

Farewell address

of

Horace Fairbanks

As it appears in the

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of the

**JOINT ASSEMBLY**

**BIENNIAL SESSION**

**1878**

**Farewell Address**  
**Wednesday, October 2, 1878**

*Gentlemen of the Senate and of the House of Representatives:*

Since the presentation of my message to the Legislature of 1876, information on several subjects has been brought to my official attention, a knowledge of which, in my judgment, will be not only helpful, but important, for the proper discharge of your duties as legislators. I have, therefore, concluded to depart from the usual custom of my predecessors, and submit a brief message at the close of my administration of the executive department of the State. I am the more impelled to make this departure from the fact that under the biennial system, as hitherto administered, the Governor is obliged to communicate the customary message, before having had any official experience of the practical operation of the laws, as bearing upon the institutions and welfare of the State.

PARDONS.

The pardons granted by me may be divided into two general classes. The first class comprises persons sentenced to the payment of a fine and costs of prosecution, and to stand committed until such payment is made. To this class I have granted one hundred and ninety-five pardons, the fines and costs remitted in the aggregate amounting to about eight thousand dollars.

In most cases of the first class, the pardon has, in effect, been the remission of the imposed fine, in consideration of the length of confinement in jail; and of the second class, the remission of a part of the term of imprisonment imposed by the court, from the consideration that the ends of justice had been fully accomplished by the imprisonment already endured, or because of new developments tending to establish the innocence of those convicted, or upon the recommendation of the court, who have felt there was doubt of the guilt of the party convicted.

As the law has been hitherto—it is now somewhat modified by the act establishing a State work house—the imposition of a fine upon a man unable to pay it, practically amounted to imprisonment in the county jail for life. No power was vested in the courts to determine what length of such imprisonment should be equivalent for the payment of the fine; therefore, there have been found, in all our county jails, a large number of persons confined in enforced idleness, without hope of release except through executive interference. Without its exercise the jails would soon cease to furnish room for new offenders.

The second class includes persons sentenced to be confined at hard labor in the State prison for a term of years. To this second class I have granted fifteen pardons.

In the appendix will be found a list of the pardons granted of the latter class during the two years ending this day, and a brief statement of my reasons for granting each.

It is a question which has suggested itself to me, whether there should not be some advisory tribunal, as is the practice in some other States, whose duty it should be to examine applications for pardons, and recommend to the Governor.

It is apparent that so many applications, urged frequently with much persistency and feeling by near and suffering friends, imposes a heavy burden of responsibility upon the Executive. If refused the election of a new Governor incites to a fresh application. No general principles governing the granting or the refusal of such applications can be established and uniformly applied. Such frequent application keep the convict in a state of constant expectation or disappointment, The uncertainty of mind thus induced renders prison discipline more difficult and less effective. The law, too, loses much of its terror for evil doers, from the uncertainty which arises in regard to an even and impartial execution of its penalties.

These reflections are suggested to my mind by an examination of the number of pardons granted annually during the last thirty-five years, a lot of which, together with the number of commitments for each fiscal year ending August 1st, is as follows:

It will be observed that the commitments for the years 1877 and 1878 are largely in excess of those of former years.

TABULAR STATEMENT OF COMMITMENTS AND PARDONS.

Years	Commitments	Pardons	Years	Commitments	Pardons	Years	Commitments	Pardons
1843	23	9	1855	35	15	1867	29	3
1844	30	11	1856	31	8	1868	42	8
1845	26	12	1857	25	16	1869	44	8
1846	25	20	1858	38	9	1870	39	11
1847	16	8	1859	41	9	1871	32	8
1848	19	7	1860	44	12	1872	23	7
1849	34	6	1861	42	5	1873	35	1
1850	38	8	1862	22	6	1874	50	
1851	35	5	1863	17	5	1875	35	1
1852	21	9	1864	31	4	1876	81	6
1853	32	8	1865	51	10	1877	68	7
1854	22	5	1866	43	9	1878		

Should not the Executive be required by law to communicate to the legislature at each regular session, all cases of reprieve or pardon granted, with his reasons for granting the same?

PRISON SYSTEM AND CRIMINAL LAWS.

It is a sad commentary upon our prison system, that under it the rule has been, once a criminal always a criminal, and that the convict thereby has been confirmed in his criminal tendencies rather than the reverse.

My more intimate connection with and observation of its administration during the two years now closing, has by strengthened and confirmed the views I expressed in my former message, and impressed upon me the conviction that the further carrying out of the humane and reformatory measures already so happily begun, will result in good both to the inmates of the prison and to the State at large.

In this age, when the deaf and dumb are taught to converse freely, the blind to read and write, and when the faint glimmering intellect of the feeble minded and idiotic is developed and strengthened into fair intelligence, it would seem that a sovereign State, with all its resources, might be able to turn back from vice and restore to virtue, youth, many of whom have been brought to the commission of crime more by evil associates and untoward circumstances, than by innate criminal disposition. To this end, ought not our criminal laws to have a most careful revision? Ought not the State to own our county jails, making them simply houses of detention for the safe custody of prisoners awaiting examination or trial? Ought not the State prison accommodations to be enlarged, making it possible for the convicts to be classified and more thoroughly disciplined and reformed?

## REVIEW OF JOHN P. PHAIR.

On the day appointed for the execution of John P. Phair, April 6th, 1877, and only an hour or two before the execution was to take place, a telegram was received from M.C. Downing of Boston, sent by advice of the Chief of Police, saying that he thought he saw and conversed with Mr. Phair on the train coming from Providence to Boston on the next day following the murder of Mrs. Freeze; and also a telegram from Charles H. Taylor, manager of the Boston Globe, vouching that Mr. Downing was a reliable man.

Phair left Rutland on the early train on the morning of the murder, and went to Boston. At the trial, and in a statement which he had caused to be published, he claimed that he did not stop in Boston, but went directly through to Providence, stopped over night and returned to Boston the next forenoon.

The strong evidence on the trial against him showed that he, under the name of "E.F. Smith," occupied a room that night at the Adams House in Boston, in which, after he left, was found part of a shawl, which was identified as having belonged to the murdered woman, and that under that same name the next morning he pawned in one place a watch and in another an opera glass and some rings, which were also identified as having belonged to her. He could not have done this if he went to Providence and returned as he claimed, and as Mr. Downing's testimony tended to show. There was no time for investigation. I deemed it my duty to stay the execution of the sentence for a short time, and did so until the 4th day of May following.

The matter was of so much importance, not only to Phair, but to the State, that I thought an investigation should be had by those acquainted with the facts and circumstances attending the murder and trial, and accordingly requested E.J. Ormsbee, Esq., the State's Attorney under whom the conviction was had, and W.G. Veazey, Esq., one of Phair's attorneys at the trial, to proceed to Boston and Providence and take such evidence as they might find bearing upon this claim. This testimony, together with additional evidence, is herewith transmitted. Petitions were presented for a further reprieve, signed by many leading and highly respectable citizens of the State. Many letters were also received from well known and prominent professional and business men, urging the reprieve. I felt it to be my duty to grant the request. A further stay of the execution of the sentence was ordered until the first Friday of April, A.D. 1879. I think that the question presented by this evidence is for judicial investigation and determination. If Phair is guilty he should suffer the penalty. If not guilty he should be set at liberty.

When the question arose, the time limited by the statute for the presentation of a petition for a new trial had elapsed. Until quite recently the time in which such petition must be brought did not elapse before the execution of the sentence in such cases. By an extension of the time which must intervene in capital cases between the sentence and execution, under the present law, there is now a time shortly before the execution, in which a person under sentence of death, whatever the developments, has not the right to bring a petition for a new trial. This condition of the law has probably been occasioned inadvertently by the change from the annual to the biennial system. I think this is a defect in the law. When life is the penalty, the State cannot afford to make a mistake. I therefore thought it my duty to stay the execution until such time as the Legislature would have an opportunity to take action and determine whether the law should be so amended as to furnish Phair and others under sentence of death, the right to bring a petition for a new trial at any time before the execution of the sentence.

## WORKHOUSE.

I appointed Hon. Wm. W. Grout of Barton, Hon. Albert Clarke of St. Albans, and Hon. Ner P. Simons of Rutland, Commissioners, required by the act of 1876, for the establishment and construction of a workhouse. They duly qualified and entered upon the prosecution of the work committed to them by the act. The county of Rutland reasonably complied with the conditions of the act, and thereby secured the location of the workhouse within, and in part for the use of that county.

The Commissioners purchased land in the town of Rutland, necessary for the site, erected thereon the buildings required, at an expense within the appropriation—a fact in the construction of public buildings, in these times, which is as creditable to them, and their management, as it is rare—and had the same in readiness for occupation by the time named in the act.

Having thus promptly and satisfactorily completed their work as Commissioners, I appointed them Directors. Their report will be duly transmitted.

The necessity of such an institution has long been felt. Its establishment and proper management I am sure will be found a great relief, not to say improvement, in the administration of criminal justice. It is probable that a similar institution located on the east side of the State will ultimately be a necessity.

#### INSANE AND INSANE ASYLUM.

Under the Joint Resolution of 1876, "In relation to the insane of the State and the statutes in relation to their confinement and treatment," I appointed Dr. Middleton Goldsmith of Rutland, Dr. O.F. Fassett of St. Albans, and William H. Walker Esq. of Ludlow, Commissioners, to make the inquiries and investigations required by the resolution. These gentlemen accepted the appointment, and have entered upon the discharge of their duties. Their report will be duly transmitted.

#### STATE LIBRARY, CABINET AND HISTORICAL SOCIETY.

"To devise a plan for the better accommodation and utility of the State Library, the State Cabinet, and the Collections of the Vermont Historical Society, and to prepare designs and make estimates for the same," required by the Joint Resolution of 1876, I appointed Hon. T. P. Redfield of Montpelier, Hon. G.G. Benedict of Burlington, and Hon. Roswell Farnham of Bradford, Commissioners, who have entered upon the discharge of the duties imposed. Their report will be duly presented.

#### JUDGE OF THE SUPREME COURT.

The resignation of Honorable Hoyt H. Wheeler, occasioned by his appointment as United State District judge for the District of Vermont the Judges ranking below him were each promoted, leaving a vacancy in the sixth assistant judgeship, which was filled by the appointment of Hon. Walter C. Dunton of Rutland.

#### STATE MILITIA.

In pursuance of an act of the Legislature of 1876, providing that whenever the Militia force of this State shall be reduced to ten companies of infantry, the commander-in-chief is authorized and directed to organize a battery of light artillery, which shall be deemed a part of the organized Militia of the State.

This contingency having arisen by the disbandment of two of the companies of infantry, under my direction the "Fuller Battery" of Brattleboro was mustered into service and became a part of the organized Militia of the State.

This change renders our Militia force, though small compared with other new England States, much more complete and efficient than it had hitherto been.

I am happy to report that the Vermont Regiment, in point of discipline and equipment, is not surpassed by the troops of the neighboring States. The comparison to which it was subjected at the Centennial celebration at Bennington in 1877, with the picked troops of New Hampshire and Massachusetts, was not unfavorable to it. It reflected great credit not only upon those in command but upon the men themselves, who behaved with marked decorum and evinced the soldierly qualities expected of Vermont troops.

The departments of the Adjutant and Inspector General and Quartermaster General have been conducted with efficiency and fidelity.

#### STATE CENTENNIAL AND BENNINGTON BATTLE MONUMENT.

The Centennial celebration of the adoption of the State Constitution, at Windsor, July 9, 1877, and of the Battle of Bennington, at Bennington, August 16<sup>th</sup>, 17<sup>th</sup> and 18<sup>th</sup>, 1877 – who were present representing other States and the nation – what was done – what was said in oration and poem of the heroes and heroic deeds of one hundred years ago, – have passed into and become a part of the history of the State and the nation.

It was well to incite our minds to patriotism and devotion to the maintenance of equal rights for all, at whatever peril and cost, by recalling the sacrifices and heroic deeds of valor of those who laid the foundations of the State.

It is well to commemorate the battle so intimately connected with the weal or woe of the State and the nation, by a fitting monument which shall perpetually remind us, our children and our children's children, of the cost of treasure, suffering and precious blood at which the liberties and rights enjoyed by us and them were purchased.

Under the act incorporating the Bennington Battle Monument Association, as was my duty, I invited in the name of the State the States of New Hampshire and Massachusetts to unite with the State of Vermont in erecting a battle monument at Bennington.

These States have responded most generously: the former by appropriating \$5,000 and the latter by appropriating \$7,500 for the erection of such a monument.

These sums, together with the sum appropriated by this State, amount to \$27,500.

This last named sum has been increased by individual donations, so that the sum now available to the erection of such a monument is \$32,500.

The Directors of the Monument Association have determined to increase this sum to a much larger amount through private generosity.

#### UNITED STATES COAST SURVEY.

Information having come to me that the appropriation by Congress for carrying on the Geodetic triangulation of the United States Coast Survey would allow of its extension to this State, I immediately communicated with the Superintendent of the United State Coast Survey at Washington, under whose direction this work is being done. I was informed that on furnishing satisfactory evidence that the State had been surveyed geologically, the Department would undertake the work in this State.

The required evidence was furnished, and on my recommendation, Prof. Volney G. Barbour, of the Vermont University and State Agricultural College, was appointed to perform the work. By this survey, the location of a great number of points in the State and on Lake Champlain will be fixed and determined relatively, not only to each other, but to many other points in other States, and along the coast of the United States.

#### LIGHT HOUSES

I herewith transmit a communication from Colonel Woodruff, Engineer of the third Light House District, relating to some legislation necessary to render effective an act passed at the last session of Congress, authorizing the location and construction of Light Houses at certain points on Lake Memphremagog.

You will no doubt give the matter favorable consideration.

#### THE ANTIETAM NATIONAL CEMETERY.

The title to this property is vested in the State of Maryland as Trustee for the several States which contributed towards its establishment and maintenance. The State of Vermont made such contribution. The Board of Trustees of the Cemetery have become involved in a debt. Congress, by act of March 2, 1877, authorized the Secretary of War to pay this indebtedness on the title to the property being vested in the United States, and made an appropriation for that purpose.

The War Department of the United States, requests the extinguishment of the right of this State to the property, by the passage of the act herewith transmitted, that the appropriation may be made effectual to the payment of such indebtedness.

#### PARIS EXPOSITION.

I received from the State Department of the United States Government, an official communication requesting me to nominate to the President of the United States, two persons suitable for appointment as honorary commissioners to represent this State at the Paris Exposition.

I complied with this request by nominating Ex-Governor John Gregory Smith of St. Albans, and Hon. Luk P. Poland of St. Johnsbury, who were duly appointed as such. The former attended the Exposition, and with his

accustomed energy and ability addressed himself to the promotion of the interests of the State and its citizens there represented. I regret to say that the latter, by unexpected business engagements, found himself unable to attend.

### THE HUNTINGTON BEQUEST.

Arunah Huntington, a native of Vermont, but more recently of Brantford, Province of Ontario, Dominion of Canada, died January 10, 1877, leaving an estate inventoried in the will at two hundred and two thousand dollars, to the State of Vermont as a common school fund. Of this estate, \$3,450.00 was in real estate and real estate securities situated in the Province of Ontario. The balance of the devise is of a personal nature and consists of bank and insurance stock, railroad securities and personal loans. Mr. Huntington left no children. He left a second wife who is not an heir because of an ante-nuptial contract. The heirs of Mr. Huntington have commenced legal proceedings in the Court of Chancery, praying said court to declare void the devise and bequest so far as it relates to real estate under the old English statute of *Mortmain*. This statute declares void all conveyances and devises of land or any interest therein, where the gift is for charitable uses, unless such gift or conveyance be made by deed, twelve calendar months before the death of such donor or grantor, and be duly recorded six calendar months before the death of such donor or grantor. And also praying said court that the whole devise and bequests are made by the said testator cannot be carried out by the State of Vermont and cannot be enforced by the courts of Canada, and because the aforesaid conditions, if carried out, would result in creating a perpetuity; and asking that the heirs at law be declared entitled to the same, according to their respective interests.

Before the cause was reached for trial, negotiations had begun with reference to a settlement and adjustment of so much of the claim as would come within the provisions of the statute of *Mortmain*, conditioned upon the withdrawal of the suit. These negotiations have as yet resulted in no adjustment, and I am unable to state whether it is probable that such adjustment can be had upon any terms that the State could consent to. I have exercised all possible diligence to secure such disposition of this matter as would carry out the wishes of the generous donor. Immediately upon the commencement of legal proceedings by the heirs, I intrusted the matter to Judge Poland, who has diligently cared for the interests of the State in the courts.

Mr. Huntington was born in Roxbury, in this State, February 23, 1794. His early years were spent upon a farm; later he worked at the tanners and shoemakers' trades, teaching school during the winter, until 1828, when he removed to Canada, where he has since resided. His attachment for his native State never abated, and it has been his custom for years to talk over with his friends his project of leaving his property as a common school fund to the State of his nativity.

What fitting action should be taken by you in recognition of his warm attachment and persistent devotion to the State of his birth, is a matter which I leave to your wisdom without comment.

*Senators and Representatives:*

In closing my connection with the Executive Department of the State, allow me to express to you and through you to all the people of the State my most hearty appreciation of the cooperation, kindness, forbearance and charity which have been universally extended to me in the discharge of my official duties, and I trust that that Providence which controls alike the destinies of individuals and of nations, will grant His blessing upon your united efforts for the welfare of the State.

HORACE FAIRBANKS

EXECUTIVE CHAMBER,  
Montpelier, Oct. 2, 1878 }  
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