Farewell address

of

William P. Dillingham

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Farewell Address

GENTLEMEN OF THE GENERAL ASSEMBLY:

Inasmuch as the constitution requires the incoming governor to prepare and lay before the general assembly such business as may appear to him to be necessary, I have thought best in the valedictory message to confine myself to a discussion of the operation of such past legislation as bade fair to be of unusual importance to the State, was somewhat experimental in its character, and whose workings I have watched with warm interest and had opportunity to judge. I shall, however, omit any reference to the Vermont State Asylum for the Insane, now in process of construction at Waterbury, for the reason that by the terms of the act authorizing its erection I was made, *ex-officio*, a member of the board of trustees, and, having acted with them and joined in their report to this honorable body, I prefer that my successor shall speak of the institution and its needs as they represent themselves to his judgment.

DEAF AND DUMB, BLIND, AND FEELBE MINDED CHILDREN.

During the years 1889 and 1890 the State has expended in the education of the deaf and dumb, the blind, and the feeble minded the sum of $12,627.13. Every application made by indigent parents for the education of children belonging to any one of these classes has been granted under the conditions imposed by statute, and it is creditable to the State that the general appropriation for beneficiaries generously exceeds the amount annually required for their support at the various institutions.

The expenses for beneficiaries in detail are as follows:

American Asylum for the Deaf and Dumb, Hartford, Conn.

School year 1888 – 89, 15 pupils	$2,678 42
School year 1889 – 90, 12 pupils	2,145 73
	$4,824 15

Clarke Institution for Deaf Mutes, Northamption, Mass.

School year 1888 – 89, 3 pupils	$525 00
School year 1889 – 90, 3 pupils	494 38
	$1,019 38

Perkins Institute for the Blind, South Boston, Mass.

School year ended October 1, 1889, 10 pupils	$2,848 80
School year ended October 1, 1890, 9 pupils	2,707 80
	$5,548 60

Massachusetts School for the Feeble Minded, Boston, Mass.

School year ended September 30, 1889, 1 pupil	$300 00
School year ended September 30, 1890, 2 pupils	335 85
	$635 83

Blind Instructed within the State.

M. W. Farman, Westfield, 1888 – 90	$ 525 00
Total expenses of all beneficiaries during the terms indicated	$12,552 96

AGRICULTURAL COLLEGE FUND.

I have recently received a communication from Hon. John W. Noble, secretary of the interior, calling my attention to an act of congress approved August 30, 1890, entitled "An act to apply a portion of the proceeds of the public lands to the more complete endowment and support of the colleges for the benefit of agriculture and the mechanic arts, established under the provisions of an act of congress, approved July second, eighteen hundred and sixty-two."

It appears by the report upon the same, made by the commissioner of education, that, though passed and approved subsequent to the close of the fiscal year 1890, the act appropriates to each State complying with certain conditions the sum of fifteen thousand dollars for the year ending June 30, 1890, and increased amounts for each subsequent year, the money appropriated thereby to be applied to the support in each State and territory of one college of agriculture and the mechanic arts, provided no distinction of race or color is made in the admission of students thereto, and that the first comptroller of the treasury has decided that the installment of the fiscal year 1890, and that also for 1891, are now due and payable to each State that is entitled to receive the same, which installments amount to thirty-one thousand dollars.

Inasmuch as Vermont, through its legislature, accepted the terms of the grant of 1862 and has since maintained a college of agriculture and the mechanic arts which has received the benefit of said act, and as the State is therefore entitled to the appropriations made under the act of 1890, I have, in response to the request of the secretary of the interior, furnished him with the requisite proofs, and, as authorized by the act, have assented in behalf of the State to the purposes of said grants and have directed the installments of the appropriations, now due, to be paid to the State treasurer.

Since the transmission of the proofs I have received no communication from the Secretary and can not, of course, say that the same will be received as completed evidence of the right of Vermont to the payment of the installments now due, but I have no reason to doubt that they will be paid to the treasurer of the State at no distant day. In the event of no further State legislation upon this subject, these installments of said appropriations, and those to follow in the future, will undoubtedly go to the University of Vermont and State Agricultural College under the provisions of its charter. Upon the question of the right of the legislature to adopt measures for the diversion of the appropriation into other channels, I express no opinion, but inasmuch as a respectable number of gentlemen, prominent in agricultural circles, have indicated to me their purpose to ask for the establishment of a separate and distinct institution for instruction in agriculture and the mechanic art, to be supported by such appropriation, I have deemed it my duty at the opening of the session to call attention to the probable early receipt of the first two installments as before mentioned that such action may be taken in the premises as, in your judgment, is deemed legitimate and wise.

THE WORK OF THE COMMISSIONER OF AGRICULTURAL AND MANUFACTURING INTERESTS.

When the legislature of 1888 assembled, there was, as now, a well-settled conviction that the resources of Vermont, both as a manufacturing and agricultural State, were too little known to the world, and that means should be devised to advertise the advantages which the State offers to those seeking to make new homes. Legislative thought finally took form in No. 110 of the laws of 1888, entitled "an act providing for the appointment of a commissioner to investigate the agricultural and manufacturing interests of the State, and devise means to develop the same." Realizing the importance of selecting for the position of commissioner a man of sound judgment, experienced in business, of good general information, I finally selected Hon. A.B. Valentine of Bennington, and after considerable importunity induced him to accept the position. In the discharge of these duties, he has known no rest, and in a perusal of his report may be seen the evidence of his great industry, his good faith, and an honest purpose to accomplish something for the good of the State. If he has failed to collect the statistical information in regard to agricultural interests and productions of the State as therein provided, it must be remembered that he has faithfully employed the only machinery for the collection of such statistics that was provided by law, and the fault therefore can not rest upon him.

His report, embodying the result of his own observation and study, is exceedingly valuable, and well calculated to arouse thought on the part of those most interested in the state's welfare, and I commend it to your careful consideration.

SWEDISH COLONIZATION.

You will observe that a considerable portion of his report pertains to the scheme inaugurated to induce the best class of Swedish emigrants to come to Vermont and settle upon what are known as unoccupied or abandoned farms, and you will read the same with lively interest.

The question he presents to your consideration relates to the continuance or abandonment of the experiment already inaugurated, but not fully solved, to induce a good class of emigrants to purchase lands and make homes in our midst, thus ministering to the wealth and prosperity of our State. In considering the question it will be well to remember that for a good many years there has been a constant depreciation in farm values. In every section of our own country, and in all parts of the world, agricultural interests have suffered a severe depression. In a new and growing country like our own, there have been opportunities for young men who were strong, temperate, intelligent, industrious, enterprising and ambitious to seek and make fortunes in the commercial and manufacturing centres, and in those portions of the west where speculative values have afforded opportunity for the exercise of sagacity and sound judgment. Vermont has reared more than her share of this class of men, and the result has been that they have taken advantage of the opportunities so offered, and in all portions of our land business and professional circles have been enriched by the addition of young men with sound minds in sound bodies whom we have sent out. The extent to which Vermont has ministered to the wealth of other states is indicated, in some degree, by the census of 1880, by which it appears that, of her native born sons, there were then residing in Connecticut, 3,476; in New Hampshire, 15,040; in Massachusetts, 26,943; in New York 31,271; the majority of whom, I think it safe to say were to be found in the cities and villages of those States. The same source of information reveals the fact that of native born Vermonters there were then residing in Pennsylvania, 3,600; in Kansas, 4,900; in Ohio, 7,064; in Minnesota, 7,869; in Iowa, 12,297; in Michigan, 12,588; in Illinois, 14,593; and in far off California, 4,681; so that, comprehensively stated, there were then residing in the united States 430,041 persons who had been born in Vermont, and of this whole number only 251,730, or about fifty-eight per cent of the whole, were then residing in Vermont. That this exodus proceeded from the more purely agricultural towns is, I think, generally admitted, but if proof were needed, a glance at the census tables since 1830 would probably satisfy the most skeptical mind of the fact. In the county of Addison, one of the finest for agriculture purposes in the State, though her villages increased in population and importance, there was between 1830 and 1880 a decrease in her population of about 750. In 1830 Bennington county had 17,468 inhabitants; ten years later, in 1840, only 16,872 but through a growth in manufactures and the opening up of quarries her population in 1880 had come to be 21,950. In Caledonia county the population, which in 1830 was 20,967, had come in 1880 to be 23,607, a gain largely accounted for in the growth of two or three of her larger villages. In 1830 Chittenden county had a population of 21,765; in 1850, 29,036; and in 1880, 32,792; a growth largely attributable to Burlington's prosperity. In Orange county, which is peculiarly an agricultural region, but which possesses several prosperous and growing villages, the population decreased between 1830 and 1880 from 27,285 to 23,525. The population of grand old Rutland county also decreased in the ten years between 1830 and 1840, but on the opening of her quarries and the establishment of manufactu5ring industries her population began to increase, and between 1840 and 1880 she had made a gain of about 11,000. In Washington county the gain of 4,000 between 1830 and 1880 was largely in the villages, and the gain during the last ten years (the greatest of that in any county in the State) has been mainly in Barre and Montpelier, and is the direct result of the opening of a large number of granite quarries at the former place. Notwithstanding the growth and prosperity of Brattleboro and Bellows Falls, the loss of population in Windham county between 1830 and 1880 amounted to 1,935, while in Windsor county, with some of our finest and most prosperous villages in her midst, the falling off during the same time amounted to more than 5,000.

All of our counties have suffered from the removal to other States of young men from the ranks of our farers, and the impression which has generally prevailed, that only the back towns have been affected, is, in my judgment, unfounded. I am strongly of the opinion that the exodus began from the towns more favorably located with reference to railroads and other great thoroughfares, but was not so noticeable as it would

otherwise have been for the reason that emigration from other States and countries poured in to take the places of those who had gone out. Connected with the building of our early railroads a large immigration from Ireland was induced, and as these new comers became acquainted with the existing condition of things, and saw the facilities here offered for obtaining homes, they had the courage and foresight to buy and cultivate lands and to encourage their friends abroad to immigrate to Vermont for the same purposes; and in this way it has come about that in many of our best towns our Irish fellow-citizens have become the owners of a large proportion of the farm property, and are highly esteemed for their intelligence and success. With the increase of manufactures in our larger towns, and the development of our lumber interests in different sections of the State, there have also come to us large numbers of industrious persons from British America, and while a good many of them have purchased land and are engaged in its cultivation, it is probably true that the greater number of them are gathered in the business centres.

But for the introduction of these new elements into the State, I apprehend that the condition we are now called upon to face would have appeared much earlier; and the fact that in ten years intervening between 1870 and 1880 the number of foreign-born residents in Vermont decreased from 47,155 to 40,959, indicates that the tide upon which we had come to depend, and which had ministered so much to the prosperity of the towns affected by it, had ceased to flow. The extent to which this and other depressing influences have operated is shown by the statement of the Commissioner that nearly one-tenth of the acreage of the State is either unoccupied or indifferently cultivated, though a large portion of the soil is very good, not worn out, and can be made as fruitful as other lands lying contiguous which are now successfully cultivated. The towns where these lands are mainly found are what are known as back towns, or, from their situation, are at some distance from the railroads or manufacturing centers. Aside from the value of their real estate, there is, comparatively speaking, little personal property with which to swell the size of their grand lists, and as values and population have gradually lessened, the rate of taxation has correspondingly increased, until now, in many places, it has come to be a serious burden to our farmers, and a grave industrial problem has been presented for solution. This condition of things cannot in my judgment, be attributed either to a free trade policy in the past or to the protective tariff of the present, nor is it to be presumed for an instant that the lands in question are poor or valueless. They are, as stated by the Commissioner, of good quality and not worn out. Many of them have buildings in a fair state of repair, and at the price at which they can be purchased are undoubtedly as good an investment for those desiring to make homes as can be found in any part of the United States; but the fact exists that in a nation affording so many avenues to wealth as are open in the United States, and which offers so many temptations to young men of enterprise and ambition to engage in more remunerative pursuits, there is a tendency on the part of American boys in every part of our land to abandon small farming. So far is this true that almost every State in the Union has been obliged to look to foreign fields for material with which to make up or replenish its farm population.

It is evident to my mind that the enterprising youth whose exodus from our State helped to produce the present condition of affairs, will not return to again join the ranks of our husbandmen. It is true also that the sons of our foreign-born population have, in a large degree, imbibed the spirit of enterprise that has inspired the action of native Americans, and they too are pushing out into mercantile, manufacturing and professional pursuit, with an energy that is most commendable, but which reminds us that they cannot be depended upon to maintain the number of our farmers.

If our sparsely settled towns are to be re-populated, and the farms now unoccupied are to be restored and brought into a higher state of cultivation, we too must look abroad for the material with which to accomplish this result. Almost every State in the Union has been compelled to adopt this policy, and to this end bureaus of immigration have been maintained, and agents have been sent to all parts of Europe for recruits. What is true in Vermont is true in every part of the land; farms are waiting for purchasers, and the State that makes the most intelligent and well-sustained effort is the one that brings emigration to her doors. This was the thought that inspired the legislation under which the Commissioner was appointed, and that impelled him in his effort to direct the tide of foreign emigration to our State.

After much thought I am unable to avoid the conclusion that the only plan of relief for the overburdened farmer in sparsely-populated towns, that offers any hope of success, lies in the direction of this experiment.

In the Swedes who have been induced to settle here, the Commissioner is confident a beginning has been made which will eventually result in a great and lasting benefit to the State; and after a careful personal examination of the colonies at Wilmington and Weston, I am of the opinion that the experimental action so begun should be continued during the biennial period upon which we are now entering. Through the favorable reports of those now among us, supplemented by other judicious effort, he hopes and expects to reach others of the same class who have means sufficient to enable them to make advance payments upon farms they may purchase, and who will enter vigorously upon their cultivation.

The question presented is one of real importance, Upon you alone rests the responsibility of deciding whether, in this critical period of the State's history, you will abandon an experiment that offers any hope of increasing our population, and thus take a backward step; or whether, like our enterprising sister States, both East and West, you will reach out after desirable emigration from whatever source it may be derived. In closing I can only recommend that you make a patient, careful and candid study of the problem as presented by the Commissioner, and take such action as you think will be for the highest interest of the State.

EDUCATION.

Perhaps the most important measure adopted at the last session of the General Assembly is the present School Law. It was the outgrowth of a conviction long entertained by thoughtful persons that the schools of the State never could rise to a proper degree of excellence until the teachers should, as a class, reach a higher standard, both in scholarship and in a knowledge of teaching, and that this standard could only be reached by those who look upon teaching as a profession, and are willing to apply themselves to a patient study of its principles and methods. The elements of the law through which such results were sought, were those relating to the examination of teachers, county supervision, and well conducted teachers' institutes. That these agencies have done effective work is evident to all who are in a position to judge. The reports of the Supervisors represent that even among the teachers long employed, there has been a great increase of interest in their work, that they have been inspired by new courage and zeal, that they are taking great pride in achieving success, and that nearly all are supplying themselves with the various periodicals and treatises on school work, and in every way possible, are striving to keep abreast with the best educational thought.

The result of the new methods of examination, with their higher standard, was to deter a certain number of those who had intended to teach from entering the lists. Some of these were young, and anticipating that the examination was more difficult than it proved to be, had not the courage to take it. Others who were older, but whose education was of a superficial character, also declined; so that during the first few months of the operation of the law, there was a scarcity of teachers in some of the districts where low wages had been paid, and, as a consequence, teachers' wages so advanced that in the poorer towns and districts much complaint was made regarding the operation of the law. It appears, however, that during the year following many of the younger and brighter teachers who had at first shrunk from the examination, applied themselves to their studies, and taking on new courage found that they were able to procure certificates; and thus encouraged, they have entered the ranks of teachers and are pursuing their work with success. The result seems to be that there is now no particular scarcity of teachers, though it is undoubtedly true that with their increased competency, wages are somewhat higher, particularly in those districts where the cheapest teachers were formerly employed.

The complaints regarding the operation of the present law, come, as before stated, mostly from the back towns and districts, and relate almost wholly to the matter of expense. In his investigations of these complaints, the superintendent has made a careful study of their difficulties, and the facts he has brought to light in relation to the inequalities in taxation for school purposes are positively startling. From tables he has prepared it appears that while there are towns in the state in which the average rate of taxation for school purposes amounts to only seventeen cents on the dollar of the grand list, there are others where it amounts to seventy-five cents, and one in which such average rate is one hundred and thirty cents.

The same disparity in the rate of school taxes that exist among the different towns, exists also in as great a degree among the different districts in individual towns. In the villages where the grand list is large, the taxes are light; while in the hill districts where the grand list is small, they are almost uniformly burdensome. In glancing through these tables, I notice that in a town like Bennington, one district escapes with a tax of six cents

on the dollar of the grand list, while another is subject to the burden of a tax ten times as great in its rate. The same also appears to be true in Brattleboro, where one district requires a tax of only ten cents on the dollar of its grand list, while another requires one hundred; while in Bakersfield the disparity reaches the greatest extreme, and the contract in the condition of the people in different districts in this respect is exhibited by the fact that in one district the rate of school taxation is only seven per cent., while in another it is two hundred and fifteen per cent. These, of course, are extreme instances, and yet you will probably be surprised when you examine the tables prepared by the superintendent, and note the great inequalities that exist in taxation for school purposes in every town where the district system has been retained.

In his investigation the superintendent has become convinced that a great wrong has been done to the poorer class of towns and the smaller districts in the failure to provide an adequate system for equalizing taxation for the maintenance of the common schools, and after mature consideration, he has reached the conclusion that the wrong can never be remedied until we adopt the policy already adopted by at least nine-tenths of our sister States in levying a State tax for this specific purpose.

He therefore recommends a state tax to equalize taxation for school purposes among the towns, and the adoption of the town system to equalize taxation among the districts. In addition to such innovations, he also favors a law by which all pupils in our public schools shall be supplied with the required text books at the public expense.

He bases his argument in favor of such recommendation upon the broad proposition that the education of the masses is absolutely essential to the safety of the State and the United States; that it is, indeed, a public necessity; and that the State in recognition of this principle, has established a system which is compulsory in almost every feature, and in which little that is optional can be found; and he claims that the spirit of the constitution, as well as its letter, requires that, inasmuch as society is protected in its enjoyment of life, liberty and property in a thousand fold greater degree by education than through its jails and prisons, every member is bound to contribute his proportion toward the expense of that protection, and that until taxation for the support of those schools in which are taught the required English branches is substantially equalized among the towns and among the districts, the State has subjected a portion of its citizens, and those least able to bear it, to unjust hardship. Time will not permit me to review his argument. Its material is drawn from every source, his facts are clearly stated, and, to my mind, his logic is unanswerable. A more valuable report has seldom, if ever, been presented to a Vermont legislature, and I bespeak for it the consideration it so richly deserves.

In my first message to the general assembly I called attention to the fact, as it seemed to me to exist, that there had been a gradual strengthening of public sentiment in favor of the enforcement of the statutes relating to the traffic in intoxicating liquors, and that in localities where in the past few convictions could be procured, the law then found ready supporters and was easily enforced; and that the chief difficulty encountered by the prosecuting officers was found in the more populous communities. In this respect I have had no reason to change my opinion, and extended observation has convinced me that the proper enforcement of the law in the central localities would result in its perfect enforcement in every town in the State. It stands to reason that if men engaged in the traffic in such communities are seen to be successful, not only in evading the provisions of the law, but in accumulating handsome properties, weaker men in smaller places will be stimulated and encouraged to make a like effort, though upon a smaller scale. If, on the other hand, the business is attacked and driven out of its strongholds, it will be abandoned in its more exposed positions.

Much of the opprobrium that has been cast upon the law has been the result of a failure in a limited number of the larger places to have it impartially and vigorously enforced. The men there engaged in the traffic differ from those in the smaller places in that they make it their chief, and only business. They are men who are calloused to all sense of right and wrong; they enter into a criminal occupation with deliberation, they pursue it persistently, and they adopt the most desperate measures to shield themselves from its penalties; to avoid the operation of the law, they do not hesitate to commit perjury and often suborn others to do the same; their crime is of that order that can find no justification, nor has it even the excuse of hot anger or other evil passions that may be urged by those whose offences are often followed by long terms in the State prison. It seems to me that in the past these men have been dealt with too leniently, both by the law making power and the courts, and that

every subterfuge beneath which they take refuge and every avenue through which they attempt to escape should be carefully examined and exposed.

It is a matter of notoriety, and one viewed with fear and shame by all thoughtful citizens, that at every term of our courts men who are called as witnesses in these cases commit perjury, apparently without so much as a thought that they are guilty of a crime, or that there is a possibility that they may be prosecuted therefor. Their guilt is patent to all, and the conclusion can not be avoided that a conviction must follow if the witness be prosecuted for perjury. I apprehend that the reason why this practice has been permitted to assume such great proportions lies in the fact that no statutory authority has been given to our courts to summarily order the arrest of such an offender, and in a disinclination on the part of the prosecuting officers to proceed against him on account of the difficulty they encounter in framing an indictment for perjury, which, at the common law, is a laborious and painstaking process.

The importance of having this evil remedied, leads me to suggest the enactment of a statute providing that when a witness or a party legally sworn and examined, or making an affidavit, in any court of record, testifies in such a manner as to raise a reasonable presumption that he is guilty of perjury, the court shall have power to immediately order him committed, or to take his recognizance with sureties for his appearance to answer to the charge of perjury, and it shall be the duty of the State's attorney to immediately institute the prosecution therefor against him; and to aid the same end I also recommend the adoption by law of a simple form of complaint or indictment for use in such case, as has been done in some of our sister States, thus facilitating the work of the prosecuting officer, and avoiding the danger that guilty parties may escape their just deserts through technicalities in pleadings. A fair but vigorous exercise by the court and prosecuting officer of the powers so conferred, would, in my judgment, serve to rid out courts of the scandal that has attended many attempts to vindicate the law, and by extracting the truth would make this army of witnesses, which has stood as a shield of defence to those engaged in violation of the law, an instrument of justice.

In this connection permit me to also call your attention to section 3814, of the Revised Laws and those sections which immediately follow it which, in substance, provide that when a person is found in such a state of intoxication as to disturb the public or domestic peace, he may be arrested, and when able properly to testify, be brought before a magistrate and compelled to disclose the place where, and the person of whom, he procured the liquor producing his intoxication, and upon failure to so disclose, may be committed to jail until he shall so do.

Under this statute large bills of costs are annually incurred in most counties of the State, but the benefits intended to be derived from such disclosures are not correspondingly great. Experience shows that it is the almost uniform practice of persons so arrested to attempt to deceive the magistrates before whom they are brought, by pretending that they procured the liquor causing such intoxication of a stranger, whose name was not known, or by making some other equally false statement. If the magistrate, under such circumstances, commits the respondent to jail, and permits him to remain there until he realizes that the subterfuge will not prevail, he usually stands ready to make a truthful disclosure: and does so. The magistrate then issues his warrant for the arrest of the person furnishing such liquor, who is brought before him, pleads guilty, and takes an appeal to the county court. When the case finally comes to trial, little advantage is derived by the State from the testimony of the party disclosing, because he is compelled to admit that when first arrested he told an entirely different story, and the jurors hesitate to find one guilty of a crime on the testimony of a man, who by his own confession stands impeached. This evil has reached such proportions that means for its arrest are imperatively demanded. It is not easy to say what means would best accomplish this end, but it has seemed to me that some method should be devised by which such person will find it for his advantage to speak the truth in the first instance rather than to attempt a deceit; and I am inclined to the opinion that every person so arrested and found guilty of intoxication, should, in addition to the usual fine of five dollars, be sentenced to imprisonment in the house of correction for a period of thirty days; and that a discretionary power be vested in the magistrate to withhold the execution of such sentence of imprisonment, when, in his opinion, the witness has, without equivocation or evasion, disclosed as the statute requires. Such a sentence may at first seem harsh and uncalled for. The intoxicated person has usually been looked upon more as an unfortunate victim of appetite than as a violator of the law, but when it appears that to his misfortune he has deliberately joined the

crime of perjury, all will admit that he has passed from the realm of pity, and should be vigorously dealt with. With such a discretionary power lodged in the magistrate, there can be no fear that a simply unfortunate inebriate will suffer from the increased penalty.

CHANCERING OF BONDS.

Another avenue through which guilty men escape the penalty of imprisonment and the other penalties provided by law is that of forfeiting the condition of bonds given for their appearance for trial, and afterwards, through their bondsmen, making application to the court to chancer the same.

Sec. 1,763 of the Revised Laws provides that such sureties may file a motion to chancer, and that the court may hear the parties and render judgment. This may be a humane provision in some classes of cases, but that it has resulted in disaster in its application to cases arising under the statute relating to intoxicating drinks cannot be denied. Under our present system the presiding judge in our county courts come to each county not oftener than once in two years. He is not acquainted with the men brought before him. Plausible statements are made respecting the reason why the respondent failed to take trial. His bondsmen (not infrequently the counsel making the statement, is one of them,) make pitiful appeals for relief, and it often happens that a man who should have been imprisoned for his crime, not only escapes that disgrace by the payment of money, but by the payment of a sum grossly inadequate to the measure of his offense. The extent to which this evil has proceeded may be illustrated by calling attention to two or three instances that have been brought to my notice of the exercise of this discretionary power on the part of the courts. At a recent term in one of our counties a man stood as respondent in three criminal prosecutions under the liquor acts. He forfeited his bail in each of them, and so avoided trials and convictions. The State's attorney, as in duty bound, caused writs of *scire facias* to issue against the respondent and his bondsmen, which were entered at the next term of court. In each of these cases a motion to chancer was filed. In the meantime the respondent had continued his unlawful traffic and at the last named term of court was convicted in three other distinct cases in which he was charged with illegal sales. In face of the fact that he was an old offender, and that since the forfeiture of the bonds, as aforesaid, he had persistently followed this illegal traffic, the court before whom he was convicted chancered the bonds forfeited at the previous term, reducing them from the sum of four hundred dollars to the sum of thirty dollars. Thus encouraged, this man is, I am informed, still conducting a most profitable business. Another man, also a well known violator of the law, was convicted at a single term of court under two charges of maintaining a nuisance, and one charge growing out of the disclosure of an intoxicated person, yet in the face of established guilt the court chancered bonds forfeited by this man at a previous term from the sum of four hundred dollars to the sum of twenty dollars, and the respondent continues his business with an assurance of undisturbed peace. After a full consideration of this subject, I am satisfied that the right to chancer bonds given in liquor cases should be taken from the court. In other classes of crime there is not so much danger that the proofs against the respondent can, or will be dissipated by a delay of six months, and if in such cases, the bondsmen produce their principal in court there is equity in their claim that they should be relieved of the operation of the bond, the condition of which has been broken; but in liquor cases experience has proved that a delay of six months ordinarily results in an acquittal, and even though the bondsmen surrender their principal after such forfeiture, or he be brought in on a bench warrant issued by the court, proofs of his guilt have become so wanting that he usually goes free, or is let off upon a trifling penalty. Let the bonds be enforced and I am satisfied that the practice of forfeiting them will cease in all cases save those where a conviction must be followed by imprisonment, and certain others where the business is so prosperous that the respondent is willing to pay the amount of the bond for an opportunity to continue it another six months. In this connection I commend to the consideration of the General Assembly the fact that in the United States courts the power to chancer bonds given by way of recognizance is not recognized by statute, nor by the published rules of practice, and I feel confident that a denial of this right to our courts, in all cases arising under the liquor laws of the State, will aid materially in the administration of justice, and will work no wrong to any individual.

NUISANCE ACT.

Another obstacle, and to my mind one of the most serious, to the successful enforcement of the law, is the construction that some of the judges of our supreme court have placed upon the so-called nuisance act, a statute better suited to the purpose of really closing the saloon than any other now found in the volume of our laws.

Section 3,836 of the Revised Laws provides that "every saloon, restaurant, grocery, cellar, shop, billiard room, bar room, and every drinking place or room used as a place or resort, where intoxicating liquor is unlawfully sold, furnished or given away, or place or room used or resorted to for gambling, shall be held to be a common nuisance, occupied in violation of the law." Subsequent sections of the statute provide that when there has been any violation of the law in any one of the places named in the section quoted, the court shall adjudge such place to be a common nuisance, and the same shall be shut up and abated by order of the court, and the officer serving such order is directed to post on the "door or main entrance" to such place a notice that the same is closed, and such place can not thereafter be opened by the person convicted until he files a bond that he will not again engage in the unlawful traffic.

If the parties engaged in liquor selling or gambling never occupied but one room in so doing, there would be little difficulty in following the statute and in closing places of that character; but in almost every instance when a person is about to engage in liquor selling, he opens what is called a grocery in which he keeps a stock of goods which age can not tarnish, and in addition to the room where the goods are kept, and connected therewith, he has back rooms and side rooms, as well as a cellar, all of which he can use as occasion requires. In case of a search and seizure, liquor is frequently found in some remote point of the cellar, in a cupboard, in the fuel room, or in some other apartment, which, if closed, would not operate to affect the party's business.

It has always seemed to me that the word "grocery," as used in the statute, was intended to cover all the rooms occupied by the proprietor in the management of his business, and that a violation of the liquor law in any one of them would constitute the whole a common nuisance. The statute requiring the notice to be posted upon the "door or main entrance" to such place would indicate that such was the legislative intent, and what is true of the word "grocery" would also be true of the words "saloon" and "restaurant." But the phraseology of section 3836 before quoted, is, when taken altogether, so peculiar that the courts have placed upon the act a narrower construction than the one indicated, and have construed the word "place," as used in that and subsequent sections, to mean the particular room in which the violation of the law was committed. This construction has rendered the statute of little or not practical effect in suppressing nuisances.

In support of this statement permit me to call your attention to a few of the many instances which have come to my knowledge in the application of the law. In one of the villages of our State, a man occupied four rooms in conducting his business. The only main entrance to them led from the street directly into the largest room in which were billiard tables. Out of this room opened three smaller rooms, He was brought into court charged with maintaining a nuisance in the building in which said rooms were situated and filed a plea of guilty in which he described the nuisance as "the room at the right of the entrance to the billiard room on the first floor of the building described in the indictment," which plea was accepted by the court. The room so adjudged a nuisance was one of the smaller ones opening out of the billiard room, and when that was closed by order of the court all the respondent had to do was to move his bar into one of the other small rooms, and carry on his illegal traffic as freely as he had done before. Another person who was indicted for maintaining a nuisance occupied rooms on the first floor of a business block and the cellar underneath the same. He was a well-known violator of the law. A search of the premises was made, but matters had been so well attended to that the only liquor discovered was in the cellar. The court accepted a plea of guilty which described the nuisance as a room in one corner of the cellar and made an order closing said room, but leaving all the rooms above mentioned unaffected by the judgment. Possibly another instance will aid in showing the insufficiency of this statute when construed as above indicated. A dealer of liquors was brought into court charged with maintaining a nuisance. The place of business consisted of at least four rooms, the main and only entrance to which led directly from the street into the room where he kept groceries. Connected with this room by doors were other rooms, in one of which was kept a well equipped bar. Others were used for storage and for fuel. In a search of these premises, which had evidently been anticipated, liquor was found secreted in the fuel room. The respondent filed a plea of guilty of maintaining a nuisance in the room last named, which plea was accepted by the court, and the majesty of the law was maintained by closing the respondent's woodshed, while he was left to give a hearty welcome to his patrons in the rooms where they had been accustomed to be received. It has been claimed, and with some reason, that if this construction of the statute be carried but a little further the interior of a jug will be deemed a

“place” and declared a nuisance, in which case the order of the court will be posted upon the cork, and the remaining jugs in the same closet remain unaffected by the order.

In calling attention to these cases by way of illustration I do not intend to cast any reflection upon the courts issuing such orders, but do it to call attention to the peculiar phraseology of the statutes which permit such orders to be made, which orders have brought ridicule upon the courts and have rendered attempts to enforce an otherwise effective statute farcical.

Added to this difficulty is another that grows out of the provision permitting the place adjudged a nuisance to be opened by the owner when he has filed the bond prescribed by law. By reason of the practice before noticed such bonds usually cover only one of the several rooms occupied by the dealer, so that he may go the grand round of his apartments and upon each of his convictions give a fresh bond and, until their number of his convictions equal the number of his rooms, there is no need that he violate the condition of either of the bonds previously given. In practice, also, even in a breach of the condition, I have never had a case come to my knowledge where the bond was prosecuted. I do not pretend to say where the blame rests; I simply know that in general such a bond is of no practical use in restraining the party giving the same from further violation of the law, and the result is that a man may continue in business in substantially the same place for year after year, though he be convicted time after time in the same court. I have in mind the case of one man who has been in business in precisely the same rooms for three or four years. That his place, though called a grocery, is a saloon, is a matter of public notoriety. He was once indicted for maintaining a nuisance and not caring to take a trial, forfeited his bonds. At the following term of court two additional prosecutions under the nuisance act and one for illegal sales were pending against him, in all of which he was convicted. Six months later there were pending against him four different prosecutions in the same court, one for maintaining a nuisance, one for illegal sales, one for keeping with intent to sell, and one on the disclosure of a person found intoxicated, all of which cases were continued to the next term on account of the sickness of the respondent. Twelve months later this same man was in the same court charged with maintaining a nuisance and had five other prosecutions pending against him. He pleaded guilty to maintaining a nuisance, but the court limited the operation of its order to a store room mentioned in the plea, while the other cases were continued. At the following term the same man was in court, again charged with maintaining a nuisance upon the same premises and was convicted, but only one out of the four rooms occupied by him was affected by the order; so year after year, in precisely the same rooms this man has gone on persistently violating the law.

Another difficulty that asserts itself in the enforcement of this statute arises from the fact that, while under the law as it now stands, the person convicted can not again open the place adjudged a nuisance without giving the bond prescribed by the statute, *any other person* may step in and do so. The result is that the *ostensible* proprietorship of the saloon changes as often as judgments are entered broad enough in their terms to really affect the business, but the saloon itself goes on as if nothing had happened. In most instances of this kind the real proprietorship rests in the person first convicted, although it is sometimes difficult to demonstrate such fact in a court of justice.

There is no reason for such a condition of things as I have described. Let the law be so amended that every order adjudging a place to be a common nuisance shall be broad enough to cover the entire premises occupied by the respondent, whether they consist of one room or twenty; let such premises be closed, not only against the respondent himself but against all persons whomsoever, and for any and every purpose; let the clause providing for opening the same upon giving a bond be repealed and have every order for closing a nuisance absolute in its terms and not subject to be suspended by any power or person for at least six months; and, at the end of such time, permit such premises to be opened only upon the application of the owner thereof to the court in which the conviction was had, and then only upon the filing of a proper bond the condition of which shall be considered broken in the event of the conviction of any person of a violation of the liquor law in any part of the same.

With such amendments, and others that may to you seem to be needed, the law will, in my judgment, become effective, and places known by all to be saloons will be a thing of the past. At all events, they will not be openly conducted and will cease to be a mockery to the law. Such an order as has been suggested may be deemed severe in its application to the owner of the premises, but it seems to me to be the only means of effectually closing the saloons. If the owner is ignorant of the character of the business done on his premises (a

condition hardly to be imagined) he has upon coming to a knowledge of the same, a right to terminate his lease and to maintain an action against his tenant for damages. If he has had knowledge of the business he ought to be and is subject to a penalty, and he deserves no pity and is entitled to no consideration. Common prudence ordinarily leads a landlord to inform himself of the nature of the business carried on by his tenant, but if one be found who, having eyes sees not, and ears hears not, the provision suggested would bring him to a realizing sense of the condition of things and lead him to the exercise of at least ordinary caution in the future.

The legislation in relation to the traffic in intoxicating drinks should, in all its branches, be clear, strong and effective; and I most earnestly recommend that the subject be taken up with a due appreciation of the subterfuge and opposition that is uniformly exercised by violators of the law who are desperate in their purpose to destroy its power, and that in devising remedies the general assembly exercise a courage which will indicate a purpose to make prohibition prohibit in Vermont.

WILLIAM P. DILLINGHAM

EXECUTIVE CHAMBER,
Montpelier, October 1, 1890 }