

Jerome E. Porter

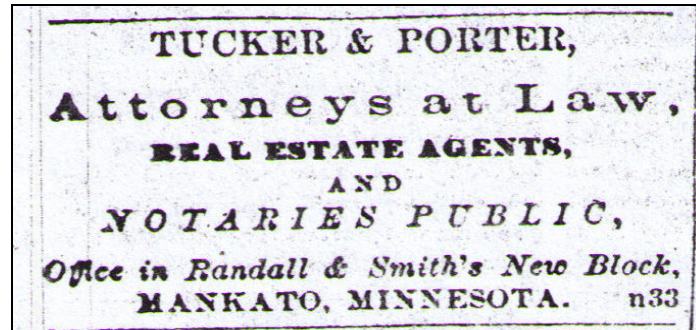
(December 28, 1843 - December 9, 1910)



JUDGE JEROME E. PORTER.



Jerome Porter, a college graduate and a member of the New York bar, arrived in Mankato, the seat of Blue Earth County, in late 1870. He was almost twenty-seven years old. He entered into a partnership and the firm's business card appeared in the local press:¹



In 1872 he was elected Probate Judge of the county, and was known thereafter as "Judge." When he ran for re-election two years later, the *Mankato Review* gave him a flattering endorsement:

Two years ago, when Judge Porter's name was first presented to the voters of Blue Earth county for judge of probate, it was promised that he was a gentleman in every respect qualified for the duties of that office, and would faithfully and impartially discharge them. This pledge has been fulfilled in every respect, and to-day there is no better officer in the state of Minnesota.

Every person who has had business with the probate court will bear testimony to Judge Porter's honesty, ability and courteous and gentlemanly demeanor. In every respect he is the best and most competent person in that position since the organization of the county. These facts being conceded on all hands, what is the necessity or

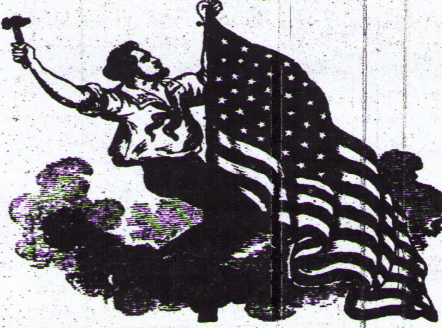
¹ *Mankato Record*, December 23, 1871, front page (enlarged). The complete name of Tucker is not known.

occasion for turning him out? There is none.— Then see to it, voters, that he is re-elected.²

On election day, *The Review* endorsed the following ticket, which included Porter:³

THE REVIEW.
MANKATO, TUESDAY, NOV. 3, 1874.

**Farmers' and Work-
ingmen's Ticket.**



For Chief Justice of Supreme Court,
WESCOTT WILKIN.

For Associate Justice,
WM. LOCHREN.

For Congress, First District,
FRANKLIN H. WAITE.

For Judge, Sixth Judicial District,
DANIEL BUCK.

For Legislative Representatives,
**DANIEL W. BURLESON,
CHARLES F. WARNER,
ROBERT H. HUGHES,
LYSANDER COOK,
E. T. CHAMPLIN.**

For County Auditor,
S. W. GLEASON.

For County Attorney,
A. R. PFAU.

For Judge Probate,
JEROME E. PORTER.

For Court Commissioner,
WM. B. TORREY.

He served on the probate court until 1881. Returning to private practice, he was associated briefly with former District Court Judge Franklin Waite. In April 1882, he ran as a Democrat for

² *Mankato Review*, October 20, 1874, at 2.

³ *Mankato Review*, November 3, 1874, at 2.

Judge of the Municipal Court, an office authorized by the Twentieth Second Legislature in November 1881,⁴ and defeated Clark Gilmore easily:

Jerome Porter.....723
Clark W. Gilmore.....279 ⁵

He was the second municipal court judge, the first being Orrin O. Pitcher. The term of this office was three years, its annual salary \$1,000.⁶ In his obituary two decades later, the *Free Press* recalled a judge who was lenient and mindful of the public interest:

As a judge he was lenient, preferring to err on that side than the other. In every office he was faithful in the discharge of his duties, and as president of the board of public works he was progressive, jealous of the city's rights, untiring in the collections of moneys due the city, and at all times had the thought of the of the city's good before his mind rather than the desires, often-selfish, of individuals.

In April 1888, he soundly defeated J. R. Ogle, who had the Republican endorsement:

⁴ Special Laws 1881 (Special Session), Chapter 224, at p. 236 (November 22, 1881). Excerpts are posted in Appendix A, "Orrin C. Pitcher (1830-1902)" (MLHP, 2013-2014). ⁴ It took effect January 2, 1882, but also required a "general city election be holden" on the first Tuesday in April 1882, to elect the judge and a special judge of the court. That three month gap between the law's effective date and the election was considered a "vacancy" which only the governor could fill. On January 13, 1882, Governor Pillsbury appointed Orrin Pitcher municipal court judge and Clark W. Gilmore, special municipal judge. The drafters likely thought that the appointees' incumbency would give them an advantage in the April election. They were mistaken. In the Republican nominating convention for city offices, Gilmore challenged Pitcher, and won the endorsement.

⁵ *Mankato Free Press* (weekly), April 7, 1882, at 3.

⁶ The Mankato Municipal Court Act was amended by the Legislature on March 5, 1885. Excerpts from 1885 Special Laws, ch. 119, §§ 1-3, 19, 20, are posted in Appendix A, at 11-15, below.

Jerome E. Porter (D).....975
J. R. Ogle (R).....743 ⁷

Running for re-election in 1891, he was opposed by Ira P. Shissler, a Republican, who had the endorsement of *The Free Press*, a staunch Republican organ. ⁸ In the election on Tuesday, April 7, 1891, he defeated Shissler by only 56 votes:

Jerome E. Porter (D).....782
Ira P. Shissler (R).....726 ⁹

The high level of partisanship at that time is reflected in the *Free Press*' explanation of his victory:

The boastful assertions made by a certain faction of the Democratic leaders that Judge Porter must be shelved at any cost, because of his refusal to betray the trust of his party by putting Gen. Baker on the Democratic Congressional ticket, caused his friends to work with untiring zeal for his success and created no little sympathy for him with Republicans. Mr. Porter owes his election to Republicans and not to members of his own party, and this fact will apply to several former elections as well as that of yesterday. Had the Republicans stood by Mr. Shissler, as he deserved, he

⁷ The Republican party's slate of candidates for municipal office, which included Ogle, was published in the *Mankato Free Press*, Saturday, March 31, 1888, at 2. For the election results, see *Mankato Free Press*, April 4, 1888, at 2. Porter received 57% of the vote, Ogle 43%.

⁸ *Mankato Free Press*, April 6, 1891, at 2 ("For the three general offices, municipal judge, city recorder and city treasurer, party lines have been drawn, and the FREE PRESS desires to urge the election of its party nominees."). The next paragraph contained a detailed description of Shissler. It is posted in "Ira P. Shissler (1844-1903)" 1-2 (MLHP, 2013).

⁹ *Mankato Fress Press*, April 8, 1891, at 2. Porter received 51.9% of the vote to Shissler's 48.1%. The article's headline is noteworthy for its sarcasm:

**Porter, the Invincible, Re-elected by
56 Majority Despite the Opposition
of the Leaders of his own Party.**

would have been elected by a good, round majority.¹⁰

Heartened by these results, Shissler challenged Porter in the next election on April 4, 1893, and won easily:

Ira P. Shissler.....944
Jerome E. Porter.....790 ¹¹

Porter, however, would not relinquish the office, contending that he was entitled to serve the remaining one year of the three year term to which he was elected in 1891.¹² Shissler countered that a special law enacted in 1891 reduced the term to two years. To oust Porter, Shissler brought a *quo warranto* proceeding in the Supreme Court.¹³ It was argued on April 25th, just three weeks after the election, and decided on May 19th. The Court ruled in favor of Porter, declaring the 1891 Special Law unconstitutional

¹⁰ Id.

¹¹ *Mankato Free Press*, Wednesday, April 5, 1893, at 3. Shissler received 54.4 % of the vote to Porter's 45.6%.

¹² *Mankato Free Press*, April 11, 1893, at 3 (describing Porter's refusal).

¹³ *Quo warranto* is a legal proceeding in which an individual's right to hold public office is challenged. In 1891, the Supreme Court had original jurisdiction over such an action:

Sec. 4408. Original and appellate.— The supreme court has power to issue writs of error, certiorari, mandamus, prohibition, quo warranto, and also all other writs and processes, not especially provided for by law, to all courts of inferior jurisdiction, to corporations and to individuals, that are necessary to the furtherance of justice and the execution of the laws; and shall be always open for the issuance and return of all such writs and processes, and for the hearing and determination of the same, and all matters therein involved, subject to such regulations and conditions as the court may prescribe. Any judge of said court may order the issuance of any such writ or process, and prescribe as to the service and return of the same.

Stat., ch. 66, §4408, at 144 (1891). See generally, Jason Taylor Fitzgerald, "The Writ of Quo Warranto in Minnesota's Legal and Political History: A Study of its Origins, Development and Use to Achieve Personal, Economic, Political and Legal Ends" (MLHP, 2015).

because its subject was not expressed in its title.¹⁴ The *Mankato Free Press* grudgingly reported the decision:

JUDGE PORTER WILL STAY.

The Supreme Court yesterday discharged the order to show cause in the proceedings between Judge Porter and Ira. P. Schissler regarding the municipal judgeship. This sustains a point made by Judge Porter that the charter provision does not supercede the municipal court act, and Judge Porter will hold the office another year. At the same time it will make Mr. Shissler's term three years, instead of two.¹⁵

His term over, Porter returned briefly to private practice. In 1898, he was appointed head the Board of Public Works. He held this non-partisan post for about a decade. In a city history published in 1903, he listed the public offices he has and currently held:

PORTER, Judge Jerome E.—Born December 28, 1843, at Macedon, Wayne County, New York. When he was only a few months old, his parents moved to a farm near Albion, New York, removing to that village about ten years later. Here the subject of this sketch was educated at the village academy, and went thence to Genessee College (now Syracuse University), graduating in the Class of 1863. Returning home, he entered a law office at Albion and was admitted to the bar at Buffalo in 1866. He continued at Albion until 1870, when he came to Minnesota and finally located at Mankato in September of that year.

In the Fall of 1872, he was elected Probate Judge of Blue Earth County, which office he held for eight

¹⁴ *State ex rel. Ira P. Shissler v. Jerome Porter*, 53 Minn. 279, 55 N. W. 134 (1893), is posted in the Appendix, Part B, below at 15-25.

¹⁵ *Mankato Free Press*, Saturday, May 20, 1893, at 3 (synopsis of decision omitted).

years. Retiring in 1881, he formed a partnership with Judge Waite, but in the spring of the following year (1882), he was elected judge of the Municipal Court of Mankato (sic). He served faithfully in this position for twelve years and then retired again for a brief, period to the practice of his profession.

In May, 1898, he was appointed President of the Mankato Board of Public Works, which office he still holds. Judge Porter is an enthusiastic member of the A. O. U. W., and in 1893-4 was chosen Grand Master of the lodge for the state of Minnesota.

He was married October 6th, 1875, to Marion J. DeGraft of Mankato and they have three children: Jerome D., Harriet M. and Lulu. ¹⁶

The Judge died on Friday, December 9, 1910, a few weeks shy of his sixty-seventh year. The following day, the *Mankato Free Press* reported the story on its front page:

**JUDGE J. E. PORTER IS
SUMMONED BY DEATH**

**Long a Resident of Mankato;
Filled Public Office**

POMINENT IN THE A. O. U. W.

**President Board of Public Works
for Several Years; Victim of
Bright's Disease**

¹⁶ *Mankato, Its First Fifty Years* 292 (1903) (the photo on the first page is from this book).

Judge J. E. Porter passed away between six and seven o'clock last evening at his home, 209 State street, after an illness of some weeks. He had been afflicted with chronic Bright's disease for several years, but he was not taken seriously ill until the latter part of the summer, when he was taken to Immanuel hospital. He remained there some weeks and improved somewhat and was then taken to his home. His condition has been serious for a week or more, and the past two or three days he was in a state of coma, unconscious and without suffering. Only his unusual vitality kept him alive as long as it did.

Well-known Resident.

Judge Jerome E. Porter was one of the best known residents of the city. He was born December 28, 1842, at Macedon, Wayne county, New York. When he was only a few months old, his parents moved to a farm near Albion, New York, removing to that village about ten years later. Here he was educated at the village academy, and went thence to Genessee college (now Syracuse university), graduating in the class of 1863. Returning home, he entered a law office at Albion and was admitted to the bar at Buffalo in 1866. He continued at Albion until 1870, when he came to Mankato and finally located at Mankato in September of that year.

Elected Judge of Probate.

In the fall of 1872, he was elected probate judge of Blue Earth county, which office he held for eight years. Retiring in 1881, he formed a partnership with the late Judge Waite, but in the spring of the following year, he was elected judge of the municipal court of Mankato. He served faithfully in this position

for twelve years and then retired again for a brief period to the practice his profession.

In May, 1898, he was appointed president of the board of public works, which office he held until he resigned a little over two years ago. When G. G. Krost was appointed clerk of the district court to succeed the late Stephen Thorne he appointed Judge Porter his deputy, and this position the latter held until his death.

Prominent in A. O. U. W.

Judge Porter was an enthusiastic member of the A. O. U. W., and in 1893-4 was chosen grand master of the Order for the state of Minnesota. He held various offices in the local lodge.

He was married October 6, 1875, to Marion J. DeGraff of Mankato, who survives him. He also leaves one son, Jerome D. Porter of Kansas City, Mo., and two daughters, Hattie M., wife of Lieutenant J. Lynch of the regular army, stationed at Fort Snelling, and Mrs. Lulu McQuig. The children were all at home the last few days.

Possessed Rugged Honesty.

Judge Porter possessed rugged honesty of the character and throughout all of his long career not one word was ever said by anyone that would reflect on his character or motives. He was a gentleman of the old school, uniformly polite and courteous, and accommodating to the extent that he found himself able. As a judge he was lenient, preferring to err on that side than the other. In every office he was faithful in the discharge of his duties, and as president of the board of public works he was

progressive, jealous of the city's rights, untiring in the collections of moneys due the city, and at all times had the thought of the city's good before his mind rather than the desires, often-selfish, of individuals.

Man of Highest Impulse.

Judge Porter was a kind and indulgent husband and father, a good friend and neighbor, a public spirited citizen, and a man of the best and highest impulses. He came from a good family, whose ties were well knitted. He was a man of simple domestic tastes and simple pleasures, whose home had greater attractions for him than the street or busy mart, and he was a great reader, being interested in current literature as well as in books. His death casts a shade of sorrow over the city, where he possessed the highest respect of all. ¹⁷ □



¹⁷ *Mankato Free Press*, Saturday, December 10, 1910, at 1 (funeral arrangements omitted). In an account of the funeral published two days later, the names of the "honorary pallbearers" were listed:

[T]he honorary pallbearers were Judge A. R. Pfau, Judge Lorin Cray, Judge W. F. Hughes, Andrew Anderson, F. M. Currier and C. O. Dailey.

Mankato Free Press, Monday, December 12, 1905, at 5. Cray served on the Sixth Judicial Court from January 1899 to May 1908, when he resigned, and was succeeded by Albert R. Pfau, who served from 1908 to 1915.

APPENDIX

Section	Pages
A. Excerpts from the Mankato Municipal Court Act (1885).....	12-16
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A. AN ACT TO ESTABLISH A MUNICIPAL COURT IN THE CITY OF MANKATO, BLUE EARTH COUNTY, MINNESOTA.

1885 Special Laws, Chapter 119, at pp. 349-361.

Be it enacted by the Legislature of the State of Minnesota:

SECTION 1. There is hereby established in the city of Mankato, in the county of Blue Earth, a municipal court for the transaction of all business which may lawfully come before it. Said court shall be a court of record, and shall have a clerk and a seal, and shall have jurisdiction to hear, try and determine civil actions at law, where the amounts in controversy does not exceed five hundred (500) dollars. It shall also have exclusive jurisdiction to hear all complaints, and conduct all examinations and trials in criminal cases arising or triable within the city of Mankato, heretofore cognizable before a justice of the peace. It shall not have jurisdiction of actions for divorce, nor of any action where the relief asked for in the complaint is purely equitable in its nature nor cases involving the title to real estate; nor for false

imprisonment, libel, slander, malicious prosecution, criminal conversations or seduction, or upon a promise to marry; nor for an action against an executor or administrator as such, and when in any cause pending in said court a counter claim in excess of five hundred (500) dollars over plaintiff's claim, or an equitable defense or ground for equitable relief is interposed, or whenever it shall appear from the pleadings or upon the trial of any cause that the title to real estate is involved, the said court shall immediately cause an entry of the facts to be made of record, and cease all further proceedings in the cause, and order the clerk to certify and return to the district court in and for the county of Blue Earth, a transcript of all entries made in the record relating to the cause, together with all process and papers relating to the cause, and the clerk shall within ten (10) days after being so ordered make such certificate and return; and thereupon said district court shall proceed in the cause to final judgment and execution the same as if said cause had been commenced in said district court, as near as may be, and the costs shall abide the event of the action; *Provided*, The clerk of said municipal court shall not make said certificate or return, until the costs chargeable by the clerk in favor of the city have been paid.

SEC. 2. The qualified electors of the city of Mankato shall, at the general city election to be holden on the first (1st) Tuesday in April, in the year one thousand eight hundred and eighty-five (1885), and on the day of the general city election every third (3d) year thereafter, elect a suitable person, with the qualifications hereinafter mentioned, to the office of judge of said municipal court, to be called "municipal judge," who shall hold his office for the term of three (3) years, and until his successor shall be elected and

qualified. In case of any vacancy in the office of municipal judge, the governor of the state of Minnesota shall appoint some qualified person to said office until the next annual city election, occurring more than thirty (30) days after the vacancy shall have happened, when a judge shall be elected for a full term of three (3) years.

SEC. 3. The judge of the municipal court shall be a resident of the city of Mankato, and a qualified elector therein, a person learned in the law and duly admitted to practice as an attorney in this state. Before entering upon the duties of his office he shall take and subscribe an oath as prescribed in the general statutes for judicial officers, which oath shall be filed in the office of the city recorder of said city. He shall have the general powers of judges of courts of record, and may administer oaths and take and certify acknowledgments in all cases, and as a conservator of the peace shall have all power and authority which is by law vested in the justices of the peace, or any other judicial officer. There shall be one (1) special judge of said municipal court, whose manner of election, term of office, powers, duties and qualifications shall be the same as those of municipal judge, except as otherwise provided in this act, and his successor shall be elected and vacancies in his office filled in like manner. At the request of the municipal judge, or in case of the absence, sickness or disqualification of the municipal judge, the said special judge shall act as judge of said court. When the special judge so acts at the request of the municipal judge, the said special judge [and the municipal judge] may each have and exercise the powers of said court. The said special judge shall not act on the trial or examination of any case except as above provided, and such special judge acting as

judge of said court, shall receive compensation from the city at the rate of three (3) dollars per day, and when said special judge shall act for any other cause than the sickness or disqualification of said municipal judge, three (3) dollars per day for each day that said special judge shall so act shall be deducted from the salary of said municipal judge. This section shall not incapacitate such special judge from acting as attorney in said court: but when such judge is acting as judge of said court, he shall take no action in such case, save to adjourn the same. Nothing in this act shall be so construed as to disqualify or prevent the municipal judge from practicing as an attorney or counselor in any court of this state, except in said municipal court. In all actions or proceedings in the district court of Blue Earth county, wherein the judge of said court may enter a trial of said actions or proceedings, the same may be referred to the said municipal judge to hear, try and determine, or report the evidence thereon and may be ordered or agreed upon, and said judge so acting as referee shall be entitled to the same fee for [said] services as other referees. He may accept said reference with all the powers of a referee.

. . . .

SEC. 19. The judges of said court shall receive a salary of one thousand (1,000) dollars per annum, to be paid in equal monthly installments from the treasury of the city of Mankato in like manner as other officers of said city. . . .

SEC. 20. The judge of said municipal court shall hold no other office created or existing under or by virtue of the laws of the state of Minnesota, or created or existing under the charter, ordinances or by-laws of the city of Mankato; and said municipal judge, while

holding said office, shall have no law partner, but this section shall not apply to the special judge of said court, but when said special judge is acting as judge of said court, his law partner shall not practice before him.

....

Approved March 7, 1885.

.... Λ

B. *State ex rel. Shissler v. Porter.*

A close reading of the following decision discloses the justices' skepticism of the competency of legislators to perform their duties. The court declared that the title of the 1891 law reducing the term from three years to two violated Article 4, §27, of the state constitution requiring that no law shall embrace more than one subject, which shall be expressed in its title. Justice Loren W. Collins writes:

[W]e are to inquire whether the legislators were fairly informed by such titles of the nature and character of the proposed legislation....The titles to these amendatory acts, if the legislation embraced therein was designed to affect the provisions of chapter 119, were very misleading, and well calculated to accomplish the mischief the constitutional requirement was expressly designed to prevent.

He seems to have suspected that the authors of the 1891 bill tried to "slip" it past their colleagues, many of whom he apparently thought read the title of a bill and knew nothing else about it before voting. Of course, this is not the way members of the 27th Legislature operated at all.

A study of how bills in the Minnesota legislature were drafted in the nineteenth century has not been written. The Office of the Revisor of Statutes and the Legislative Reference Library did not exist. In other cases during this period, the Supreme Court took note of an ineptly drafted measure.¹⁸

State ex rel. Ira P. Shissler

vs.

Jerome E. Porter

53 Minn. 279, 55 N. W. Rep. 134

Argued April 25, 1893. Decided May 19, 1893.

Special Laws Held Unconstitutional.

1. In so far as they relate to the term of office of the judge of the municipal court for the city of Mankato, Sp. Laws 1887, ch. 8, Sp. Laws 1889, ch. 12, and Sp. Laws 1891, ch. 47, are unconstitutional and void.

The Subject not Expressed in the Title.

2. The subject of the attempted legislation is not expressed in the titles to these laws, as required by the Constitution, art. 4, § 27.

On April 14, 1893, Ira P. Shissler, presented in this court his petition stating in substance that on April 4, 1893, he was elected Judge of the Municipal Court of Mankato, a court created by Sp. Laws 1885, ch. 119. That he had received a certificate of election and had qualified as Municipal Judge, but was prevented

¹⁸ It did not, however, void major regulatory legislation in the Populist and Progressive eras. See generally Carol L. Chomsky, "Progressive Judges in a Progressive Age: Regulatory Legislation in the Minnesota Supreme Court, 1880-1925," 11 *Law & History Review* 383 (1993)

by Jerome E. Porter, the prior incumbent, from taking possession of the office. A writ of Quo Warranto issued, and the respondent showed cause April 25, 1893. The Act creating the court provided that the Municipal Judge should hold his office for the term of three years. Porter was elected Judge in April, 1888, and re-elected in April, 1891. This term would not expire until April, 1894, but the relator claimed that the term of the office had been changed to two years, by Sp. Laws 1891, ch. 47, subch. 2, §2, and expired April 10, 1893. The respondent claimed that this Act, so far as it attempted to change his term of office, was invalid, because that subject was not expressed in its title, as required by the Constitution, art. 4, §27. He also claimed that Sp. Laws 1887, ch. 8, and Sp. Laws 1889, ch. 12, in so far as they attempted to alter the term of office of the Municipal Judge, were invalid for the same reason. This was the only question discussed on the argument.

Lorin Cray and Wm. N. Plymat, for relator, cited *Supervisors of Ramsey Co. v. Heenan*, 2 Minn. 330 (Gil. 281;); *State v. Cassidy*, 22 Minn. 312; *State ex rel. Rice v. Smith*, 35 Minn. 257; and *Johnson v. Harrison*, 47 Minn. 575.

Pfau & Young, for respondent.

COLLINS, J. The relator seeks by this proceeding to obtain immediate possession of the office of judge of the municipal court of the city of Mankato; he having been elected to that office at the city election held April 4, 1893. His claim is that the term of office of the respondent—who was last elected to the same office at the election held in 1891, duly qualified, and has since discharged the duties—expired on Monday, the 10th day of April, 1893. The question is whether the respondent's term of office is two or three years.

The facts are that the city of Mankato was chartered and organized long prior to the year 1885. A municipal court for the city was created by Sp. Laws 1885, ch. 119; the same being an act of the legislature entitled "An act to establish a municipal court in the city of Mankato, Blue Earth county, Minnesota." This was an independent act, providing for the establishment of the court, and defining its powers and jurisdiction, and was similar in all respects to like acts which have passed the legislature from time to time under the authority of that section of the constitution which provides for certain named courts, and for the creation of "such other courts, inferior to the supreme court, as the legislature may * * * establish by a two-thirds vote." It is conceded that this act has never been referred to directly by the legislature, except in an amendatory act now known as Sp. Laws 1887, ch. 78, the amendment relating simply to the salary of the judge of the court.

By the original enactment, Sp. Laws 1885, ch. 119, §2, it was provided that the qualified electors of the city of Mankato, at the city election to be holden on the first Tuesday in April of that year, and on the day of the city election every third year thereafter, should elect a judge of the court, who should hold his office for the term of three years, and until his successor was elected and qualified. By section 3 it was provided that there should also be elected a special judge of said court, whose manner of election, term of office, powers, duties, and qualifications, should be the same as those of the judge. Both of these officers were required to be residents and qualified electors of the city, persons learned in the law, and duly admitted to practice as attorneys in this state.

By the terms of sections 2 and 3, vacancies in either of these offices were to be filled by appointment by the governor; the appointees to be qualified persons, and to hold office until the next annual city election occurring more than thirty days after the vacancy should have happened, when a judge or a special judge, or both, as the case might be, should be elected for a term of three years. We call attention to some of these provisions for the purpose of showing the painstaking care of the legislature when establishing the court, which is a court of record, having civil jurisdiction in cases where the amounts in controversy do not exceed \$500. Its criminal jurisdiction is that of a justice of the peace, and is exclusive in the city.

The respondent was first elected in April, 1888. There was no attempt made to elect a municipal judge from that time until the annual city election of 1891, when he was re-elected, as before stated. So it will be seen that respondent held the office for three years under his first election.

In the year 1887 an act was passed, (Sp. Laws 1887, ch. 8,) entitled "An act to amend and consolidate the charter of the city of Mankato, state of Minnesota." This was really a new charter for the city. We find no reference to the municipal court, or the judges thereof, except in subch.2, § 2, where it is provided that the elective officers of the city shall be a mayor, a municipal judge, treasurer and city recorder. The recorder and treasurer are to be elected for two years, and "all other elective officers * * * shall hold their offices for one year, or until their successors are elected and qualified." There was also a provision which had the effect to continue in office all persons then holding office under the prior charter until the

expiration of the terms for which they were elected or appointed.

It is claimed by the relator that by this act the term of office of municipal judge was reduced from three years to one, and that, when respondent was elected in 1888, he was elected for but one year.

In the year 1889 various amendments were made to the act of 1887, by an act entitled "An act entitled 'An act to amend the charter of the city of Mankato in the state of Minnesota,'" now Sp. Laws 1889, ch. 12. In section 2 of the act the elective officers of the city — mayor, municipal judge, etc.—were named, the same as in section 2 of the statute of 1887. An election was provided for the year 1889, and for every two years thereafter, and the term of office of every officer elected under the act was to commence on the second Tuesday of April of the year in which he was elected, and was to continue for two years. The only substantial change in the amendment of 1889, relating to elections or terms of office, was to substitute biennial for annual elections, and to make the terms of office for the respective officers two years, instead of one. It will have been noticed that a municipal judge was not elected in 1889.

In the year 1891, Sp. Laws 1891, ch. 47, another act was passed, entitled "An act to amend chapter 8 of the Special Laws of the State of Minnesota for the year 1887, entitled 'An act to amend and consolidate the charter of the city of Mankato, state of Minnesota,' as amended by chapter 12 of the Special Laws of the State of Minnesota for the year 1889, entitled 'An act entitled an act to amend the charter of the city of Mankato, in the State of Minnesota.'"

This was, in substance, as was chapter 8, supra, a new charter. An election was provided for the first Tuesday in April, 1891, and every two years thereafter. The elective officers were to be a mayor, municipal judge, a special judge, treasurer, and recorder. These officers, it was provided, should be elected for two years, and until their successors were elected and qualified. The municipal court was not mentioned in this act, nor were the judges thereof, except as above stated.

Our attention has not been directed to any other legislation bearing upon the subject, and the relator rests his claim to immediate possession of the office on the amendatory statutes of 1887, 1889, and 1891, before mentioned, and in which he contends the term of the office in question was first reduced to one year, to take effect in the year 1888, when respondent was first elected, and then enlarged to two years, taking effect, as to respondent's second term, in the year 1891, when he was last elected.

It is the position of the respondent that the term of the judge of the municipal court, as fixed by the act of 1885, establishing the court, has not been changed or shortened by the so-called amendatory acts, because, if the language used therein could be given that effect, it would prove ineffectual; the subject-matter of such legislation not having been expressed, it is claimed, in the title to either of these various acts, as required by Constitution, art. 4, § 27, which provides that no law shall embrace more than one subject, which shall be expressed in its title.

The main argument of counsel for the relator seems to be based upon their contention that the act of 1885, establishing the court, was an amendment to the then existing city charter, and upon its passage became

incorporated into and a part of it, so that the subsequent enactments of the legislature amendatory of the charter affected the act. The city charter was not mentioned, and to create this court it was not necessary that it should be. That such an act might be styled as amendatory of a charter, or might be made a part of a city charter, either originally or by legislation subsequent to the granting of corporate powers, we do not now question, although the policy and wisdom of establishing such tribunals by independent and distinctive legislation are strongly suggested by the fact that they can only be lawfully created, under the constitution, by a two-thirds vote of the legislature, while acts relating to offices purely municipal need but a majority vote. But we are not to consider what might have been enacted as a part of the original charter, but what was enacted; so that, taking it for granted that a municipal court might have been provided and created in the charter act, without special reference to such court in the title, it was not. The city charter was wholly silent on the subject, and covered only such subjects as are ordinarily found in a charter. Nor was there anything in the act of 1885, establishing the court, indicating an intention to add it to, or make it a part of, the charter, or to amend any of the charter provisions; and whether that could have been done legally, under its title, may well be questioned. Of course the functions of the newly-constituted court were to be exercised within the limits of the municipality; and it was established, undoubtedly, at the instance and for the convenience of its residents. That its judges were to be chosen by ballot, by and from among the electors of the city, and that the city recorder was to be clerk of the court, was not significant, or of any greater effect than would have been a requirement that from among the qualified electors of the city the

governor should appoint those officers. These provisions simply pointed out, and specified, the means and methods by which the court was to be equipped with its proper complement of officials.

Prior to the passage of Sp. Laws 1885, ch. 119,— an act to establish a municipal court in the city of Mankato, according to its title, — that city had been chartered by the legislature. The act or bill for the charter was full and complete, and the subject embraced therein was tersely, but clearly, expressed in its title. It is probable that the subject-matter covered by said chapter 119 might have been incorporated into this original legislation, or, with a proper and suggestive title, the act creating the court might have been lawfully passed as an amendment to the charter. But this was not the course which was pursued. Instead of adopting a title which would have indicated a purpose to amend the charter, or make the new law a part of it, the exact object of the legislation was expressed. Two laws were then in force, separate and distinct enactments,—one creating and chartering a city, but making no provision for a municipal court, nor was it essential that it should; the other establishing such a court, and not referring at all to the city charter. The fact that the law establishing a judicial tribunal might have been made a part of the charter originally, or by amendment, does not affect the fact that such was not the course of the legislature. Nor can it have weight when considering the legislation through which it is urged the term of office of the municipal judge, as fixed in chapter 119, has been reduced to the term of two years.

The constitutional requirement as to the entitling of laws has often been discussed in the opinions of this court. The substance of what has been said, so far as

we need to repeat it at this time, is that an amendatory law is for the amendment, not of what might have been enacted under the title of the original statute, but of what was enacted. Hence the sufficiency of the title of an act merely declared to be amendatory of a prior law, to justify the legislation which may be enacted under it, depends, not alone upon the fact that the title of the original statute was so comprehensive that the legislation in question might have been properly enacted in such prior law, but it depends also upon the nature and extent of the prior enactment, to amend which is the declared purpose or subject of the later act. And when the title of an act is such that the legislature can be deemed to have been fairly apprised of its general character by its subject, as expressed in such title, and all the provisions of such act have a just and proper reference thereto, and are such as, by the nature of the subject so indicated, are manifestly appropriate in that connection, and might reasonably be looked for in a measure of such a character, the title is sufficient. *State v. Cassidy*, 22 Minn. 312; *State v. Klein*, Id. 328; *State v. Smith*, 35 Minn. 257, (28 N. W. Rep. 241.)

Applying this language to the case at bar, it will be seen that it is of no materiality that the matter found in and covered by the act establishing the court might have been germane to the subject embraced in the original charter, and have been sufficiently expressed in the title to that law, for the nature and extent of the charter itself must be consulted. And when we are examining the title to the amendatory act of 1891, under which relator claims his right to immediate possession of the office, and the titles to the acts of which that was an amendment, we are to inquire whether the legislators were fairly informed by such

titles of the nature and character of the proposed legislation. In view of the independent charter provisions in existence at the time of the enactment of the law establishing the court, and the title of that law, would amendments to the latter be looked for in measures which, if dependence could be placed upon their titles, related solely to the charter? We think not. The titles to these amendatory acts, if the legislation embraced therein was designed to affect the provisions of chapter 119, were very misleading, and well calculated to accomplish the mischief the constitutional requirement was expressly designed to prevent. As the subject of that part of the legislation heretofore referred to in Sp. Laws 1887, ch. 8, Sp. Laws 1889, ch. 12, and Sp. Laws 1891, ch. 47, was not expressed in the titles of either of these acts, the term of office of the judge of the municipal court for the city of Mankato remains at three years. Order to show cause discharged.

Vanderburgh, J., absent, took no part herein. □

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Posted MLHP June 17, 2013;
Revised July 20, 2013,
June 26, 2014;
typos corrected, December 16, 2016.