmining purposes and queried his title to the land because, inter alia, Mrs Quigley's signature was missing from the first deed. Each deed is very lengthy and obviously the second copy contains inaccuracies due to hurried writing. Figures for land areas expressed in the first copy of the deed have been preferred where there is discrepancy. These reveal that Dr Mitchell bequeathed a total of 45,596 acres, 1 rood and 5 perches of land in the Newcastle district: no mention is made of land elsewhere. In the partition E.C. Merewether received as his wife's share the whole of the Burwood Estate containing 2,297 acres, 3 roods; C.J. Stevens in trust for Mrs Quigley received 2,604 acres at Stockton and Teralba; and D.S. Mitchell 40,694 acres, 2 roods and 5 perches in the Rothbury region and the Hexham Estate, mostly the former.

178. Ibid.

179. S.M.H., 6 February 1869.

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