

The Notre Dame Scholastic

DISCE · QVASI · SEMPER · VICTVRVS · VIVE · QVASI · CRAS · MORITVRVS ·

VOL. XXXIX.

NOTRE DAME, INDIANA, MAY 26, 1906.

No. 31.

Our Offering.

EUGENE P. BURKE, '06.

O MOTHER dear, the month of May
Is fairest of the year;
The mother birds are wild with joy,
Earth's sweetest flow'rs appear.
The ground is white with petaled snow
From pear and apple tree,
A symbol of thy innocence
And spotless purity.

O Mother fair, before thy shrine
Thy children humbly kneel
To thank thee for thy tender care,
And stronger bonds to seal.
When darkling trouble, like a cloud,
Hangs o'er our childish way,
Thy smile shines like a summer sun
And drives the clouds away.

And now, sweet Mother, at thy feet
Our offerings we place,
Not ours with rich and sparkling gems
Our Mother's throne to grace;
But from the treasury of our hearts
Our deepest love we give,
And ask, when this short life is done,
In Heav'n with thee to live.

Railroad Rate Regulation.*

Underlying Principles.

WITH everyone in the country who is discussing this question we understand it to mean that a commission appointed by the President in about the same manner as our Supreme Court judges are appointed, should be given power to fix a particular railroad rate whenever, after a full hearing with the burden of

proof on the complainant, a rate fixed by a railroad is found to be unjust.

A railroad rate is the charge imposed on a shipper for carrying his goods from one part of the country to another. I propose now to analyze the present situation, to see how far rates are fixed by natural business forces and how far they are subject to the arbitrary will of wealthy railroad men looking out for their own interests at the expense of the interests of the people.

Competition between rival railroads is one of the forces supposed to keep rates just, but the days of anything like general competition are over. Competition never was a just regulator of rates, because it either forced them so low that the railroads went into bankruptcy, or it raised them too high on non-competitive traffic. The big railroad men were quick to realize how prejudicial competition was to their interests, so they began to make rate agreements and to pool their traffic and their earnings. These practices were before long declared unlawful, so that the only thing left for the railroad men to do was to consolidate. This process has gone on rapidly since 1899, and recent statistics show that of our 210,000 miles of railroads, two-thirds are controlled by seven or eight capitalists: Morgan, Hill, Vanderbilt, Gould, Harriman, Moore and Cassatt. In addition, most of these men are financially interested in the roads of the others, and there is a steady movement toward what is called "community of interest" among all great owners of railroads. Therefore, competition can no longer be said to have a general effect on rates, and we are face to face with new conditions under which most of

* Affirmative speeches in the Notre Dame-Iowa Debate.

our railroads are controlled by a very few men. So far, therefore, the railroad men are free to dictate the rates that suit them best to a helpless people.

They have another claim, however, which is entitled to our attention. They say the interests of the railroads and the interests of the people are identical. This much is true: it is more profitable to carry a large amount of traffic at low rates than a small amount at high rates. If a railroad is to be prosperous it must have a great deal of traffic, but if rates are too high, traffic can not move. This law is a far-reaching one in the railroad world. It stimulates traffic managers to do everything to secure traffic. In it is found the reason for special rates and experimental rates. The expenses of operating a heavily laden train are not at all in proportion with the expenses of operating a light one. This law explains why rates are as low as they are in the country, and, on account of it, I do not believe that general, initial rate-making power should be taken away from the railroads.

But this law is only a general one. If we look at it from another point of view, we find in it the reason for the multitudinous discriminations that have so roused the indignation of the whole people. Traffic managers want traffic, and where it is necessary to give low rates to get it, as in the case of large cities, large industries and ports, they give them; but the small city, the small industry, the inland town must pay almost anything traffic managers please. Railroad men are not in the business for the fun of the thing, nor are they actuated by philanthropic or patriotic motives. They want to make all the money they can, and where they see a chance to charge a high rate without doing injury to their business, they will charge it. Their policy is to grant such rates as will keep industries in business, and after that, as they themselves have expressed it, "to get all they can."

Therefore, whenever the railroads must charge a low rate or not carry the traffic, which is often the case in dealing with large corporations and markets, rates will be reasonable; but in that vast number of cases where there is no such pressure, human greed asserts itself in the persons of the traffic-

managers, "striving to get all they can."

But let us examine the way in which rates are actually made, to see whether or not it insures the public justice. The only rule the railroads follow, the only rule at all practicable in the United States, is "to charge what the traffic will bear;" but necessary as this rule is, observe how much arbitrary power it places in the hands of the rate-makers! The question they try to decide every one of the millions of times a year they are called on to fix rates is: how much can we possibly charge the traffic of this shipper without driving it away from the railroad? It must be clear to everyone, therefore, how much arbitrary power this method of making rates, united to the present consolidated, unrestrained condition of the railroads, places in the hands of the railroad rate-makers, and what terrible disaster and injustice human ignorance and human greed, in the persons of these men, can inflict on the people unless there is possible an effective appeal to an impartial third party in questions of dispute, which, as the second affirmative speaker will prove, is not possible at the present time.

What we ask for is, that there be a public board, as conservative and impartial as possible, to which any person in the United States who thinks he is being charged an unjust rate, may appeal and learn whether or not his particular rate is unjust, and if it is to have a just rate quickly fixed in its place. We realize that this will place considerable power in the hands of the Commission, but we have got to entrust somebody with power or leave the railroads absolute masters of the situation. We do not say that it is wrong for private men with every motive to look out for their own interests at the expense of the people, to make all the rates in the country, and is it fair for the railroad men to say there ought not to be a board of arbitration to which the people may appeal to have the mistakes and acts of injustice the railroad men undeniably make, examined and corrected?

The better to illustrate what I have said, I will cite a concrete case. Mr. Murdo Mackenzie, representing a large number of the cattle raisers of the Southwest, testifying before the Committee of the House of Representatives, said: "Until 1898 the railroads

charged us from \$55 to \$65 for hauling a car of cattle from Texas to the northern ranges; then they raised their rate to \$70, and now we are paying \$100 for the same or rather poorer service than we were getting in 1898. It costs the railroads less now than it did then because they load their trains heavier and run them much slower. They seem to be treating us pretty much as they please, and we would like to feel that there is some board in between us and the railroads that will tell us when a rate is just, and if it is unjust, correct it."

Notice what probably took place. The railroads found it to their interests to charge a rate of \$65 until the cattle men had their money securely invested in their business and could not easily withdraw it. Then they gradually raised their rate from \$65 to \$100, an increase of \$35 a car. This case shows how far the interests of the railroads and the people are identical, and it is only one of a whole legion of similar cases, some of which will be cited for you by the next affirmative speaker.

It should be noticed that the first general upward tendency of rates observable in thirty years, began in 1900, the year after consolidation started on a large scale, and has continued ever since; also, New England, where consolidation has reached its most advanced stage, is one of the chief hot-beds of dissatisfaction and complaint.

The evil that I would have all my arguments culminate in impressing upon you is the injustice of the present situation: the feeling on the part of the shippers, especially the smaller ones, that they are powerless; that this great big force is towering above them, and that no power in the country can save them if the big railroad men choose to crush them out of business existence.

Conditions have changed. Our country is no longer an infant; our resources are fairly well developed, and society has already taken on a rather definite form. A large number of Americans have acquired great wealth and, on account of it, great power. The poorer classes are growing restless and fearful lest our free government may degenerate into a plutocracy. The most wealthy men in the country are at the head of the railroads, and the railroads are

of the most vital concern to all the people. These wealthy men have the power to regulate transportation charges, and, on account of their consolidated state, can do so in a more or less arbitrary manner. There is no power in the country capable of doing so much injustice as the railroads. They can build up cities or individuals or blot them out of commercial existence. In essence, the people are being taxed by these wealthy men, and they are not represented. The present situation is intolerable, and if Congress does not see fit to adopt the mild conservative plan we suggest, before long, willing or unwilling, it must deal with the railroad problem in a far more radical way.

CORNELIUS J. HAGERTY, '06.

*
*
*

Present Evils and Present Legislation.

It is a principle of common law that common carriers should be impartial. The principle has been affirmed by constitutional provisions, by state and federal enactments. Mankind's universal sense of justice demands its recognition; its justice is admitted by the railroads. Yet, despite all this, the railroads unjustly favor persons, places and commodities.

"Frequently," to quote President Hadley of Yale, "the railroads make whatever local rates are necessary in order to get the business on the through traffic, thus the people in non-competitive places are forced to pay the cost of killing competition in other places." The truth of this is borne out by numberless rates. The rate from Cincinnati to the non-competitive town of Marietta is six times as much per ton mile as the rate to the competitive town of Atlanta.

Rates on imports are so low that, as a Pittsburg manufacturer said: "We produce glass here in Pittsburg, but it costs us more to ship it to Chicago than it costs the manufacturer in Belgium."

The average rate on all staple articles from Cleveland to New Orleans is about two cents higher per hundred pounds than from Chicago to New Orleans, but the rate on petroleum oil is eight cents higher. Thus while the merchants of Chicago and Cleveland compete on almost equal terms in the markets of the South, owing to an

unjust discrimination of eight cents in favor of the Standard Oil Co. shipping from Chicago, the markets of the South are closed to the independent oil men of Cleveland. For years we have been trying to prevent unjust discriminations; never were they so many or so great as to-day. It is an unjust discriminatory rate to-day that compels the citizen of Marietta to pay six times as much per ton mile for railroad service as the citizen of Atlanta; it is an unjust discriminatory rate to-day that tears down the protective tariff, puts a bounty on foreign merchandise and enables the manufacturer of Hamburg, Germany, to undersell the manufacturer of Chicago in the markets of Denver and the West; it is an unjust discriminatory rate to-day that, for all purposes of trade, has erected a wall of adamant between the markets of the South and the independent oil men of Cleveland.

Similar in extent and effect are the discriminations between commodities. The beef combine, with Armour at its head, ships immense quantities of beef and hog products from Kansas City to Chicago. Competing with the packers are our western cattle men, who from Kansas City ship their live cattle to Chicago to be butchered and sold. Now it is a basic principle of rate-making that the cheaper the product the cheaper the rate. Consequently, live cattle should be shipped at a lower rate than dressed beef, and this is observed on all roads east of Chicago. East of Chicago the rate on cattle is one-half the rate on beef; west of Chicago, where the beef combine operates, for the last ten years they have been the same. Seventeen years ago the beef combine, desiring a complete monopoly of the meat business, began to force down the rate on dressed beef, while the rate on cattle not controlled by a combine remained as high as ever: so low a rate was obtained upon beef that the cattle men were threatened with positive financial ruin. They appealed to the Interstate Commerce Commission which decided way back in 1890 that more should not be charged for hauling cattle than beef. Now mark how the railroads, obeying the letter of this decision, defeated its purpose. They did not charge more for hauling cattle than beef; they charged just as much.

Remember, east of Chicago the rate on cattle was one-half the rate on beef; west of Chicago, where the combine operated, they were made the same. Not satisfied even with this low rate, for years the combine forced a rebate of five cents on every hundred pounds of beef. This was discovered and stopped; then in open defiance of the Interstate Commerce Commission's decision of 1890, the railroads gave the packers a rate on beef five cents lower than the rate on cattle and the cattle men, who, year after year, had seen their number decrease as the combine's ever-growing power of monopoly drove shipper after shipper to the wall, again appealed to the Commission; but the Commission without the one power necessary to remedy the evil; without power to substitute a reasonable for an unreasonable rate, could only reissue its useless decision of 1890—more should not be charged for hauling cattle than beef—and the railroads laughed at the decision. The unjust rate is charged to-day, and has been charged for ten years; for ten years cattle man after cattle man has been driven out of business because Armour and the beef men can ship dressed beef and hog products as cheap or cheaper than the small cattle men can ship live cattle, and that is going on to-day and can not be stopped; and why? Because there is no power in the United States that can compel the railroads to substitute a reasonable for an unreasonable rate. Is this injustice to go on forever? This case of the beef combine is but one of many. From the cotton raisers of Texas, from the lumber men of Oregon, from the vegetable raisers of Florida, from the grain raisers of Kansas and the grain shippers of Iowa, from North, South, East and West pour in complaints of unjust discriminatory rates; complaints that tell of the ruining of the small town and the small shipper by discriminations, that the big town and the big shipper may thrive. Out of the hopelessness of justice has risen the present universal cry for relief; a cry that found its echo in the House's almost unanimous passage of the Hepburn Bill; a cry that will not down until, as the nation's chief has said: "A government tribunal is given power to substitute a reasonable for an unreasonable rate."

As we have partially seen, present legal remedies are inadequate to correct existing evils. They fail for two reasons: first, because of the law's delay, and second, because the law itself does not go far enough.

At present the Interstate Commerce Commission can only request a railroad to lower its rate. The railroad may refuse and carry the case through three courts, taking an average of four years, during all which time the rate condemned by the Commission prevails. The four years spent thus in litigation, as President Roosevelt said in his last message to Congress, amounts almost to an absolute denial of justice. Give a commission power to substitute a reasonable for an unreasonable rate and this evil of delay will vanish, for during any judicial review the rate of the Commission obtains. The question at issue here is simply this: pending final adjudication, which rate, the railroad's or the government's, should prevail?

But aside from the law's delay, the law itself does not go far enough. To-day the courts and the Interstate Commerce Commission have power to condemn a rate as unreasonable; but power to condemn a rate as unreasonable without power to fix a reasonable rate for the future stops at the vital point. For example, a rate of \$3.85 per ton on iron from Birmingham, Ala., to Cordele, Ga., was declared unreasonable, and a reduction of \$2.00 was recommended as reasonable. The railroad reduced the rate .15. All the commission or the courts could compel the railroad to do was to cease charging \$3.85. They could merely recommend a reduction of \$2.00. The railroad reduced its rate 15 cents, and it was lawful, yet it was a rate \$1.75 more on every ton than an impartial government tribunal after a thorough investigation of all the facts in the case declared to be reasonable. Now as in this case the commission or the courts are powerless to compel the railroads to charge a reasonable rate, so in every case are they equally powerless. Out of the absolute inadequacy of present laws has arisen the present intolerable situation. The evils complained of are unjust rates. The people's legal right to just rates can only be guaranteed them by an impar-

tial government tribunal having power to fix just rates. To-day the outraged public demands such a remedy. For years the Interstate Commerce Commission has condemned rates as unreasonable without power to fix a reasonable rate, and the unreasonable rates still continue; and we of the affirmative believe that to the power of condemning a rate as unreasonable should be added power to substitute a reasonable rate in its place.

WESLEY J. DONAHUE, '07.

*
* *

A Practicable Remedy.

It remains for me to show that our plan is practicable and that the advantages of the present system will be retained. At the outset it is necessary to get a clear and exact idea of the power to be delegated to this commission. First, as to what that power is *not*. It is not general rate-making power. To give a commission power to substitute a reasonable rate for a particular rate complained of and found unreasonable,—that is the issue of this debate. But it has been urged that because any rate may be complained of, the Commission will be empowered, possibly at least, to fix all rates. Yes, just possibly; but what is the probability? President Hadley, for years our best authority on transportation, meets this argument in a summary manner. He says: "Theoretically it might be, if the Commission were composed of madmen, and the courts of socialists; practically the number of changes in the rate schedule that would be made by any sensible commission would be small indeed." Both reason and experience assure us, then, that the power to correct a particular rate found unreasonable means general rate-making, only on the one condition—that rates are generally unjust. If you tell me that rates are interdependent, I tell you that the railroads themselves often change particular rates for particular reasons without recasting entire schedules. There is no reason at all why a commission could not do the same thing.

But in abolishing some of the worst evils in the present situation, is there danger of losing much that is good? In bridling railway greed, shall we work injustice to

the railroads, or harm to our commercial and economic prosperity? These are fair questions, and I shall endeavor to meet them fairly. We maintain that the correction of particular cases of railroad injustice involves no danger to legitimate railroad interests.

This, then, is the situation. The public has no remedy. If the Commission is given power to provide a remedy, it may possibly do injustice to the railroads. Let us weigh the chances of injustice. During litigation, shall the government's rate or the railroad's rate obtain? the decision of the umpire, or the decision of one of the contestants? To-day, pending adjudication, it is always the public that suffers the practically irreparable loss of an unreasonable rate, and after litigation the railroads may make that rate just as much or just as little less unreasonable as they see fit. Adopt the proposed remedy—pending litigation let the Commission's rate obtain, and then, sometimes it will be the public and sometimes it will be the railroads that may suffer an occasional temporary loss; but with this all-important difference—the railroads will have in the courts a complete and effective remedy against unjust confiscatory rates; a remedy which is guaranteed them by the Constitution; a remedy which is competent to set aside confiscatory rates, even if they were made by Congress itself.

We have been told that if a commission is empowered to correct specific cases of injustice in rate-making, the commercial development of the country will be impeded by inelastic rates. We appreciate as fully as do the gentlemen of the negative, the advantages of an elastic freight rate, and that is just the reason why we insist that the Commission shall not be given general rate-making power; that is just the reason why we insist that the power to make all rates in the first instance shall remain with the railroads. But I protest that this argument for elasticity has been stretched out of all due proportion. To begin with, it assumes that a vast number of rates shall be fixed. But a sensible commission will fix a just rate only when it has been clearly established that the railroads have fixed an unjust one. It therefore remains

with the railroads themselves to decide how much flexibility shall be taken out of the rates. Moreover, it is a very pertinent fact that much of the present elasticity is very undesirable. A little more stability and a little less elasticity of a certain kind is what is needed for our railroad rates.

The number of rate changes demanded by the true interests of commerce are greatly overestimated. Chairman Knapp of the Interstate Commerce Commission says: "It is the verdict of the oldest and most experienced traffic officials that there is no sort of reason at all for the five hundred to a thousand changes in the interstate tariffs which are now made every twenty-four hours. The simple truth of the matter is that there are adaptations in rates to meet sudden emergencies; there are special rates to develop new industries which would be permitted and encouraged by any sensible commission. But there are other fickle fluctuations of rates which are plainly an unmixed evil, and which have led a careful student of the problem to exclaim: "O Elasticity! how many flying midnight tariffs and secret unjust discriminations and practical confiscations lurk under cover of that reputable word, *elasticity*."

But a sufficient proof that the plan we advocate is practicable and that any harm it may possibly occasion is incomparable to the good it must accomplish, is the work of the Interstate Commerce Commission during the first ten years of its existence. Whether Congress meant to give the Commission power to fix rates in particular disputed cases is irrelevant; but that it actually exercised that power is incontestable. In its report of 1897, the Commission says in substance: "Up to this time we have proceeded upon the theory that the only way to correct an unreasonable rate is to fix a reasonable one in its place." Furthermore, out of the 135 formal orders made by the Commission up to that time, 68 fixed a rate for the future. Even the railroads believed that the Commission had effective power. Regardless of what distinguished railroad presidents say on that point, the *fact* remains that immediately after the passage of the Act the carriers began of their own accord to correct the

most glaring abuses. The great trunk lines of the north and west, believing the law to be really effective, all remodelled their local tariffs to conform to the long and short haul section. But we are not told of disasters to commerce from elastic rates; we are not told that there were confiscations of railroad property. But on the contrary, so generally satisfactory was the law regarded that President Cleveland, in his annual message of December, 1896, said of the Interstate Commerce Act: "The justice and equity of the principles embodied in the existing law are everywhere conceded, and there appears to be no question that the policy thus entered upon has a permanent place in our legislation." The next year came the well-known decisions of the Supreme Court in the Troy case and the Maximum rate case.

It is not for me to pass upon the legal correctness of those decisions, but as to their practical effect upon the law there can be no doubt. Justice Harlan in his dissenting opinion expressed the literal fact when he said: "The Commission has been shorn by judicial interpretation of authority to do anything of an effective character." The railroads realized the facts of the situation; the Interstate Commerce Commission was disarmed; their immunity was complete, and they knew it. Within five days after the decision, the Trans-Missouri Freight Association raised the rates to intermediate points over more than a hundred thousand square miles of territory. To-day we are back where we were nineteen years ago with this most significant difference: at that time the railroads were owned by 5000 independent companies; to-day six colossal, closely affiliated clusters of railroad management dominate more than 90% of the vital railroad mileage of the country.

The issue is between the eighty million people of the United States and the six magnates of the united railways. By concerted action, not disavowed, these magnates decreed a 12% advance on the grain rate from the West to the Atlantic seaboard. I do not say that this advance was unwarranted, but I do say that the producers and shippers and consumers of this country had no means of preventing

it if it was. Rates on cattle from Texas to the ranges of South Dakota have risen from \$65 to \$100 a car with no compensating benefit of service. I do not say that this advance is unjust, but the cattle raisers believe that it is. They pile up great big volumes of evidence to prove their point, and the crying evil of it all is, that there is no power in the United States which can give them relief that is worth the asking. This then is the radical wrong. Glaring cases of rank injustice abound for which there is practically no remedy. Twenty-five of our states have found a remedy in giving to a commission the power to fix rates. From 1887 to 1897 the people of the United States had such a remedy; its justice and equity were everywhere conceded, and it was believed to have taken a permanent place in our legislation. By the almost unanimous passage of the Esch-Townsend Bill last year and of the Hepburn Bill last month, the people's Representatives in the House have emphatically demanded the restoration of that remedy.

WILLIAM A. BOLGER, '07.

Desires.

THOMAS E. BURKE, '07

If I were a bird from the snowy South
 And you were a blushing rose,
 I'd sing all day on your thorny stem
 Where the sun its splendor throws;
 And at eve when your dreamy petals closed
 And the dewdrop cooled your brow,
 I'd lay my head on your perfumed breast
 And rest as I'm resting now.

If I were a stream from the mountain side
 And you were a lily white,
 Like a silver thread I would wind my way
 In the mellow starlit night;
 And I'd cool the earth 'neath your chalice pure
 And whisper in love's delight,
 If I were a stream from the mountain side
 And you were a lily white.

But alas! a timorous maid are you
 And a simple lad am I,
 And the mountain streams are far away
 And the birds soar far too high;
 But I'll take you into the milk-white fields,
 Where the ermine clover blows,
 And I'll weave a lover's wreath for you
 As fair as the driven snows.

Notre Dame Alumni College Song.*

WILLIAM M. WIMBERG., '04.

GIVE voices now in lusty trim;
 It's U. N. D. Rah! Rah!
 We'll sing our song with college vim;
 It's U. N. D. Rah! Rah!
 It matters little where we're at
 Wherever we hang up our hat,
 We'll give it with a gusto, boys,
 It's U. N. D. Rah! Rah!

CHORUS.

Who rah! who rah! U. N. D. rah-rah, rah-rah!
 Who rah! who rah! U. N. D. Rah! Rah!

We've known no blue save with the gold,
 Of U. N. D. Rah! Rah!
 Our love for her will ne'er grow cold,
 For U. N. D. Rah! Rah!
 Away with books and discipline,
 The cause must now excuse the sin,
 So, give it with a gusto, boys,
 It's U. N. D. Rah! Rah!

To Notre Dame we're ever true,
 To U. N. D. Rah! Rah!
 And proud to wear the Gold and Blue
 Of U. N. D. Rah! Rah!
 For Notre Dame means loyalty,
 And Notre Dame means victory;
 So, give it with a gusto, boys,
 It's U. N. D. Rah! Rah!

Who Was It?

THOMAS E. BURKE, '07.

It was in late May when the lilacs were full blown that my sister and I wandered along the river bank enjoying the cool air and the scent of the wild flowers sprinkled over the steep river bank. We had a free afternoon and had wandered aimlessly down along the shore to talk of school friends, of the approaching vacation and how we intended to spend it. The path along the river wound in and out among the trees; sometimes the young branches of overhanging willows covered it and we were compelled to push our way through; sometimes the new green myrtle with its dot of purple bloom crept across the path, showing that the road was not much used;

* Composed, after the air of the Berlin University student song, for the Notre Dame-Georgetown debate.

now the path turned short and ran up the steep bank of fifty feet unable to break through a thick row of trees. When we stood on the height above the river we saw another row of trees a short distance from the first; both were connected by a thick line of bushes making a perfect enclosure.

Out of curiosity, for we were then high-school children, we pushed aside the branches of the bushes, and crawled through into a cosy cave. The bank instead of proceeding as it did along the outside of the trees was scooped out and a pair of stone steps led down to the river. We went down into the shady grotto and examined the place. To the left of the steps a cool spring bubbled over and flowed to the river, a mossy tin cup was near it, and above and somewhat to the left, an old tree pushed its twisted roots out of the straight bank, making a sort of pocket in which we found a silver box about a foot in length and six inches in width. It was somewhat rusted from the rain, and its cover refused to come off when we pulled on it, but it finally gave, and we found within it a small piece of white paper. Filled with the romantic spirit I wrote my name on it and put the cover on again, intending to come back sometime later to see if anyone might have opened the box. After this we went to the edge of the river to see if it were possible for anyone to enter the cave by proceeding along the water's edge, but the trees growing a foot out in the river showed us that unless approached by boat the way we had come was the only entrance.

The evening was falling, and the air was becoming a trifle damp when we crawled through the bushes at the top of the steps and ran home through the fields. I did not sleep much that night, my thoughts were centred in the grotto by the river. I saw numberless pretty maidens making their way by moonlight down the stone steps, tripping around the spring and taking down from the wreathed roots the silver box. What they did I don't remember, but I could see them standing there by the spring, the moonlight falling on their streaming hair, their eyes glistening with beauty reading the name on the white paper and wondering who I could be. Morning

came to my relief and I went off to school with no lessons prepared, but my sister stood by me and told me when I didn't know, and if she didn't tell me to-day, why what difference would it make? I wasn't interested in my lessons now, it was too warm. I was waiting for Saturday to come and after three slow days it came.

I was up early on Saturday, finished up my morning chores by 9 o'clock and without saying a word to anyone I started for the grotto by the river. How useless would it be, I thought, as I made my way across the fields toward the river, to tramp all the way out to the grotto for nothing. Suppose the box has not been touched and the place not visited since we left it; but then I thought how fine it would be if some bright-eyed maiden had visited the place, seen my name and thought she liked me. I was at the place before I knew it, and crawling through the lilacs I ran hurriedly down the steps. The spring bubbled over as before, the mossy cup was there, the old tree roots held the silver box. I opened the box slowly fearing disappointment and the slip of paper dropped to the ground, it was folded and my heart leaped, for I knew I had not done it. Under my name I read as I picked it up:

"Dear Harry, for you are dear to me, meet me here at twilight on Wednesday, the 1st of June."

I took out my pencil and wrote under it, "I will," and closing the box I was off again toward home.

The 1st of June came and I went only to be disappointed. Under our former correspondence was an explanation: "I have taken a bad cold from wading in the water and am unable to keep my appointment. How I wish I could come! But in a few days my cold will be better I expect, and I can go out in the evening air and meet you whom I have so long wished to see. Till then, believe me,—G."

"Gee!" I said as I finished, "a cold in June—isn't it an awful time to get a cold? Yet it would be an easy matter to catch cold in the moist evening air if one were not well clothed." Well, June and July passed with just such results as this. The dates were made, but something would turn up and prevent her from coming. She

always answered and excused herself, but we never met, although I had waited whole days during the vacation expecting to get a glimpse of her when she came to answer my note. September came and school would start in a day or two, and yet I was as far off from the unknown as the day my sister and I wandered along the river. I had concluded finally that she came at night to write her excuses, but I was not allowed to go from home after dark and could do nothing without attracting the notice of my mother and sister. At last an opportunity presented itself and I took it by the forelock.

Bill Perce, an old friend of mine, who lived at Brandon, a town nine miles from home, invited me in to see the Labor Day procession. I obtained leave of my mother, and started out at once for Bill's. But I did not go far. As soon as I was out of sight of the house I made for the grotto by the river, intending to stay there all night to see the unknown when she came to answer my request. The grotto was more silent than usual. The birds that usually flitted about through the trees had gone South, as the weather was becoming cold. Everything but the river was still as I crept down the stairs and seated myself by the trees on the right. Night came on, the shadows deepened and the hazy moon crept from behind the clouds. I was feeling chilly, but the fire of expectation kept me quiet as I sat there in the starlight. About ten o'clock I heard a rustling of leaves on the bank above, and as I looked up a slender form came through the bushes and stood for a moment looking down into the grotto. She was covered with a purple shawl which concealed her face from me; but her dark silky hair, which curled out from the shawl, glistened in the moonlight. She came quickly down the steps as if accustomed to them, carefully avoided the spring and was standing under the wreathed roots reaching for the box when I arose. I crept up behind her burning with excitement and joy. When she heard my step she turned short and caught her breath. As she did so her shawl slipped from her head and shoulders. "Oh!"—I gasped as I stepped back and sank to my waist in the spring. It was my sister.

NOTRE DAME SCHOLASTIC

Published every Saturday during Term Time at the
University of Notre Dame.

Entered as second-class matter at the Post Office, Notre Dame, Ind.

Terms: \$1.50 per Annum. Postpaid.

Address: THE EDITOR NOTRE DAME SCHOLASTIC,

Notre Dame, Indiana.

Notre Dame, Indiana, May 26, 1906.

Board of Editors.

EUGENE P. BURKE, '06

CHAS. L. O'DONNELL, '06	JOHN F. SHEA, '06
WILLIAM A. BOLGER, '07	JOHN M. RYAN, '06
THOMAS E. BURKE, '07	JOHN C. MCGINN, '06
WESLEY J. DONAHUE, '07	LEO J. COONTZ, '07
CORNELIUS HAGERTY, '06	EDWARD F. O'FLYNN, '07
WALTER O'DONNELL, '06	ROBERT L. BRACKEN, '08

—Victory again! Last Wednesday evening in, perhaps, the most warmly contested debate we've had this year, Notre Dame defeated the University of De Pauw. The question was the same as that discussed in the Notre Dame-Iowa debate: Resolved, That a commission be given power to fix railroad rates, but this time Notre Dame upheld the negative side. The decision of the judges was two to one in favor of Notre Dame. A detailed account will appear in next week's SCHOLASTIC.

At this time when the sufferers of the Japanese famine and the volcanic eruption at Naples are receiving so much help from foreign countries, the message of President Roosevelt to foreign powers that "America is well able to take care of herself," is received by them as illustrating the strength and independence of Americans. This spirit seems to them the more plausible, because they, on the far side of the Atlantic, felt the San Francisco disaster keenly, and were ready to come to our assistance with pecuniary resources. The Americans have a spirit of justice which is not surpassed abroad, and it was this spirit that prompted the President in his message. A few of the papers have called it vanity; but it is a

law of justice that he who has plenty should not receive, and the vast majority across the sea have seen the President's message in this light and praised it.

—Mr. Octave Uzanne in *La Grande Revue* (Paris), quoted by the *Literary Digest*, discusses most interestingly the present attitude of the majority of mankind toward literature. He says: "Indifference in the matter of literature is increasing every day and affecting every class." He thinks the illustrated magazine and the cheap "gossip" paper are fast taking the place of standard literary works. It is the fashion for society men and women to write novels to gain notoriety. So much cheap stuff which requires no mentality at all to digest is thrust upon the people that they have no time or thought to look for anything better.

Mr. Uzanne's view undoubtedly has truth in it. People read, but the tendency is to follow the line of least resistance. Since the danger confronts us we must be on our guard. True literature is interesting, but, like everything at all valuable in life, can be appreciated only by those who make themselves worthy of it by discipline and effort.

—The question whether or not Niagara Falls shall be preserved as a monument of natural beauty or be converted into electrical power is full of deep interest for those concerned with education. The question involves a principle: is the acquisition of wealth America's only object? Our material progress is, indeed, a matter for just pride; but is not the chief good coming from material progress the possibility of cultivating the higher forms of life within us? Man has a mind and soul that must be fed on peaceful harmony and beauty; our great material wealth will be of no avail unless it serves to uplift our mental and moral standard. We have in our country some of the most wonderful pieces of nature in the world. As the nation advances and our people enjoy more leisure these marvels of nature will be more and more appreciated. If we destroy them now we will appear to future generations as the Vandals and other barbarian tribes now appear to us.

vary in the degree of punishment for similar offences, thus causing the laborers to go to the state where the laws were light to the detriment of manufacturers in the other states. Mr. Igoe spoke with remarkable clearness. He seemed right at home with his subject and laid down argument after argument with telling force.

Mr. Terence B. Cosgrove continued the affirmative argument. His speech was syllogistic in form; whenever the public rights are affected it is the duty of the government to intervene. The public rights are affected by strikes and lock-outs, and it is therefore the duty of the government to intervene and compel Labor and Capital to settle their disputes by arbitration rather than that strikes should result. He described the havoc wrought by the teamsters' strike in Chicago and the great coal strike in which the President had to interfere, thus showing that Labor and Capital were unable by themselves to settle their disputes. Mr. Cosgrove is an emphatic speaker. He knows how to construct an argument and to send it home forcibly. This he did remarkably well and was roundly applauded.

Mr. McHenry Gallaher was the second speaker on the negative. He argued that a board of compulsory arbitration would be unjust to the employer, employee and the public. To the employer because he would be deprived of the right of free contract, to the employee because he would be deprived of the right to sell his labor to whom he would, and lastly to the public because it is opposed to established institutions. Mr. Gallaher was, perhaps, the strongest speaker on the Georgetown team. He gave out telling arguments, and forced the Notre Dame men to bring forth their

strongest defence. His manner was graceful and attractive; and when he finished he was applauded enthusiastically.

Mr. Farabaugh closed the argument for Notre Dame. He showed that the system advocated by the affirmative is practicable. It involves the compulsion of ordinary law suits; it does not compel men to work, but only insists that if they *do* work, they deal justly with one another and do not endanger the public welfare. He argued that compulsory arbitration removed the cause of the strike by settling the grievance; by laying open the facts of the economic situation, and that the awards of the arbitration

courts would therefore be self-enforcing, for workmen, when they know that employers cannot pay higher wages, will submit voluntarily to the decision. Mr. Farabaugh is an experienced debater. His manner is earnest and forcible, and he used his powerful voice with good effect. His speech rounded out the arguments for the affirmative and made things look pretty bright for Notre Dame.

Mr. Charles M. Mattingly in closing the argument for Georgetown summed up the arguments of his col-

leagues: "We have proven this board to be unnecessary, unwise, unjust, unconstitutional and impracticable." Mr. Mattingly's speech was clear and logical and he delivered it with earnestness and grace. During the five minute rebuttals excitement ran high. Both teams battled with pointedness and logic, tearing down arguments and building up new proofs. Mr. Cosgrove was remarkably strong in this line.

When the decision was read by Senator Carter, chairman of the judges, the Notre Dame team was heartily applauded by all, and yells for Georgetown and Notre Dame shook the hall.



GALLITZEN A. FARABAUGH, '06.

The Feast of the Ascension at Notre Dame.

Ascension Thursday is the day set apart at Notre Dame for the reception of First Holy Communion and Confirmation. This event is one of the most beautiful and solemn of the year. To see the little boys, decked out in festal attire, with faces shining like the morning sun, approach with wonderment and awe their God for the first time, is one of the most impressive spectacles that it is possible to witness.

Solemn High Mass was celebrated in the presence of the Right Rev. Bishop Alerding. Father Schumacher preached a short, touching sermon that brought home to the boys and the congregation the solemnity of the Sacrament that was about to be received.

In the afternoon the Sacrament of Confirmation was administered. The Bishop preached a sermon full of instruction, emphasizing the need of faith in the supernatural. Many visitors were present to witness the ceremonies. The names of those who made their First Communion and received Confirmation were:

Harold Joseph Holladay, Clifton Aloysius Louisell, Charles Michael Berteling, Joseph Frederick Sheahan, Edmund John Burke, Alfred Anthony Casinelli, Hubert Edmund Burke, Joseph Michael Kryl, John Francis Kryl, Joseph Michael Schwalbe, Leslie Michael Carroll, John Patrick Fordyce, Charles Michael Broad, Raymond Joseph Connolly, Raymond Edward O'Donnell, George Edward Moran, Horacio Louis de Baca, Alfredo Charles de Baca, Richard A. Tello,* Carl Joseph White, Lawrence Francis Carter, Joseph Anthony Hein, Milton Charles Mann, Louis Alphonsus Veazy, Gerard Joseph Robinson, John Patrick Thornton, Joseph Michael Peurrung, Juan J. Miralles,* Rafael Rousseau,* William Ambrose Petritz, Thomas Anthony Sheehan, William Anthony Darst, Simeon Joseph Kasper, Lee Joseph Dillon, M. Francisco Concha.*

The following received Confirmation alone: Leo Domnske, William Ryan, James McIver, Charles Zinc, James Stack, B. Clement, Mrs. Curran and her daughter, Grace Curran, Buchanan, Mich.

* Had previously received Confirmation.

The Notre Dame-Georgetown Debate.

The student body at Notre Dame gave a rousing "U. N. D." yell when it was reported that our men secured a unanimous decision in the debate with Georgetown. This was the first time our debaters went up against the East, but they added another link to our unbroken chain of victories. On Thursday evening Gaston Hall, at Georgetown, was crowded with an enthusiastic audience. The question in discussion was: Resolved, That Labor and Capital be compelled to settle their disputes through legally constituted boards of arbitration. Messrs. Patrick M. Malloy, Terence B. Cosgrove and Gallitzen A. Farabaugh represented the Notre Dame Law School and upheld the affirmative side of the proposition. Messrs. Lambert Igoe, E. McHenry Gallaher and Charles M. Mattingly of Georgetown Law School spoke for the negative. Senator John M. Gearin, chairman of the debate, introduced Mr. Malloy as first speaker for the affirmative.

After stating the question, Mr. Malloy showed that the present systems of settling industrial disputes were quite inadequate, and he reviewed briefly the great strikes and lock-outs which have occurred under present conditions and the evils that have resulted from them. He maintained that the proper remedy for such existing evils was a compulsory arbitration board, for while it retained whatever was good in other systems, it also supplied their deficiencies. Mr. Malloy was at his best, and his usual earnestness and force in delivery, which is so well known here, made things look good for Notre Dame.

The negative argument was begun by Mr. Lambert Igoe. He showed that the number of strikes occurring in the year 1900 was much lower than that of 1890; that Labor and Capital were gradually coming to an understanding, and settling all difficulties by themselves. He maintained too, that compulsory arbitration boards, whether national or state, would be productive of great harm: the national boards would not be able to deal justly with different classes of labor with which it was not familiar, and the state boards would



PATRICK M. MALLOY, '07.

The judges of the debate were Senator T. H. Carter of Montana; the Hon. Edwin Walter Sims, Solicitor of the Department of Commerce and Labor, and the Hon. H. Golden of New York.

The Notre Dame debaters will not soon forget the hospitable way in which they were entertained while in Washington. After the debate on Thursday they were the guests of the Georgetown Law Department. The members of the Notre Dame alumni made the visit a most enjoyable one, and Mr. Brick's kindly and enthusiastic interest in the debaters is deeply appreciated.

Athletic Notes.

PURDUE, 8; NOTRE DAME, 4.

When we got to Purdue, things happened—terrible things—among which were: McNerny's blood-poisoned heel kept him out of the game, and—just whisper it,—Purdue beat us, 8 to 4.

Waldorf pitched for the Varsity and

pitched a game good enough to win any time, but the support he received was enough to make even the hard-hearted weep.

In the fourth inning Purdue scored seven runs, and all off one lonely hit. But the errors—it was awful; every man who got a chance contributed and some a couple of times. But it's all in the game. From the present outlook the championship appears to be tied up, and another game between Purdue and Notre Dame—if they both succeed in winning from the other Indiana teams—would settle all disputes and give the winning team a clear title. But so long as we had to lose to somebody—here's to Purdue.

SUMMARY.

Notre Dame	R	H	P	A	E
Bannon, 2b.	1	2	3	2	2
Perce, r. f.	1	1	0	0	0
McCarthy, l. f.	1	1	0	0	1
Murray, c.	0	1	12	1	1
Stopper, 1b.	0	1	4	0	2
Brogan, 3b.	0	1	0	0	1
Sheehan, c. f.	0	2	1	0	0
Shea, ss.	0	0	4	4	0
Waldorf, p.	1	2	0	1	0
Totals	4	11	24	8	6



TERENCE B. COSGROVE, '06.

	R	H	P	A	E
Purdue					
Kelly, 3b.	1	2	3	2	1
Babcock, ss.	1	1	4	3	2
Fleming, 1b.	0	0	8	0	0
Kieffer, c. f.	1	0	1	0	0
Miles, 2b.	2	1	2	1	2
Bird, l. f.	0	2	1	0	0
Holdson, r. f.	1	1	2	1	0
Rosenbaum, c.	1	0	6	0	0
Kelinger, p.	1	0	0	1	1
Totals	8	7	27	8	6

Two base hits—Waldorf, Sheehan, McCarthy, Murray. Struck out—By Waldorf, 10; by Kelinger, 5. Bases on ball—Off Waldorf, 2; off Kelinger, 1. Passed balls—Murray, 2. Hit by pitcher—Babcock, Kelinger. Umpire, Jones.

* *

Captain McNerny has blood poison in his heel, occasioned by his wearing a tight shoe, which irritated the skin and later developed into poisoning. Although it is not as dangerous as first supposed, he will be out of the game for some time, and perhaps for the rest of the year.

* *

ILLINOIS, 12; NOTRE DAME, 1.

After Purdue we kept right on going down to Champaign and down to defeat. The team was up in the air for fair after the Purdue game. They played two good innings against Illinois, and away they went again. It happened in the fifth and seventh this time. Perce did the pitching for the Varsity and received his good and plenty. Five hits and as many errors gave Illinois 7 runs in the seventh inning. Waldorf went in and finished the game, but it was too late then to do any good.

In passing it might be well to mention that Ovitz, Illinois freshman pitcher, had much to do with our defeat. He was the best thing we will run up against this year, and is in fact the best man in the West. For his share he struck out thirteen men in seven innings and allowed us one hit and a scratch.

SUMMARY.

	R	H	P	A	E
Notre Dame					
Bannon, 2b.	1	1	1	5	1
Perce, p., r. f.	0	1	0	1	1
McCarthy, l. f.	0	1	1	0	1
Murray, c.	0	0	6	0	0
Stopper, 1b.	0	0	12	0	2
Brogan, 3b.	0	0	2	1	0
Sheehan, c. f.	0	0	0	0	1
Shea, ss.	0	0	2	2	1
Waldorf, r. f., p.	0	0	0	1	0
Totals	1	3	24	10	7

	R	H	P	A	E
Illinois					
Vandergrift, 3b.	0	0	0	0	0
Brooks, 2b.	2	2	1	1	0
Demmitt, r. f.	2	2	1	0	0
Carrithers, l. f.	2	1	0	0	0
Dicke, ss.	2	2	2	2	0
Snyder, 1b.	0	2	5	0	0
Byers, c. f.	2	1	1	0	0
Gunning, c.	1	2	17	0	0
Ovitz, p.	1	0	0	1	0
Juul, p.	0	0	0	0	0
Totals	12	12	27	4	0

Two base hits—Byers, Dicke. Three base hits—McCarthy, Bannon. Struck out—By Ovitz, 13; by Juul, 4; by Perce, 2. Bases on balls—Off Ovitz, 1; off Juul, 1; off Perce, 2; off Waldorf, 1. Umpire—Clark.

* *

NOTRE DAME, 6; ALBION, 1.

With O'Gorman in the box, Notre Dame defeated Albion College on Monday by the score of 6 to 1. The game was interesting, as the Varsity were sadly in need of pepper and showed the effects of that last trip. Shea sprained his ankle and will be out of the game for three or four days. O'Gorman had good control and pitched a good, steady game.

SUMMARY

	R	H	P	A	E
Notre Dame					
Bannon, 2b.	0	1	2	1	0
Perce, rf.	0	1	0	0	0
McCarthy, lf.	1	0	0	0	0
Murray, c.	1	0	6	0	0
Stopper, 1b.	1	0	12	0	0
Brogan, 3b.	1	1	1	6	2
Sheehan, cf.	1	1	1	0	0
Shea, ss.	0	2	4	4	1
O'Gorman, p.	1	0	0	2	0

Total 6 6 26 13 3

SUMMARY.

	R	H	P	A	E
Albion					
Ellerby, 2b.	0	0	2	1	0
Squire, cf.	0	0	2	0	0
Ellerby, 3b.	1	2	2	0	1
Frye, c.	0	0	6	1	1
Howe, ss.	0	0	1	4	2
Bliss, 1b.	0	1	9	0	0
Keils, p.	0	1	0	3	2
Moore, cf.	0	1	2	0	0
Maxson, rf.	0	0	0	0	0

Total 1 5 24 9 6

Two base hits—Shea, Bannon. Three base hits—Sheehan. Struck out—By O'Gorman, 6; by Keils, 3. Bases on balls—Off O'Gorman, 1; off Keils, 6. Passed balls—Frye 2. Hit by pitcher, O'Gorman. Howe hit by batted ball. Umpire—O'Shaughnessy.

* *

NOTRE DAME, 5; NEBRASKA INDIANS, 3.

Notre Dame defeated the Nebraska Indians Wednesday in a good fast game by the score

of 5 to 1. "Mac" McCarthy was the man behind the bat in the fifth inning and gave the team the required tallies to tie up the score, getting a home run with two men on bases. In the sixth the Varsity scored another and in the seventh one more.

Waldorf was on the mound and pitched a great game, allowing the Indians but six hits. Shea played second, handicapped as he was by his sprained ankle, but put up a good game, and Bannon played a star game at short. "Bonnie" is the only utility man on the team and makes good in every position, though short appears to be to his liking more than second.

SUMMARY.

Notre Dame	R	H	P	A	E
Bannon, ss.	1	2	2	3	0
Farabaugh, l. f.	1	1	2	0	0
McCarthy, r. f.	1	1	1	0	0
Murray, c.	0	1	8	1	0
Stopper, 1b.	0	1	11	0	1
Brogan, 3b.	1	1	0	2	0
Sheehan, c. f.	0	0	1	0	0
Shea, 2b.	0	1	2	2	0
Waldorf, p.	1	1	0	4	1
Totals	5	9	27	12	2

SUMMARY.

Indians	R	H	P	A	E
Wanboose, ss.	0	1	2	1	1
Wanseka, c.	0	0	3	0	0
Nokowas, 2b.	1	2	3	0	2
Tabase, 3b.	1	1	3	2	2
Neultnowah, l. f.	1	0	2	0	0
Jusicania, c. f.	0	1	1	0	0
Thorgy, 1b.	0	0	7	0	0
Rapp, r. f.	0	0	2	0	0
Nucas, p.	0	1	1	4	0
Totals	3	6	24	7	5

Home run—McCarthy. Struck out—By Waldorf, 8; by Nucas, 3. Bases on balls—Off Waldorf, 1. Passed balls—Wauseka, 2. Double plays—Brogan, Stopper, Shea. Umpire, Shaughnessy.

*
* *

Nebraska Indians were the fastest team that has played here this year.

*
* *

The members of the SCHOLASTIC Staff are preparing a special athletic number which will appear June 10. The athletic work of the year will be reviewed in this number and Varsity verse with athletic coloring will be sprinkled through its pages.

*
* *

Corby Hall is negotiating with the Elkhart High School for a track meet. R. L. B.

Local Items.

—This is our twelfth debate and our twelfth victory.

—Lost.—A white bone-handled office knife. Finder please give same to James Greevey of Carroll Hall, and receive reward of one dollar.

—On next Wednesday, Decoration Day, the Varsity plays Minnesota at Spring Brook Park, South Bend. This is one of the two games that students of the University are allowed to attend in the city.

Inter-Hall League:	W.	L.	P. C. T
Brownson Hall	3	0	1000
Holy Cross Hall	2	1	667
Corby Hall	1	2	330
St. Joseph's Hall	0	3	000

—Among the most enthusiastic rooters at the Georgetown debate was Congressman Brick of this district whose kindness to the Notre Dame men was one of the most enjoyable features of the Eastern visit. Mr. Brick never loses an opportunity of manifesting his friendly interest in the University.

—At the late Faculty meeting, Friday, May 18, it was decided that the examinations of the graduates would be written and not oral; each subject will probably require a half-day's earnest writing. A number of questions affecting the courses, degrees, etc, were determined during the evening. The legislation will be published in a coming number of the SCHOLASTIC.

—The Marathon Athletic Association, composed of the students of St. Mary's College who are interested in physical culture, have decided to give a Rose Fête on the lawn of St. Mary's College on Wednesday, June 16, from 4 to 6 p. m. One object of the fête is to make possible the completion of St. Mary's Lake where the young women of the college will henceforth enjoy rowing, swimming and skating as new features of their gymnasium work. Admission to the fête will be by ticket. The cost of the tickets will be \$1.00.

—By this time the *Dome* is well known to everybody at Notre Dame, and almost universally well liked. Of course, it was inevitable that a book gotten out by a particular class should represent that class rather thoroughly; it is natural that '06 and senior English should be featured in the *Dome* since it is their work. It is much to the credit of the editors that, handicapped as they were in this regard, they succeeded in making the *Dome* a representative of all Notre Dame as it is. This quality of the book, no doubt, is largely the reason of its general popularity.

LAW DEPARTMENT.

In the case of *Krumback v. Lawmaker*, recently tried in the Moot Court, R. C. Madden assisted by J. McGannon, and E. J. Morris assisted by J. V. Cunningham, acted as attorneys for the parties. Judge Hoynes presided, with F. J. Hanzel as clerk.

Statement of Facts.

Jonathan Lawmaker is a justice of the peace in Clay Township, St. Joseph County, Indiana. He was the victim of a sunstroke while assisting his hired men in making improvements on his farm in the summer of 1902. Ever since he has been subject in hot weather to attacks of a mild form of insanity. They rarely appear as late as September or before the middle of June. Last summer his unfortunate malady manifested itself early, and he could hardly be considered responsible for what he said or did from the 10th of July to the 20th of August. He was, however, more particular and zealous than usual during this period in enforcing the law. He often spoke of President Roosevelt and Governor Hanly saying, these are the men he wished to imitate in discharging the functions of his office. "We are men of the same type," said he, "and behold how aggressive they are in seeking out and punishing fraud and wrong. People may say that they are unduly suspicious, for they say the same of me, but I say that we are simply zealous to safeguard and promote the public welfare." About this time the people of the Township and County were complaining of the depredations of burglars, horse thieves and forgers. In the Township especially many forged notes had been discovered, and others were undoubtedly in circulation. The justice investigated the matter with all the energy of his burning zeal, and his suspicion finally rested upon Jacob Krumback, a young man who had taught school in the Township for three years.

The justice accused him of the crime, but Krumback vehemently denied it and laughed at what he called the absurdity of the accusation. Further investigation led the justice to believe in the young man's guilt, and he issued a warrant for his arrest. The teacher was taken into custody under this warrant by Constable Lemuel Roth. Krumback protested, declared himself innocent and said that he would have satisfaction if detained even an hour. The constable kept him in custody, however, until the following day, July 23d, when the trial took place before the justice and a jury. No evidence whatever was introduced

to prove his guilt, and he was promptly acquitted. He had been arrested on the suspicion merely of a man evidently irresponsible by reason of his mental condition. Krumback nevertheless sues the justice for \$500, charging false imprisonment.

Opinion.

This case is based as to all the essential facts upon that of *Krom v. Schoonmaker*, 3 Barb. 647. Schoonmaker was a justice of the peace in Monroe County, New York. Although well known to be opinionated and stubborn, yet he had the reputation of being active, honest and zealous in the discharge of the duties of his office. People were disposed to overlook his known deficiencies in the light of his reputed fairness and honesty. It was, however, the impression of those who knew him more intimately that he was mentally unbalanced, if not actually insane. He conceived the idea in some way that a certain Mr. Krom had committed forgery on an extensive scale. Although the imputation was indignantly repudiated by Krom and vigorously denied by his friends, yet the justice persisted in his suspicion, and by his order Krom was arrested and obliged to spend an entire day in the custody of a constable. There being no evidence against him he was discharged. Soon afterward he sued the justice for false imprisonment, claiming substantial damages. The defence of insanity was interposed on behalf of the justice, it being claimed that he did not know what he was doing and could not distinguish between right and wrong when he issued the warrant for Krom's arrest.

On hearing the facts the court held that the arrest under the circumstances stated was a tortious act and amounted to false imprisonment. Insanity is a good defence on an accusation of crime, but not for a tort. A malicious intent or will is a necessary element of crime, and a person insane is incapable of exercising the power of mind and co-ordination of purpose and act which would make him a free agent and responsible for such intent and will in contemplation of law. But the injurious act causing damage is the gist of the private wrong called tort. Intent or will is not an element. An infant incapable of contracting, or a person insane or intoxicated, is liable to answer in damages for his torts. The Moot Court follows the regularly established courts of the land in its judgments, and hence, for the reasons stated, it decides this case in favor of Krumback, the plaintiff.