

COLLECTS \$40,000,000

Attorney General's Record in Getting Franchise Tax.

ONLY \$6,000,000 NOW OUT Assessments at Hempstead Low Annual Revenue of \$9,000,000 to State Expected.

Albany, May 22.—Estimates just completed by the Attorney General and the State Board of Tax Commissioners show that since January 1, 1909, Attorney General O'Malley has collected special franchise taxes amounting to \$40,000,000. This now leaves uncollected only \$6,000,000 of the \$46,000,000 which the corporations owed up to January 1, 1910, under assessments made from the time the special franchise tax law went into effect. The comparatively small sum remains uncollected owing to a few scattering suits instituted by several corporations to test minor objections to the law. These suits are being urged to trial as rapidly as possible. The settlement of the suits against the Metropolitan Street Railway, in New York, a few days ago brought the amount realized by that city in franchise taxes since January 1, 1909, up to about \$30,000,000.

In compiling the data to learn how much money had been so far collected under the law throughout the state it was discovered that considerable more money could have been realized by the state except for a few cases in which the corporations were assessed on a basis of uniformity as to methods of assessment prevailing in the various tax districts throughout the state. The Court of Appeals has held that a special franchise is real estate for purposes of taxation. The courts accordingly order the assessors to equalize their assessments, with the result that the assessments against special franchises in all districts were reduced to the level of the neighboring real estate. In some districts this leveling process amounted to halving the assessments, and even cutting them down to only a small fraction of the true value of the franchises.

Notable among these districts is the town of Hempstead, Long Island, where assessments were made at from 10 to 25 per cent of the full value of the real estate. As a result of this situation Attorney General O'Malley has sent a letter to the District Attorney of Nassau County calling this remarkable state of affairs to his attention. The letter is as follows:

Hon. Franklin A. Coles, District Attorney, Nassau County, Mineola, N. Y. Dear Sir:—Some time ago I designated the Hon. William A. Elting to represent this department in the certain proceedings brought by the Queensboro Gas and Electric Corporation, Nassau County, in the town of Hempstead, Nassau County, in the years 1908 and 1909. Upon the investigation made by me of the facts and circumstances which would give evidence upon the trial that real property in the town of Hempstead is assessed at from 10 to 25 per cent of its full value, I was informed that Mr. Elting could not find among the assessors of that town any one who would testify that the assessments made were much less than the relation of the value of the real property. The result was that we were obliged to settle the assessments upon a basis of uniformity with the assessments made in the town of Hempstead, and 20 per cent of the assessment for the year 1909. These settlements were certain and irrevocable. It is a fact that real property is assessed so low.

I have been informed by Mr. Elting that some facts had been communicated to the town board by him before the settlement was made, and that approval of the settlement was given by resolution of the town board of the town of Hempstead. Under the law it is the duty of the assessor to place the value of the real property by subdivision 2 of Section 20 of the consolidated tax law of 1909. It is the duty of the assessors to assess the real property at its full value, and by Section 38 of the consolidated tax law of 1909, the assessment of each tax roll, as follows: "The undersigned, do severally depose and swear that the value of the real property assessed by a majority of the assessors has been decided to be the full value thereof."

By Section 41 of the same law a penalty is prescribed for the neglect or omission of the part of the assessors of any duty which they may perform.

It is my attention to Section 1630 of the penal law relative to the subject of perjury. I have no doubt that where an assessment is made at from 10 to 25 per cent of the full value and sworn to as the full value it is a violation of this section. This violation was called to my attention by reason of the litigation arising out of the assessments aforesaid. It is my duty as the prosecuting officer of Nassau County, to bring to the attention of the town board of the town of Hempstead, the local authorities. I am mailing a copy of this communication to the Hon. William A. Elting, District Attorney, Nassau County, Albany, N. Y. Sincerely yours, FRANKLIN A. COLES, District Attorney, Nassau County.

Beast with Discouraging Obstacles. On January 1, 1909, there was due the various taxes of the state, in which \$26,000,000 was owed by corporations using franchises

in the city of New York. After looking over the large amount of work to be done in the office, the Attorney General finally decided that the collection of these back franchises, covering a period of nine years, was his most urgent duty. But, on considering the task, he found he was beset with almost discouraging obstacles. The millions of taxes were tied up in a snarl of intricate litigation. Following their unsuccessful assaults on the validity of the franchise tax in the courts, the corporations reported to the practice of suing out writs of certiorari to review the assessments of the state board. Some of these writs were procured in an honest endeavor to have the assessments reduced, but many of the suits were begun merely for the sake of delay. Under the law as it existed then these cases were sent to referees for trial. Three thousand and such suits were pending before referees. It was further discovered that all these cases were pending in the Albany County Supreme Court, another fact that would tend to block the wheels of justice. It was finally decided that if these suits were left in the hands of the referees they would drag along at such a slow pace that it would be impossible to collect any considerable amount of the taxes in a short term of two years.

To hurry matters along the Attorney General drafted and had enacted an amendment to the tax law providing that the venue of these cases be changed from Albany County to the various districts where the assessed franchises were located. The amendment also gave the Attorney General the power to have the orders of referees vacated and have the whole list of suits tried at special terms of court designated by the Governor in various parts of the state. The result of this action on the part of the Attorney General was electric. In these special terms could dispose of the franchise tax cases in a very short time. Immediately many of the corporations came forward with propositions for settlement of their taxes. Some paid up without delay, while a few prepared for trial for effect, but finally settled before any testimony was taken.

Revenue Will Grow Annually. Attorney General O'Malley estimated that the Ford franchise law will in the future net the state annually a revenue of about \$9,000,000. As the number and value of franchises to be taxed increase, this amount will grow from year to year. Never was the validity of a law so persistently assailed in the courts.

As a result of the suits instituted against the state to deprive of ever seeing any considerable amount actually collected in fact a former Commissioner, convinced of the impracticability of the act, advocated its repeal.

The remarkable fight made by the corporations on the validity of this law has never been summed up. It began as soon as the bill was introduced in the Legislature by Senator Ford in the spring of 1899. One of a tremendous public sentiment in the state, Governor Roosevelt had sent two special messages to the Assembly in its favor. At the hearing before the Governor the opponents of the measure argued that the bill was imperfect and should be amended in several respects. The Governor called a special session of the Legislature. It was argued that to leave the power of assessment in the hands of the local assessors, as provided in the Ford bill, would be unjust, because a special franchise could not be fairly valued by men who were not experts. They maintained that the assessments should be made by a state board of experts. The result of the special session was that the bill was amended in two important respects, (1) the State Board of Tax Commissioners, and (2) the corporations were permitted to deduct from their franchise taxes all other sums paid in the nature of a tax. In this form the bill became a law.

Justly as the corporations cried out for a board of experts to value their franchises when they got the amendment providing that a state board they made use of their own amendment to attack the validity of the law. They argued that the law was now invalid because it violated the home rule provision of the state constitution. A great many test cases were brought to invalidate the law.

The Grounds of Attack. A few of the grounds of attack were: 1. That it violated the home rule provision of the state constitution. 2. That it violated the provision of the state constitution forbidding any state to pass a law impairing the obligations of contracts. 3. That the act was impracticable, and therefore a nullity, because a special franchise had no ascertainable value beyond the value of the tangible property in connection with it. 4. That the law was unconstitutional because it did not state the objects for which

the tax was to be raised and to which the money was to be applied.

That the assessments were illegal because: (a) All the special franchises of a corporation were valued by the state board in the aggregate, instead of separately. (b) The state board did not adopt any fixed rule or method in its valuations. (c) The board refused to give the owners of the franchises a proper hearing in court by telling them by what rule or theory the valuations were reached. (d) The owners of the franchises did not have due process of law. (e) The franchises were assessed at their true and full value, whereas the real estate in the same locality where the franchises were located was assessed at only a certain percentage of its full value.

On the first ground the Court of Appeals held it constitutional. On the second the litigation was carried to the Supreme Court of the United States, with the same result. The only objection on which the corporations have won out so far is the last. It is now the law that special franchises, being defined by law as real estate, must be assessed on the same percentage of their true value as the real estate in the same locality.

Scratch Athletes Fail to Overcome Heavy Handicaps. Struggling under the disadvantage of heavy handicaps, none of the scratch athletes in the game of City and Endmoor, held yesterday at Olympic Park, Newark, was victorious. M. J. Sheridan and J. J. Flanagan could do no better than take second places in the discus and hammer throw respectively, while "Mel" Sheppard, after a gallant sprint, was nosed out in the 300-yard run. Robert T. Edwards, of the New York Athletic Club, won the event with an eight-yard handicap, by a few feet.

A close finish marked the end of the 220-yard hurdles event, in which J. J. Eller, the champion, allotted handicaps of one yard and five yards to such worthy rivals as C. J. Bacon, the Olympic champion, and W. C. Robbins. Bacon won by a few feet in 4 minutes 53.3 seconds.

The summary of the most influential organizations of its kind in this country, has begun active preparations for the defense of the cup. A special committee, composed of the following well known motor boat enthusiasts, has been appointed by the club to handle all preparations for the race: Vice-Commanders, F. H. Bunker, J. Stuart Blackton and Charles P. Tower.

Final arrangements for the race will be made this week by Commodore H. H. Kellogg and James A. Blair, Jr., of the Motor Boat Club of America, who sailed on the Mauritania last Wednesday to confer with the officials of the British Motor Boat Club and the Motor Yacht Club of Great Britain.

PROPOSALS. PROPOSALS FOR COMMISSARY FOOD, STATIONERY, PRINTING, STATIONERY, RAIL ROAD COMPANY, 24 State Street, New York, May 14, 1910.—Sealed proposals, to be submitted to the Commission on or before the 15th day of May, 1910, at 12 o'clock, noon, for the purchase of commissary food, stationery, printing, stationery, rail road company, 24 State Street, New York, May 14, 1910.

Summons. SUPREME COURT, NEW YORK COUNTY.—Summons.—Rose Simmons, Plaintiff, against Oskar A. Large, Defendant. Trial set for the 31st day of April, 1910, at 10 o'clock, in the office of the Clerk of the Court, in the Borough of Manhattan, City of New York.

MANY OARSMEN OUT Crews Rounding In Form for Memorial Day Regatta.

The cloudy day and southeast wind of yesterday failed to cause any decrease in the number of oarsmen out along the Harlem River. With the Harlem regatta only one week off, every man entered is working hard to put the finishing touches to his form and speed.

The Metropolitan and Harlem Rowing Club, represented by the largest number of oarsmen, the Blue and White was carried by a junior centipede, junior octupus, intermediate and senior double. The single triode consisted of Harry McCutcheon, Will McCullum and Johnny Hughes. The latter is moving faster at the present than at any other time during his career, and should prove to be a formidable factor in the junior single event.

Jack Nagle, the captain of the Harlem club, announced these entries in the Harlem regatta: A junior octupus, manned by J. J. Lyons, bow; E. H. Wagner, 2; H. Hansen, 3; W. H. Lyons, 4; T. W. Brady, 5; H. J. McCutcheon, 6; D. H. Wilson, 7; J. H. Bennett, 8; and F. A. Coney, coxswain. A junior centipede and intermediate double, with F. J. Nelson, bow, and H. Evans, stroke, will also race. These boys are going at top speed, and only recently rowed within five seconds of the course record. Fussell and Shepherd will also race. The latter should have little trouble in winning.

The Blue and White will be well represented in the single events with Bill McCullum in the intermediate and association singles, John Ryan in the senior handicap and in the centipede, and F. J. Nelson, the national champion, will defend his title in the quarter-mile dash.

The officials of the Metropolitan Club has not yet been decided, but it will probably be an intermediate and junior centipede and a senior double.

PLAN FOR MOTOR BOAT RACE Americans to Defend Harmsworth Cup on August 20.

Secondary only in interest to the international motor racing championship and motor boat owners is the forthcoming international challenge race for motor boats, in which the American motor boat owners will defend the Harmsworth Cup against their British rivals, from whom they won it in 1907.

Although the race is not scheduled to take place until August 20, the Motor Boat Club of America, one of the most influential organizations of its kind in this country, has begun active preparations for the defense of the cup. A special committee, composed of the following well known motor boat enthusiasts, has been appointed by the club to handle all preparations for the race: Vice-Commanders, F. H. Bunker, J. Stuart Blackton and Charles P. Tower.

Final arrangements for the race will be made this week by Commodore H. H. Kellogg and James A. Blair, Jr., of the Motor Boat Club of America, who sailed on the Mauritania last Wednesday to confer with the officials of the British Motor Boat Club and the Motor Yacht Club of Great Britain.

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GLENCOE A. C. WINS Captures Point Prize in Kings County Cross-Country Run.

The Glencoe Athletic Club won the point prize in the postponed cross-country run of the Kings County Athletic Association, of Brooklyn, yesterday, at a total of 85 points. The Kings County Athletic Association athletes captured the second point cup, with a total of 96 points. The Morning-side Athletic Club was third, with 116.

J. Edgerton, of the United Athletic Club, led the pack in the 5-mile run, romping over the five-mile route in the actual time of 28 minutes and 35 seconds. Harry Jamison, of the Glencoe Athletic Club, the only scratch man, finished twenty-eighth, winning the time prize. His actual time was 51 minutes and 45 seconds. The runners started and eighty-two finished.

The summaries follow: Position. 1—J. Edgerton, United A. C. 23:28. 2—J. Lewis, Kings County A. C. 23:33. 3—J. Lewis, Kings County A. C. 23:41. 4—J. Lewis, Kings County A. C. 23:48. 5—J. Lewis, Kings County A. C. 23:50. 6—J. Lewis, Kings County A. C. 23:52. 7—J. Lewis, Kings County A. C. 23:55. 8—J. Lewis, Kings County A. C. 23:58. 9—J. Lewis, Kings County A. C. 24:00. 10—J. Lewis, Kings County A. C. 24:05. 11—J. Lewis, Kings County A. C. 24:10. 12—J. Lewis, Kings County A. C. 24:15. 13—J. Lewis, Kings County A. C. 24:20. 14—J. Lewis, Kings County A. C. 24:25. 15—J. Lewis, Kings County A. C. 24:30. 16—J. Lewis, Kings County A. C. 24:35. 17—J. Lewis, Kings County A. C. 24:40. 18—J. Lewis, Kings County A. C. 24:45. 19—J. Lewis, Kings County A. C. 24:50. 20—J. Lewis, Kings County A. C. 24:55.

HAYES WINS CLOSE RACE Philadelphia Athlete Leads in 300-Yard Run. William J. Hayes, the quarter-mile of the St. Gregory Catholic Club, of Philadelphia, won the 300-yard run by a few feet in the annual games of the San Salvador Council, Knights of Columbus, held at 24th and 5th streets, New York, yesterday. Hayes, a 24-year-old athlete, won the race in 48 seconds, the long distance athlete, won the half-mile run, aided by a 48-year-old, by a close margin. The speedy runner, of J. J. Gallagher, the distance star, enabled the Philadelphia team to defeat the New York San Salvador Council in the match relay.

THE LOANTAKA IS CRIPPLED. Delaware Breakwater, Del. May 22.—The Loantaka, one of the contestants in the motor boat race, Philadelphia to Havana, returned here for repairs to its engine, and it is doubtful whether the boat competes in the race.

TO HOLD MATCH ON JUNE 1. Chicago, May 22.—Arrangements were completed here last night to hold the Chicago wrestling match at the Chicago Convention on the night of June 1. This decision was reached after Mayor Busse had refused to allow the match to be held on Memorial Day.

BROWN TO MEET GRIFFIN. "Knockout" Brown will meet Charles Griffin, the featherweight champion of Australia, at the Olympic Athletic Club of Harlem in the match of ten rounds on June 1.

EAST SIDE HOUSE GAMES. All scratch men showed up well in the first monthly games of the East Side House, held yesterday evening at the club. The inter-club star, won the 40-yard run in 34 seconds on a heavy track. The feature event, the mile run, was won by E. Kraus. He made good use of his handicap, and after a hard fight won by inches.

SURROGATE'S NOTICES. IN PURSUANCE OF AN ORDER OF HON. ABNER C. THOMAS, SURROGATE OF THE COUNTY OF NEW YORK, NOTICE IS HEREBY GIVEN TO ALL PERSONS HAVING CLAIMS AGAINST THE ESTATE OF JOHN STEIN, DECEASED, TO PRESENT THE SAME WITH VOUCHERS THEREOF, AT HIS PLACE OF TRANSACTING BUSINESS, NO. 32 WEST STREET, IN THE CITY OF NEW YORK, ON OR BEFORE THE 25th DAY OF MAY, 1910.

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