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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because they may be taken for granted, are provisions that territorial laws shall remain in effect until altered or repealed by the state legislature, that all territorial officers shall retain their offices until superseded by state authority, and that all judicial proceedings shall go on as if no change had been made.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 regionsthose 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.

these [the three pine trees] appears the North Star." On August 20 in committee of the whole it was agreed to add the words "and canoe" after the word "steamboat." The convention concurred and ordered the substitute report as amended to be engrossed for its third reading. No further action was taken in the Republican body, as the joint compromise committee of the two bodies was already at work compiling the one constitution.3

The Democratic wing of the convention had among its standing committees one on the "Seal of the State, Coat of Arms and design of the same." Joseph R. Brown was a member. The brief report of this committee, submitted on August 15, expressed the opinion that it was the appropriate work of the legislature to prepare a seal and proposed a draft section reading: "There shall be a Seal of the State, which shall be kept by the Governor, and used by him officially, and shall be called the 'Great Seal of the State of Minnesota.'" The compromise committee ignored the proceedings of the Republican committee in the matter of the seal and acceded to the principle announced by the Democratic committee, whose draft it modified, however, so as to make the secretary of state the custodian of the seal. The constitution as adopted charged the legislature with the duty of providing for an appropriate device and

On January 6, 1858, State Senator William H. C. Folsom gave notice of a bill to provide for a state seal and on January 30 he submitted a design identical in its main features with that laid before the Republican convention. The only noteworthy departure was that the three trees above the waterfall were no longer all pines, but were of three different species. A pine in the center typified the great pine region; an oak on the left, the south and southwest parts of the state; and a maple on the right, the north and northwest parts of the state. The North Star did not appear. On March 18 the committee to which the matter had been referred reported the design and description presented by Senator Folsom and recommended the adoption of a joint resolution to legalize it. 5 The matter received no further attention until after the opening of the adjourned session on June 2, 1858. On the twenty-fourth of that month the Senate adopted, by a vote of 19 to 3, the resolution declaring the seal recommended by its committee to be the great seal of the state. The House was notified of this action on the same day and it gave the resolution

a precipitate and indefinite postp House reconsidered the postponen resolution without roll call. On notice of the House concurrence.6

The bill thus recorded as passed The Senate Journal contains no r of its transmittal to the governor. announcing the governor's action o it that has been discovered—and it tion" offered in the Senate on July to the Senate the Joint Resolution Minnesota." The motion was "lai Senator Isaac Van Etten, may hav the seal was in the hands of the "Joint Resolution" to arrest its pro the governor and was not recalled days, it would have automatically I in the laws of 1858. If the Van E the resolution adopting the seal, th to it. Joint resolution no. 2 was an to cause the seal to be engraved. and was printed in the laws of 1858

Governor Sibley seems to have a cause the seal of the state to be e of August 25, 1858, contained an a editorial reference stating that he ha to get up the official seals of the stat seal was the principal one. In the a appears to have exercised a liberal d seal of the state that he was authorize assumed that the territorial seal alre tions be considered to be the seal

⁸ Debates and Proceedings (Republican), 182, 336, 411, 520, 557.

Debates and Proceedings (Republican), 102, 330, 411, 520, 55/.

**Debates and Proceedings (Democratic), 519; Constitution, article 15, section 4.

**Senate Journal, 1858, pp. 86, 181, 332. The original resolution is in Secretary of State's Archives, Legislative Papers, 1847-58, Senate Files, miscellaneous, in the custody of the Minnesota State Archives. In William H. C. Folsom, Fifty Years in the Northwest, 658 ([St. Paul], 1888), is a woodcut which the author states represents the design presented by him to the Senate.

Senate Journal, 1858, pp. 460, 466; Hous an act to provide for a state seal was introduc seal. This bill, which proposed to authorize propriate device and motto," was passed the June 18, it was referred to the committee or Journal, 416, 437, 442; Secretary of State's A

Senate Journal, 1858, p. 533. The Pione the legislative proceedings of the previous da resolution. Resolved, That the Governor be reresolution adopting the Great Seal of the Stat the Private Secretary of the Governor appear

had been signed and approved, and the resolution.

8 Constitution, article 4, section 11; Sen Journal, p. 795; General Laws, 1858, p. 338.

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." 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

^{*} 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.

I 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. 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 Journa* 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 Sible 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, 1863. Pioneer and Democrat. September 12.16

¹⁰ Minnesotian, September 10, 11, 14, 18, 1858; Pioneer and Democrat, September 14, 15
17, 1858. The Minnesotian still refused to consider "Mister" Sibley's election as legitimat
11 Neill to Donnelly, May 16, Cole to Donnelly, May 17, 1860, in Governor's Archive
Records, A: 194. The original of Cole's letter is in Governor's Archives, file 567; it is printe
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 ha
inclosed in his letter was not the great seal of the state; that Neill was in error in saying tha
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 whetle
the governor had power to change the seal; that, whether the governor's action in provide
a seal differing from the territorial seal was authorized by law or not, the seal thus adopte
had been used and treated as the great seal of the state. See Milliken's report to Govern
McGill on the seals of Minnesota (see ante, 26, n. 49). The report conveys much inte
mation 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.

¹⁸ 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.