

to persons forty years old and upwards, to high school graduates, or to owners of property worth three thousand dollars.

The remaining articles—8 on education, 9 on finance, 10 on corporations, 11 on counties and townships, 12 on militia, 13 on impeachments, and 15 on miscellaneous subjects—are all of a legislative character, but were added, according to prevailing custom, principally to place restrictions upon lawmaking and administration.

The remaining provisions, of a temporary nature, are grouped at the end under the barren title "Schedule." The most important provides for an election at which the draft constitution shall be voted upon and for the canvass of the vote. Less important, because they may be taken for granted, are provisions that territorial laws shall remain in effect until altered or repealed by the state legislature, that all territorial officers shall retain their offices until superseded by state authority, and that all judicial proceedings shall go on as if no change had been made.

2. THE STATE SEAL²

The question of a state seal and coat of arms was brought up in both bodies of the constitutional convention of 1857. In the Republican section on August 6 a special committee, which had been appointed a week before, submitted a report accompanied by a design. The central feature was a waterfall—supposed to be that of Minnehaha—within a shield, symbolical of the abounding lakes and rivers of Minnesota. Above the shield were three pine trees, typical of the three great pine regions—those of the St. Croix, the Mississippi, and Lake Superior. On the right of the pines was a distant view of Lake Superior, with a ship in sail; on the left was a view of the Minnesota River with a steamboat ascending it. On the right of the shield was the figure of a white man with a sheaf of wheat and implements of agriculture at his feet; on the left was the figure of an Indian asking the white man by an imploring gesture where he shall go; at the feet of the Indian were a bow, a quiver, and a tomahawk. The committee said that the central waterfall was proposed by a number of delegates, but that accessory features were suggested by R. Ormsby Sweeny, an artist and designer of St. Paul. It rejected the motto *Fulget intaminatis honoribus*, and recommended Webster's "Liberty and union, now and forever." On August 8 in committee of the whole the motto was amended by striking out the words "now and forever." A delegate suggested that "we can tell about the future when that becomes the present." On August 18 the committee on state seal submitted a report giving, as it said, "a brief and more correct description of the Seal and Coat of Arms." The only notable change was the addition, "Above

² See *ante*, p. 26.

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a precipitate and indefinite postponement. On the day following the House reconsidered the postponement and as precipitately adopted the resolution without roll call. On the twenty-sixth the Senate received notice of the House concurrence.⁶

The bill thus recorded as passed by both houses did not become a law. The *Senate Journal* contains no report of the enrollment of the bill or of its transmittal to the governor. It has not been found in any message announcing the governor's action on bills. The only further reference to it that has been discovered—and it is a doubtful one—is a "Joint Resolution" offered in the Senate on July 16 requesting the governor "to return to the Senate the Joint Resolution No. 2, adopting the Great Seal of Minnesota." The motion was "laid over under the rules."⁷ The mover, Senator Isaac Van Etten, may have learned that the resolution to adopt the seal was in the hands of the governor and may have proposed his "Joint Resolution" to arrest its progress. If the bill was in the hands of the governor and was not recalled nor disapproved by him within three days, it would have automatically become a law. But it was not printed in the laws of 1858. If the Van Etten resolution was intended to recall the resolution adopting the seal, there was an error in the number given to it. Joint resolution no. 2 was an ancillary one authorizing the governor to cause the seal to be engraved. That was duly passed and approved and was printed in the laws of 1858.⁸

Governor Sibley seems to have acted promptly upon his authority to cause the seal of the state to be engraved. The *Pioneer and Democrat* of August 25, 1858, contained an advertisement of an engraver and an editorial reference stating that he had been employed by the state officers to get up the official seals of the state. It may be presumed that the great seal was the principal one. In the absence of directive legislation, Sibley appears to have exercised a liberal discretion in determining what was the seal of the state that he was authorized to have engraved. He apparently assumed that the territorial seal already in use might with some modifications be considered to be the seal of the state. The notable changes

⁶ *Senate Journal*, 1858, pp. 460, 466; *House Journal*, pp. 737, 742. On June 14 a bill for an act to provide for a state seal was introduced in the House by a select committee on state seal. This bill, which proposed to authorize the governor to procure a seal "with an appropriate device and motto," was passed the following day and sent to the Senate, where, on June 18, it was referred to the committee on state seal. *House Journal*, 599, 663; *Senate Journal*, 416, 437, 442; Secretary of State's Archives, House file 284.

⁷ *Senate Journal*, 1858, p. 533. The *Pioneer and Democrat* of July 17, 1858, in a report of the legislative proceedings of the previous day, said: "Mr. Van Etten offered the following resolution. Resolved, That the Governor be respectfully requested to return to the Senate the resolution adopting the Great Seal of the State of Minnesota. During the discussion . . . the Private Secretary of the Governor appeared and informed the Senate that the resolution had been signed and approved, and the resolution was laid over for one day under the rules."

⁸ Constitution, article 4, section 11; *Senate Journal*, 1858, pp. 340, 471, 533; *House Journal*, p. 795; *General Laws*, 1858, p. 338.

made were: (1) the title, "The Great Seal of Minnesota, 1849," was replaced by "The Great Seal of the State of Minnesota, 1858"; (2) the outside diameter was reduced from three to two inches; (3) the drawing was reversed so as to show the Indian riding westward toward the setting sun and the farmer—in boots—plowing eastward; (4) the absurd Latin motto was erased and the French words for the North Star, "L'Etoile du Nord," were inserted.⁹

Knowledge of the new seal must presently have got abroad, for on September 11 the *Minnesotian* poured out vials of sarcasm upon "Mister" Sibley for selecting a motto from the Canadian French patois, the only French known to him, and one conveying no appropriate sentiment. The *Pioneer and Democrat* responded in a vein much too serious. The wordy battle continued for some days. The *Minnesotian* suggested that "Mister" Sibley should have designed an entire new seal—"with a *Huge Moccasin*, rampant; on a *Prairie*, vert; with an *Indian Trader*, prominent; and the motto issuing from his mouth of '*Big Indian me—Ho!*'" Without serious protest the modified seal doubtless came into early use.¹⁰

In 1860 the Reverend Edward D. Neill became superintendent of schools. Desirous to conform to the law requiring all state officers to use the seal of the state, he inquired of Acting Governor Donnelly what constituted the seal of the state, since the legislature had not acted under its constitutional mandate. The inquiry was referred to Attorney-General Gordon E. Cole, who replied that the modified territorial seal which Sibley had provided might properly be used. Its employment had been sufficiently sanctioned by usage. The opinion contains a suggestion that the governor had acted without authority.¹¹ In the following year, to remove doubts and to heal all defects and errors, the legislature pro-

⁹ For information concerning the compensation of the seal engraver, see *House Journal*, 1860, pp. 85, 237, and *General Laws*, 1860, p. 236. See any recent *Legislative Manual* for the two seals; the territorial seal is reproduced *ante*, 1: 461. There is a tradition that Sibley desired to have the North Star appear in the original territorial seal, but when reminded by Governor Ramsey that Pennsylvania farmers did not plow by starlight he did not insist.

¹⁰ *Minnesotian*, September 10, 11, 14, 18, 1858; *Pioneer and Democrat*, September 12, 17, 1858. The *Minnesotian* still refused to consider "Mister" Sibley's election as legitimate.

¹¹ Neill to Donnelly, May 16, Cole to Donnelly, May 17, 1860, in Governor's Archives, Records, A: 194. The original of Cole's letter is in Governor's Archives, file 567; it is printed in *Opinions of the Attorneys General of the State of Minnesota*, 116 (St. Paul, 1865). The attorney-general informed Donnelly that the seal at the head of a circular which Neill had inclosed in his letter was not the great seal of the state; that Neill was in error in saying that the legislature had taken no action in regard to the seal, for chapter 5, section 13, of the *Public Statutes of the State of Minnesota, 1849-1858*, 126 (St. Paul, 1859), provided that the governor should renew the seal when it was worn out or defaced; that it was doubtful whether the governor had power to change the seal; that, whether the governor's action in providing a seal differing from the territorial seal was authorized by law or not, the seal thus adopted had been used and treated as the great seal of the state. See Milliken's report to Governor McGill on the seals of Minnesota (see *ante*, 26, n. 49). The report conveys much information mingled with errors.

vided by law that the seal which had been in use should be the great seal of the State.¹² The conjecture may be hazarded that Sibley much preferred the perpetuation of the simple territorial seal which he had assisted in selecting to the elaborate pictorial devices favored by the legislative bodies and that some friend who knew his views arranged, without suggestion, to have the bill mislaid and not presented for approval. As a matter of taste the result is commendable.

3. THE FIRST BATTLE OF NEW ULM¹³

The question, "Who saved New Ulm on August 19, 1862?" has been mooted ever since that date. Citizens of New Ulm have been industrious in supporting the claim that to the German townsmen alone should the credit wholly or in chief be given. A narrative attributed to Charles Roos, sheriff of Brown County at the time of the battle, is probably the most emphatic in the assertion of this claim. According to this narrative, at noon on Monday, August 18, a man rode through the town shouting, "The Indians are coming. . . . They have murdered the recruiting party." Sheriff Roos believed that only some drunken Indians needed to be arrested and called out a posse. Thirty men armed with rifles, shotguns, and other weapons responded. During the half hour consumed in preparations the sheriff ordered the New Ulm militia to be in readiness for service and to barricade a part of the town. The eventful excursion of the sheriff and his posse to the town of Milford is not of present concern. On his return, about ten o'clock in the evening, he found that picket guards had been stationed, some houses had been fortified, and signal fires had been lighted. He at once summoned the Brown County militia and placed in command Jacob Nix, who had returned from a reconnoissance toward the agency with tidings that the Indians were "murdering everything."¹⁴

On Tuesday morning Sheriff Roos sent a message to Governor Ramsey asking for men and ammunition. The forenoon was spent in organizing and equipping the company and in lodging refugees. Farm wagons were added to the barricade as fast as they were driven in. At noon a few

¹² *General Laws*, 1861, p. 165. In his report of January 1, 1861, the secretary of state notified the legislature that the state had "no legally authorized Seal." *Executive Documents*, 1860, no. 4, p. 7.

¹³ See *ante*, p. 133.

¹⁴ The manuscript of Roos's narrative, the date of which is unknown, is in the possession of the family. A copy of it, made for the author, is in the Folwell Papers. The *New Ulm Post*, August 30, 1912, contains a statement by Sheriff Roos in the form of an affidavit in which he represents that before his departure for Milford he organized the militia of Brown County, appointed Jacob Nix *Platzkommandant* with the rank of major, and gave him authority to organize the citizens into companies. On his return at about eleven o'clock at night he found the companies and several squads organized.