

# IRA P. SHISSLER

( October 24, 1844 - October 16, 1903 )

ΦΦΦΦΦ

In 1883, James L. Price, a very successful lawyer in Van Wert, Ohio, decided to move his practice to Lima, Ohio. This gave his nephew, Ira Shissler, who had been his associate since 1866, the opportunity to strike out on his own—to go west.<sup>1</sup> In April 1884, Shissler moved with his wife and son to Mankato, Minnesota. He was thirty-nine years old.

He carried a reputation as an able lawyer, and for two years was associated with Albert Pfau, who was elected mayor in 1888. And he soon reaped the rewards for being a stalwart of the Republican party.

In 1891, with the endorsement of the party, he ran against the incumbent, Jerome E. Porter, a Democrat, for judge of the Municipal Court. He also had the support of the Mankato *Free Press*:

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 office of municipal judge is one of peculiar importance, and one through which much good can result, or much of the opposite. The Republicans used admirably good judgment in choosing Hon. Ira. P. Shissler for this place. He is a lawyer of more than average ability, and has had experience that renders him doubly qualified for the duties of the municipal judgeship. Mr. Shissler came to Mankato from Van Wert, Ohio, in the summer of 1884, where he served in numerous responsible positions and always to his honor and credit. He was prosecuting attorney of Van Wert county during the years of 1874, '75, '76 and '77, and left a splendid record. He was elected mayor of Van Wert for 1882 and '83 and had he not determined to come west would have been continued in the same

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<sup>1</sup> James Latimer Price (1840-1912) served on the Ohio Supreme Court from February 9, 1902 to death on March 11, 1912.

position of trust, perhaps indefinitely. He is of German parentage, and during his boyhood he passed through the cares and deprivations incident to people immoderate circumstances, educated himself and secured admission to the bar in 1869. In 1879 he graduated from the law school of Ann Arbor, Michigan, and has been in continuous practice ever since. Mr. Shissler is a good citizen and every way of support at the polls to-morrow.<sup>2</sup>

But in the election on Tuesday, April 7, 1891, he lost by a narrow margin:

Shissler (R).....726  
Porter (D).....782<sup>3</sup>

The city council dealt Shissler another blow a few days later when it voted to retain William E. Young, the current city attorney, over Shissler, 3-2.<sup>4</sup>

Undaunted if not heartened by the closeness of the election, he challenged Judge Porter three years later. Again he received the Republican party's endorsement.<sup>5</sup> Again, the *Free Press* carried a flattering profile of him under the caption, "Republican Candidates: Brief Biographical Sketches of Some of those Nominated":

Ira P. Shissler, candidate for municipal judge, was born in Carroll county, Ohio, in October, 1844. He received his early education in the schools of his county. He graduated from the academy of New Hagerstown, and afterwards, in 1870, from the law department of the Ann Arbor, Mich., university. He located at Van Wert, Ohio and practiced law there until 1883, when he removed to this city. He was county attorney at Van Wert for four years, and held the office

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<sup>2</sup> *Mankato Free Press*, April 6, 1891, at 2. The next paragraph contained a detailed description of Shissler. It is posted in "Ira P. Shissler (1844-1903)" (MLHP, 2013).

<sup>3</sup> *Mankato Free 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.

<sup>4</sup> *Mankato Free Press*, Thursday, April 16, 1891, at 2

<sup>5</sup> *Mankato Free Press*, Thursday, March 23, 1893, at 3 ("Dr. Davis nominated Ira P. Shissler for municipal judge. On motion of O. O. Pitcher, Mr. Shissler was nominated by acclamation.").

of mayor and municipal judge of that city for two years, and was assured of reelection had he remained. In both offices he was very successful. As a citizen of Mankato he has assumed a prominent position in the Blue Earth county bar. He possesses fine legal attainment and a mind well calculated to impartially discharge the duties of the office for which he is a candidate. He has done yeoman service for the Republican party and is deserving its hands. <sup>6</sup>

In the election on April 4, 1893, he won easily:

Shissler.....944  
Porter.....790 <sup>7</sup>

Porter, however, would not leave office, contending that he was entitled to serve the remaining one year of the three year term to which he was elected in 1891 and which was set by the legislature when it established the court in 1885.<sup>8</sup> Citing a special law enacted in 1891 that reduced the term to two years, Shissler brought a *quo warranto* proceeding to oust Porter in the Supreme Court.<sup>9</sup> Developments in the case were followed by the *Free Press*. On April 14, it reported, “Judge Shissler went to St. Paul this morning, accompanied by W. N. Plymat, to apply to the attorney general for a writ of *quo warranto* returnable to the

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<sup>6</sup> *Mankato Free Press*, March 27, 1893, at 3 (sketch of Shissler omitted). It also published the Republican ticket on its editorial page several times before the election. The one from the *Free Press*, April 1, 1893, is posted in the Appendix, Part A, below at 9.

<sup>7</sup> *Mankato Free Press*, Wednesday, April 5, 1893, at 3. Shissler received 54.4 % of the vote to Porter’s 45.6%.

<sup>8</sup> *Mankato Free Press*, April 11, 1893, at 3 (describing Porter’s refusal).

<sup>9</sup> *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).

Supreme Court at the earliest time, requiring Judge Porter to show cause why he does not surrender his office.”<sup>10</sup> A month later, after canvassing the local bar, it reported, “We stated a month or more ago that Judge Porter is of the opinion that his term of office does not expire for a year. . . . The attorneys generally believe that the point made by Judge Porter is correct, in which case Mr. Shissler will hold office for three years.”<sup>11</sup> On May 19th, the Supreme Court ruled in favor of Porter, declaring the 1891 Special Law unconstitutional because its subject was not expressed in its title.<sup>12</sup>

Shissler finally took office in April 1894. His obituary made brief mention of how he handled his duties:

As a judge he was thoroughly upright and honest in his decisions, and if he did not please both sides, he was always respected in his opinions. He was especially good as a police judge, backing up the police department in its efforts to restrain the lawless and maintaining peace.

Perhaps a better gauge of his performance is the fact that he was re-elected three times. Indeed, he was unopposed in his last election on April 7, 1903, when he was a double amputee and had difficulty getting to court.<sup>13</sup>

He died on October 16, 1903, almost fifty-seven years old. His passing was reported that afternoon by the *Free Press*. Its detailed description of his last hours is typical of Victorian-era obituaries. Journalists and biographers at that time placed importance on the last words and gestures of the deceased. One third of the following obituary is devoted to Shissler’s final three days.

Another interest of the public was the identity of those present at the moment of death. Harry Shissler, it was noted, was at the telegraph office when his father expired. In other obituaries of this period there was also the minor drama of whether family members who lived afar and been notified of the crisis could make it to the bedside in time.

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<sup>10</sup> *Mankato Free Press*, Friday, April 14, 1893, at 3.

<sup>11</sup> *Mankato Free Press*, April 6, 1893, at 3.

<sup>12</sup> *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 10-17.

<sup>13</sup> He received 1,581 votes in the election on April 7, 1903. *Mankato Free Press*, April 8, 1903, at 2.

## **DEATH STRKES QUICKLY**

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**Judge Ira P. Shissler Passes Away  
This Forenoon**

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**Presided Over the Municipal Court  
Yesterday Forenoon.**

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**Congestion of the Lungs Carries Of  
Prominent Jurist.**

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**Brief Account of the Life of the  
Late Judge.**

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Judge Ira P. Shissler died unexpectedly at his home, 824 South Front street, at nine o'clock this forenoon, of congestion of the lungs. He had been failing for a couple of months past, and about three weeks ago was obliged to give up his office duties and remain at home, on account of bronchial trouble and a slight congestion of the lungs.

Tuesday Judge Shissler was able to return to the office, and Wednesday he attended until late in the afternoon. The lecture he administered to the young man who was brought before him for assaulting a young girl consumed a good deal of his reserve strength, and soon afterwards he remarked to a Free Press reporter, who happened to be there, that he felt that the day's work had been a little too much for him—that he had overdone himself a little. He had been feeling quite well during the day until then, though weak.

The weather was vey unfavorable for him, yet he went to the office in the morning and transacted business before the court, sentencing three prisoners, and filing a decision in a civil case. He was looking and feeling quite poorly, but attempted to remain until the morning papers should arrive. At about two o'clock he remarked to City Reporter Hodapp that he was feeing awful sick," and that he was going home even if he never got a paper. He then went home.

After arriving at his house, Judge Shissler was taken with a severe chill, and his physician was summoned and pronounced the case a very serious one. The patient began to sink, and his son, Harry, was telegraphed for, hopped the train that he was braking on, reaching the city at 8 p.m., and he at once went to his father's bedside.<sup>14</sup> Judge Shissler sank during the night, but his death was peaceful. He passed away while his son was at the telegraph office to summon his father's sister.

The news of the death of Judge Shissler spread quickly, and caused profound sorrow. He was widely known and had many warm friends, and a great deal of sympathy had been felt for him in his afflictions. On account of gangrene, both of his lower limbs were removed two or three years ago, near the knees, and he was obliged to make his trips between his residence and the office with a hand propelling carriage, when he was able to exert himself that much. At the time of the operations his life was despaired of, but he possessed a strong constitution and made a successful fight for life at times when most people would have given up.

The deceased was born at New Hagerstown, Ohio, October 25th, 1844. His parents were John L. and Catherine (Price) Shissler, prominent people of his native town. After receiving such an education as his home schools furnished, and spending a few years clerking at Wellsville, Pittsburg, and one or two other places, he went in 1866 to Van Wert, Ohio, and entered the law office of his uncle, Judge James L. Price, now of the Ohio supreme bench.

At intervals, while reading law, Mr. Shissler taught school for a term or two and attended An Arbor university for a time. In 1869, he was admitted to the bar, but not satisfied with his legal attainments, he spent a year in the Ann Arbor law school, graduating in 1871. Returning to Van Wert, he was associated

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<sup>14</sup> This sentence has been corrected because it was garbled in the original, which read: "The patient began to sink, and his son, happened the train that he was braking on reaching the city at 8 p.m., and he at Harry, was telegraphed for, and at once went to his father's bedside."

with Judge Price in the practice of his profession for eleven years, during which time he was elected county attorney two terms and mayor of Van Wert two years.

In April, 1884, Mr. Shissler moved to Mankato, where he resided ever since. For two years he was associated with A. R. Pfau, and later with Byron Hughes and other attorneys. In 1893 he was elected municipal judge, and assumed the duties of the office in April of the following year, and he held the office up to the time of his death, having the balance of his present term and a full term of three years from next April still to serve.

The deceased was united in marriage on Nov. 11th, 1873, to Miss Alice J. Graham of Van Wert, Ohio, who survives him, as also does their only child, a son, Harry G. He also leaves a mother, at New Hagerstown, three sisters and one brother.

Judge Shissler was high up in the Masonic order, being a thirty-second degree Mason. He was a member of the blue lodge chapter, and commandery of Knights Templar at Lima, Ohio, and of the consistency at Cincinnati, Ohio. He formerly carried Masonic insurance, but dropped it some time ago.

The deceased was a staunch Republican in politics, an effective speaker, and a true loyal friend of his party and a defender and advocate of its principles. He was more than once mentioned during his early residence in the city as a possible candidate for congress. He was a kind husband and indulgent parent, and had a great pride in his home. He was a good friend and neighbor, and had a warm spot in his heart for the poor and unfortunate. As a judge he was thoroughly upright and honest in his decisions, and if he did not please both sides, he was always respected in his opinions. He was especially good as a police judge, backing up the police department in its efforts to restrain the lawless and maintaining peace. He will be greatly missed at the city hall, where he was loved and honored by all of the city officials who have served during the past ten years.

A meeting of the Blue Earth County Bar Association will be called within a day or two to arrange for attending the funeral in a body, as is its custom.

Special Judge Ogle this morning made an order that the court room and the judge's private office should be draped in mourning for the period of thirty days, and that the court adjourn action on all civil matters until after the funeral. It was the request of the special judge that the bar association assemble as soon as possible.

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Under the law, Special Judge Ogle will preside over the municipal court until the governor of the state makes an appointment to fill the vacancy until the next city election, which will not occur until a year from next April.

Mayor Taylor has ordered the flag over the city hall to be placed at half mast until after the funeral and this has been done...<sup>15</sup>

In 1903, a semi-centennial history of the city was published. It was financed by subscribers, one of whom was Shissler. He likely composed his own profile—really an autobiographical sketch—some months before he died:

SHISSLER, Judge Ira P. —Born at New Hagerstown, Ohio, October 25, 1844. His parents were John L., and Catherine (Price) Shissler, prominent people of his native town. After receiving such education as his home schools furnished, and spending a few years clerking at Wellsville, Pittsburg, and one or (two other places, he went in 1866, to Van Wert, Ohio, and entered the law office of his uncle, Judge James L. Price, now on the Ohio Supreme Bench. At intervals, while reading law, he taught school for a term or two and attended Ann Arbor University for a time. In 1869, he was admitted to the bar, but not satisfied with his legal attainments, he spent a year in the Ann Arbor Law School, graduating in 1871. Returning to Van Wert, he was associated with Judge Price in the

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<sup>15</sup> *Mankato Free Press*, Friday, October 16, 1903, at 5 (photograph and funeral arrangements omitted).



practice of his profession for eleven years, during which time he was elected County Attorney two terms, and Mayor of Van Wert, two years.

In April, 1884, he removed to Mankato, and for two years was associated with A. E. Pfau. In 1893, he was elected Municipal Court Judge, and assumed the duties of the office in April, 1894, in which office he has been continued ever since.

Judge Shissler was united in marriage on November 11, 1873, to Miss Alice J. Graham, of Van Wert, Ohio. They have one child: Harry G. <sup>16</sup> □

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## APPENDIX

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<sup>16</sup> *Mankato, Its First Fifty Years* 301 (1903) (photo omitted).

## A. Why did Lawyers Want to be Judge of the Mankato Municipal Court?

Why did Orrin Pitcher, Jerome Porter and Ira Shissler want to serve on the city municipal court in the late 1880s and 1890s? In search of an answer, we enter the realm of naked speculation. Initially, even a minor judgeship brings respect, deference and a reputation for wisdom, even if unwarranted. The occupant ascends to a noticeably higher social status, which may have had a value to these men.

A municipal court judge was allowed to have a private practice, but not be in a law partnership. Over the years, court work became nearly full-time, and it is unlikely that any judge had much outside income. In 1885, he was paid only \$1,000 a year. This could be increased by the city council but it is not known when this happened.<sup>17</sup> Regardless, the pay was puny. Why did these lawyers vie for such a job? We continue our speculation on three fronts: national, local and individual.

The 1890s was marked by financial panic and depression. The economic crisis began a few months after President Cleveland took office in March 1893. Historian Rebecca Edwards writes:

Most spectacular was the crisis of 1893, when the nation's gold reserves dropped sharply and kept on dropping. Banks failed, depositors lost their savings, the Treasury's gold reserve plunged, and it took President Grover Cleveland three years to stabilize the situation with extensive help from J. P. Morgan and August Belmont.<sup>18</sup>

Harold Faulkner continues the story:

The panic broadened into a major depression. In the following year railroad traffic for the second time in history suffered an absolute decline. . . . Unemployment mounted alarmingly. . . During the worst months

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<sup>17</sup> The *Free Press*, in its report of the Shissler-Porter litigation noted that "If Judge Porter is wrong [in his legal arguments to retain his office] then it is the duty of the council to fix the salary, a thing which he has never asked them to do." *Mankato Free Press*, April 6, 1893, at 3. Of course, Porter was aware that if he asked for a salary increase, the *Free Press* would have criticized him.

<sup>18</sup> Rebecca Edwards, *New Spirits: Americans in the Gilded Age, 1865-1905* 85 (Oxford, 2006).

of 1894 it is safe to conclude that as much as 20 per cent of the labor force was unemployed. . . . The year 1895 brought a brief improvement, but in 1896 a second shock caused a further decline, and economic activity plunged to 75 per cent of capacity in 1897. . . . Not until 1898 did recovery begin to be apparent. . . . Not until 1901 and 1902 could the country be said to have been functioning normally, and even then many areas still suffered from the lingering effects of the depression.<sup>19</sup>

The depression hit Blue Earth County, which had an agricultural based economy. Farmers, whose crops fetched less on the markets, suffered. Land transactions, a staple of the practice of lawyers in rural communities, fell off. Lawyers struggled along with everyone else. In such a dire economic environment, a few lawyers looked to the municipal bench for financial security.

During this period, Mankato was growing but not a pace to provide a comfortable livelihood for all members of the bar. Its population rose from 5,550 in 1880 to 8,845 in 1885. In the next five years, it did not budge, registering 8,838 in 1890.<sup>20</sup> By 1900, it reached 10,599.<sup>21</sup> The population of the county increased from 29,210 in 1890 to 32,263 in 1900.<sup>22</sup>

Then there are the unique situations of each man. Orrin Pitcher was fifty-five when he was elected to the court in 1885. He had practiced law for a quarter century. Wanting to escape the demands of private practice, he may have been attracted by the judgeship's salary; moreover, according to his obituary, he "accumulated a comfortable property [during his life time], and besides this leaves a \$2,000 paid policy in the Northwestern Mutual Milwaukee." During his term, he developed the heart condition that eventually took his life.

During most of the forty years he lived in Mankato, Jerome Porter held law-related positions in government, some secured by election, others by appointment. He engaged in private practice only intermittently—between government jobs—during these

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<sup>19</sup> Harold U. Faulkner, *Politics, Reform and Expansion, 1890-1900* 142-43 (Harper & Bros., 1959) (citing sources).

<sup>20</sup> 1893 Blue book, at 508.

<sup>21</sup> 1903 Blue Book, at 565

<sup>22</sup> *Id.*, at 539.

decades. He was forty-five when he was elected municipal judge. It was another way for him to make a living.

Ira Shissler, in middle age, moved to Mankato with a reputation earned elsewhere but no clientele. He associated immediately with several lawyers, but saw the way to financial security was through the ballot box, not the office door. He threw himself into Republican politics, finally landing the sinecure of the municipal judgeship, a post he held for the last nine years of his life.

Finally and bluntly, these men were not at the pinnacle of the city or the county bars. In private practice, in these times, they struggled. Interestingly, they did not seek clients by publishing their business cards in the “Mankato Business Directory” on the front page of the *Free Press*.<sup>23</sup> Among the leaders of the bar, the most prominent and perhaps the most ambitious were the lawyers who represented the contestants in the 1893 *quo warranto* proceeding before the Supreme Court. Representing Shissler were Lorin Cray and William Plymat; representing Porter were Albert Pfau and William E. Young. In later years, Cray and Pfau served on the Sixth Judicial District court, while Young served on the Railroad and Warehouse Commission.

To sum up: Orrin Pitcher, Jerome Porter and Ira Shissler sought the judgeship to meet their need for minimal financial security. Practicing law in Mankato in the 1890s was very hard.

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<sup>23</sup> To take a random example, in the issue of Tuesday evening, April 4, 1893, the cards of the following lawyers appeared in that Directory: A. M. Rutan, B. D. Smith, Benedict & Flittie, Wm. N. Plymat, Lorin Cray and W. B. Davies.

**B. "REPUBLICAN CITY TICKET" 1893.**

In the days before the 1893 election, the *Free Press* reprinted the "Republican City Ticket" on its editorial page. It included Ira Shissler for Municipal Judge and Orrin O. Pitcher for Special Judge of that Court. The following appeared on April 1, 1893.

<b>DAILY FREE PRESS</b>	
Published Daily (except Sunday) and Weekly	
Office: Jackson street, corner Second.	
<b>L. P. HUNT, Managing Editor</b>	
<b>E. F. SEARING, - City Editor</b>	
<b>TERMS:</b>	
One year.....	\$6.00
Six months.....	3.00
Three months.....	1.50
One month.....	.50
One week.....	.15
The FREE PRESS will be delivered by carrier to any part of the city within a reasonable distance.	
The WEEKLY FREE PRESS is issued every Friday at \$1.00 per year, payable in advance	
<b>REPUBLICAN CITY TICKET.</b>	
For Mayor.....	DR. J. W. ANDREWS
For Recorder.....	P. A. GUNDERS
For Treasurer.....	WM. H. SHEPARD
For Municipal Judge.....	IRA P. SHISSLER
For Special Judge.....	O. O. PITCHER
<b>ALDERMEN.</b>	
First Ward.....	ALEX. BASHAW
Second Ward.....	NICK PETERSON
Third Ward.....	GUS. WIDELL
Fourth Ward.....	C. H. HIGGS
Fifth Ward.....	P. W. PITCHER
Sixth Ward.....	J. G. FOWLER
<p><i>In Its Resolution,</i> By the Republican city convention of the city of Mankato that we pledge ourselves to the unanimous support of the ticket as nominated, and that this convention stands squarely in favor of the city government using all honorable means to endeavor to light the city by electricity from a plant owned and operated by the city, and that the officers elected pledge themselves to a progressive and economic administration of city government, if elected.</p>	

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C.

**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 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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#### D. RELATED ARTICLES.

“Jerome E. Porter (1843-1910)” (MLHP, 2013), and  
“Orrin O. Pitcher (1830-1902)” (MLHP, 2013). ■

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Posted MLHP: June 17, 2013;  
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