AUDITORS' REPORT

Shows Financial Standing of the City

The Assets Aggregate $81,843 in Value and Includes a Cash Balance of $7,387.

The most important matter coming before the council last night was the filing of the report of the auditors appointed one by the city and the other by the territorial government for the purpose of going over and checking up the books of the city for the past year. The gentlemen chosen for the task were P. G. Nash and G. Ian McLean and the result of their labors is a very concise and comprehensive statement of the financial condition of the municipality. The report was presented by Alderman Adair, chairman of the finance committee, who read from it the principal items contained therein. Preceding the report proper was a communication from the auditors stating the nature of the work they had been called upon to perform, the general condition in which they had found the books of the city and also containing a number of excellent recommendations pertaining to the future. The letter to the council accompanying the statement is as follows:

"We have made a careful audit of the books and the accounts of the municipality of the city of Dawson for the year ending December 31, 1902, and beg to submit to you the following:

"Abstract statement of revenue and expenditure, detailed statements of revenue and expenditure, summarized statement of the tax rolls for the year 1902, statement of assets.

"We wish to state that proper vouchers have been handed us by the city clerk for all disbursements and all accounts have been certified to by the city comptroller in charge and approved of by the chairman of the committee in every instance and by the chairman of finance.

"We have accepted the statement of the comptroller of the Yukon territory of the amount appearing under the heading of liquor licenses, and the statement of the police court clerk for the amount under the heading of police court fines and fees.

"We would suggest that an entry of all moneys received be made in the general cash book each day, and the same deposited in the bank the day following.

"The amount of arrears on the rolls for the year 1902 should be transferred to the rolls of 1903 so the interest and discount items will make these rolls complicated for the auditors next appointed.

"After reading the contract with the Dawson Electric Light & Power Company, we would recommend that some officer of the corporation certify to the correctness of these accounts before same are paid.

"We think that the tax rolls should be compiled by some officer of the corporation other than the city treasurer and certified to by said officer with the total amount on said rolls being certified to as correct before they are handed over to the city treasurer for collection.

"We should also recommend that a stock on hand and all purchases of plant should be added to this book as payments or purchases are made.

"We have been informed by the city clerk that he has not been requested to furnish bonds, and this is a matter which should receive immediate consideration.

"We have prepared a statement of uncollected taxes on the rolls of 1901 which have not been transferred to the rolls of 1902. We have also noticed that in some cases the city clerk has not transferred to the rolls of 1902 the full amount as appearing on the rolls of 1901. The explanation given is that it is personal property tax and uncollectable. We consider that he should make no discrimination and that, until he receives authority from the council, he should place the amounts on the rolls of 1902 as they appear on the rolls of 1901. The amount in this case which has not been transferred is in excess of $1,000."

The statement shows the total revenue received by the city up to and including December 31 amounts to $133,570.56, which sum is made up from taxes collected, fees from licenses and police court fines. That amount has all been expended in one way or another with the exception of $7,387.12 which on January 1 was the cash balance on hand in the Canadian Bank of Commerce. Of the sum spent $64,894.45 was devoted to the use of the committee on streets, works and property; $32,726.44 to the fire, water and light committee; $1390 is charged to the interest account for the overdraft allowed by the bank last summer and $20,650 was eaten up in salaries. Contained under the latter head is the salary of the city clerk for six months, $1,975; assistant clerk, six months, $1500; city attorney, seven months, $2100; license inspector, five and a half months, $1375; city engineer, seven months, $2275; mayor, $4000, and six aldermen each $1500. The pay sheet for the fire department for seven months amounted to $26,266.44.

An inventory of the city's belongings and which are included under the head of assets aggregates $81,843.81 in value. The items comprise 1855 house numbers, $411; dog tags, $10; city engineer's department, $192.50; city hall, safe, fixtures, fire department plant, etc., $55,867.72; uncollected taxes, 1902, $17,605.47; cash on hand, $7,387.12. A summary of the valuation of the real and personal property, rate of taxation, amount of taxes, arrears and discounts allowed is as follows:

Item	Amount
Assessed valuation real and personal property	$10,721,590.00
Taxes 1902, rate 1¼ per cent.	134,022.99
Amount taxes collected	117,384.21
Discounts allowed	5,513.93
Taxes uncollected	17,605.47
Arrears, 1901	6,480.62

At the conclusion of the reading of the report his worship stated that with reference to the clerk and his assistant giving bonds it was a matter that he approved of and was something that the new council would have to attend to at once. Things in that respect in Dawson were somewhat different from what they were in other countries as here almost the entire bulk of the receipts are received during the course of two months time.

Adair called the council's attention to the fact that the question of the bonds of the clerk and his assistant had come up before the council last April at which time the comptroller of the territory still had charge of all the finances of the city. There was no necessity of bonds at that time and it was intended to have taken the matter up later when the city assumed its own financial affairs and it had been overlooked and finally neglected altogether.

His worship—"Another matter here that will need immediate attention on the part of the new council is the question of delinquent taxes. We have been as lenient as possible with the delinquents not wishing to seize their property and sell the same for the taxes, but the time is now here when some step will have to be taken to collect this large sum of money that has been due the city so long. Then, too, there is the question of the transfer of the fire department to the city which has never been done. Mr. Ross promised me the last time he was in Dawson that on his return from Whitehorse he would make such transfer, but he unfortunately was taken ill and has never been back since."

His worship further complimented the auditors on their report and it was later approved and adopted by the council.

Fat Men's Hockey Match

Some time next week there will be a grand hockey match between two teams, not one member of either being less than 210 pounds in weight. Mr. Dick Cowan and Constable Winters are the leading spirits in the matter. It is expected that Messrs. Willie Bittner and Tom Chisholm will be the respective goal keepers. The date will be announced later.

WANTED. — U. S. unappropriated soldiers' scrip, for use in Alaska.—J. Falcon Joslin, Queen St. 10,12,13

At Auditorium—Virginia.

FAVOR OF McGRADE

Recovers Judgment in Sum of $14,000

Against Edward McConnell, of the Melbourne Hotel—Suit on Promissory Notes.

The following is a verbatim report of the judgment rendered yesterday by Mr. Justice Craig in the case of McGrade vs McConnell, a brief synopsis of which appeared in the Nugget of yesterday evening. On account of the intricacy of the transactions involved in the action and the masterly way in which it has been handled by his lordship the decision will be found to contain much matter which will prove interesting reading. It is as follows:

"The plaintiff sues the defendant on two promissory notes, the first being for the sum of $14,000, and the second for the sum of $2210. The defendant admits the making of these notes but sets up a defense which at the trial was resolved into a statement that the former or larger note had been surrendered and cancelled by written agreement, and that the smaller note had been paid. A short history of the case will be necessary for a full understanding of the judgment. One M. L. Hamilton and the defendant McConnell for some time prior to the making of the note for $14,000 had been engaged in partnership in several undertakings, steamboating, road building, bridge and ferry ownership, etc. On the 26th day of August the said Hamilton sold to the defendant McConnell and to one R. A. Talbot claim 73 C below lower discovery on Dominion creek for the sum of $14,000 for a two-thirds interest, taking the joint note of these two parties, McConnell and Talbot, on the same date, and payable on the 1st July for the consideration money of $14,000. On the 15th September of the same year, 1899, the said Hamilton and McConnell met and settled up their various partnership transactions, giving to each other a receipt in the following form: 'Dawson, September 15th, 1899. I, Edward McConnell, have made settlement in full of all transactions, of all partnership existing between us to date of E. McConnell and Hamilton and received satisfaction for same — Edward McConnell.' Hamilton gives to McConnell one in the same form and the same date, signed by himself. The contention of McConnell is that the note sued upon was covered by that release. The story told is that the parties met, Mrs. McConnell (the wife of the defendant) being present, and went over all their partnership transactions, made up a statement of debits and credits and balances, and that a final sum was owing to Hamilton which was covered by a cash payment and the second note. McConnell and his wife swear that at the time of this settlement a re-transfer was made from McConnell to Hamilton of McConnell's share in the mine for which the note was given and that Hamilton promised to hand over the note for cancellation but said that it had been lost or mislaid. It is contended that the receipt by itself is evidence of a complete closing up of all partnership transactions and it is also contended that the note in question was part of the partnership transactions. One has first to consider whether it was intended to cover this note by this release, and whether it was such a transaction as would come under the wording of the release and the closing up of partnership deals. It seems to me that the note in question was no part of the partnership transactions at all. It was a private debt between McConnell and Hamilton. It was a sale of a certain property which became private property, so far as his interest went, of McConnell in one-third of that mine, the private property of Talbot in the other third and the private property of Hamilton in the remaining third. That they worked the property which they so held as co-owners, in partnership does not, it seems to me, affect the matter, because while that may be true and while the receipt might close up the partnership dealings in the working of the mine subsequent to the time of the purchase, yet the debt from McConnell to Hamilton remains as a private debt,—money which he owed him for the sale of that property. Two conflicting contentions are set up by the defendant. One is that the note was paid and taken into account in the settlement, the other is that a dispute arose as to the validity of the title and that McConnell, and particularly Mrs. McConnell, at the time of this settlement objected that the title was defective owing to defective staking and that Hamilton yielded the point and then and there agreed to surrender the note. Both of these contentions cannot be held together. Either the note went into the settlement and into the balancing of the accounts or it was the other way and it was surrendered by Hamilton because he admitted that he had not a good title. Prior to the trial and upon McConnell's examination for discovery he emphasizes the former view of the matter and his evidence, which I have carefully read, is very hard to understand. He was a very stupid witness, either not knowing anything about his own business or not being willing to tell. His evidence on the trial was equally bad so far as clearness and certainty is concerned, and certainly upon discovery it is very hard to follow. Upon the examination for discovery and on the trial McConnell could not give any idea whatever as to the nature of the settlement, the amount involved, the balances on the different transactions, how any business turned out, good, bad or indifferent, absolutely could give no figures or approximations to figures, or any information whatever, except that there was a settlement. These papers of settlement have now all disappeared. At page 4 of the examination for discovery he is asked: 'What arrangement did you make with Talbot? (I read from his evidence here). A.—How? Q.—You paid off Talbot's note? A.—Yes sir. Q.—Did you make any claim upon Talbot? A.—I did not. Q.—Did you ever get it? A.—No sir. Q.—Was your claim a written or verbal one? A.—Verbal. Talbot was a partner of mine and Hamilton in that note. Q.—Did you know that this note was in the Bank of Commerce? A.—I did not know until McPhee told me in the spring following. Q.—You were never notified then on the 1st of July, 1900, that this note was in their hands? A.—I don't know whether I was or not, but as soon as I found out that this note was in existence and not lost I went to the Bank of Commerce and notified them not to purchase it. Q.—What was the first notification you received of the existence of this note? A.—I think it was from Bill McPhee. Bill McPhee told me that Hamilton owed him a lot on money and he got $10,000 or something from him.'

"Being asked about letters which he received from Hamilton he seemed to be very indefinite as to whether he received them or when he received them. These letters were produced as exhibits and I will refer to them later on. The re-transfer which McConnell says he made to Hamilton for one-third interest in the property has never been placed on record; the McConnells swearing that Hamilton purposely refrained from registering it because he was afraid of some pending suits. There is no doubt that there was some action threatened or pending at the time which afterwards matured into a judgment against Hamilton, but whether this was sufficient to prevent Hamilton from recording his transfer or not is a question. We have here these facts: That a $14,000 note made by the defendant was outstanding; that McConnell knew it, and allow it to float about in that way and all that he had to prove its satisfaction was the receipt above mentioned in which no reference whatever was made to the note. It certainly strikes one as extraordinary that any man not apprehending the imbecile condition, would allow $14,000 of his paper to be lying in the hands of another person and only take his word that the note was lost and would be returned when found when at the same time they were closing up their business transactions affecting other matters and when it would have been so easy to have had a release then and there drawn mentioning the note. The conduct of the defendant is hard to understand and explain and the only attempt made by counsel for the defense to explain it is by saying or endeavoring to prove that the defendant was a good-natured man, of easy and careless business habits. Well, if that contention is correct, certainly these habits are the most easy and careless that I have ever come across. That is the conduct of the parties at the time. What is their subsequent conduct? The note was not lost. That is quite clear because on the 19th September, four days after, Hamilton hypothecates this very note to the Bank of Commerce as collateral security for an advance. Either Hamilton was an out and out scoundrel at the time or he very soon afterwards made up his mind to defraud McConnell out of this note if McConnell's story of the settlement is the correct one. First, take Hamilton's conduct. He denies in toto that the note was covered by the settlement and by the release produced and denies that there was any question as to the title of the claim sold, and upon this branch of the case his contention is entirely borne out by the evidence because what evidence there is shews that if there was any contention about the title it was cleared up by adjudication by the gold recorder, and no attempt was made on the part of the defense to show that there was a real defect in this title. Then, again, Hamilton immediately after the settlement hypothecates this note. He afterwards writes letters to McConnell from which I will read. In July of the year following Hamilton writes to McConnell, saying, among other things, that Talbot has prospects of paying and that he (Hamilton) will hold out $7500 on the note, and there is also in the letter an appeal to McConnell to pay one McPhee who was coming into the country. He also says that if he gets any money out of Talbot there will be a rebate coming to him (McConnell), evidently meaning that if McConnell pays the $10,000 to McPhee of course there will be some money coming to him, if Hamilton gets the $7500 from Talbot. Again, Hamilton writes to McConnell in these words: 'Now, Ed., about Dominion claim, Tom tells me it didn't turn out as expected. I am willing to discount the note $5,000 provided we cannot get anything out of Talbot. Ed, I need that money (Ed being the defendant); you will hold this letter as a receipt and give the $10,000 to Bill McPhee.' When McConnell is asked about these letters he is doubtful as to when he received them and what he did concerning them. Hamilton takes no action on the note against McConnell until he hands them over to the plaintiff McGrade which he does by a written agreement transferring and endorsing the note. This of course was not done until long after the maturity of the note, and whatever equities exist as against Hamilton exist as against McGrade; so that we may deal with McGrade as Hamilton in every respect in this particular. Hamilton admits that he was hard up during this time, and it is thought to be strange that he hadn't pursued McConnell sooner for the payment of this note, no action being taken until the 6th day of September, 1901, two years after the transaction. Now, as to McConnell's conduct. McConnell says he had no knowledge of the note being lost until he saw McPhee, but we find him on April 30th, 1900, notifying the bank not to purchase it. Now, the strongest evidence against McConnell, to my mind, is his own conduct. What are the reasons which he gives to the bank? He warns the bank not to purchase the note and says it was given for property now in controversy. There is no mention here of the release, the notice in its terms and meaning being that there was a contention over the liability on the sale owing to the want of title in the property; and McConnell in reply to McPhee when he made the demand on behalf of Hamilton for the money, was to the same effect. He did not then set up as an answer to the demand that the note had been surrendered and was covered by that agreement or that it was intended to be surrendered but lost. His contention then and at other times was that the property was in dispute. When asked why he had said this both to the bank and in July afterwards and subsequently he said that he was endeavoring to save Hamilton. Quite how he meant to save Hamilton or what he meant to save Hamilton from or how he could have saved Hamilton by giving these answers was not clear to me and he could not make it clear, but it was less clear to me why he should desire to save Hamilton who was then pursuing him for an illegal and fraudulent claim according to his contention, and for a very large amount of money. It seems to me that his first thought would have been to save himself and to have told the truth, giving his real defense at the time. It is true that Mrs. McConnell swears that the note was mentioned and was covered by the settlement and intended to be covered by the partnership release owing to the fact of the contest about the property. She says she went to a solicitor, Mr. Woodworth, to get his advice about this and Mr. Woodworth is called who confirms her in that he says she did come to him regarding this claim and the staking of it but when he cannot say. She says it was pending the partnership settlement. As to Mrs. McConnell's evidence, she did not impress me favorably. She would not answer questions put to her and on cross-examination she did her utmost to baffle counsel and to prevent him from getting direct answers to direct and simple questions; instead of answering questions she repeatedly endeavored to prejudice the mind of the court, for that was her object at all events, by denouncing the counsel for the plaintiff and the firm of which he was a member, alleging various things against them which were irrelevant to the issue, at least wholly irrelevant to the questions put to her and no restraint which I endeavored to put upon her could prevent her from wandering off in all directions. For the reason that she did not give counsel fair play on the examination I am not disposed to place as much weight upon her evidence as I otherwise would, especially in view of the plaintiff's conduct and statements to the defendant himself. Now, as to their subsequent dealings with the property, McConnell says that he ceased on the 15th of September to have any connection with or ownership in, that claim for which the note was given, but we find that he had some connection because he made advances to Talbot and that the parties working on the claim came to him with statements. There is the evidence of Heath who bought out Talbot's interest. He says he prepared an account of the working of the claim in the spring of 1900 at Mrs. McConnell's request, and that McConnell wanted to pay him off for the interest which he had acquired from Talbot. It is true that McConnells deny that they had any interest in the statement any more than to know what they had advanced to Talbot, and it was also admitted that Heath and McConnell had a quarrel over the matter, McConnell repudiating liability. Haslam, bookkeeper for Heath and working on the claim in the spring of 1900, long after this transaction was closed, prepared a statement and took it to McConnell and McConnell to him objected to Talbot's transfer to Heath because Talbot had not the right to dispose of it, McConnell's contention to Haslam being that Talbot's interest was given to him if he would manage the claim and McConnell taking the ground then that he was the owner. He said he had authorized one Brown to advance money to Talbot to be used for wages. McConnell denies this. Certainly Hamilton thought that the claim was being worked in their joint interest if one may judge by the letters which he wrote to McConnell and to McGrade which were produced by the defense. Upon the top of all this inconsistency we have the evidence of McPhee, who is to my mind an independent and impartial witness and should be believed. McPhee is the person referred to in the letters written by Hamilton to McConnell, and this McPhee arrives in Dawson in July, 1900, calls upon McConnell and asks for payment of these notes now sued for.

"McConnell said he had no money and could not pay, he could give some few hundred dollars on account but he said the mine had not turned out as he had expected, and he would want to see Hamilton about the big note. McConnell on cross-examination does not deny that this conversation occurred and his explanation of this extraordinary conversation in view of his present contention, is that he was endeavoring to save Hamilton. This I have dealt with before. I cannot conceive how any man, being pursued as he was by letters from Hamilton and by demands from McPhee, acting for Hamilton, and with knowledge that the note was hypothecated to the bank, should persist in telling a falsehood regarding the real position of affairs and his real defense. I have endeavored, in view of the evidence sworn to so positively by Mr. and Mrs. McConnell, to understand McConnell's conduct and I find it impossible to reconcile that conduct with their story. I do not think the $14,000 note was involved in that final settlement but still remained a private debt, that it was not a part of the partnership transactions, and was not to be recovered as a partnership transaction. It is unfortunate that we cannot get the evidence of Talbot to throw more light if possible upon this very strange case.

"The other note sued for is not denied, that is, the making of it, but it is contended by McConnell that it was paid by advances made to Talbot at Hamilton's request. McConnell could give no clear statement as to what these advances were or how much they were. He says somewhere between $1700 and $1800. How they were made, by what sums, he cannot tell, and certainly if he cannot I cannot, and I think they were made in the working operations of the mine and should not be charged against this note except what has been credited already by Hamilton upon the note.

There is a counterclaim on behalf of the defendant for a loan of $3,000, with a credit of $500 paid on it, leaving a balance of $2500, also for notes given to McGrade to collect, $3,000, and a note of one Staunton to collect, the answer to the counterclaim being that there was no loan beyond the sum of $500 which was repaid. The notes were collected and applied to pay a debt owing by the defendant McConnell to McGrade in regard to a transaction covering the steamer 'Merwin.' The evidence on this branch of the case, as well as on the other, is entirely contradictory, one swearing to one thing and the other to another. McConnell swears to the advance, McGrade denies it, and there is no evidence to confirm McConnell's evidence of the loan any more than of the $500 which has been repaid. Mrs. McConnell does not swear that she saw the advance made, so there is one oath against the other. The burden of proof being on the defendant McConnell, I dismiss that claim. As to the notes given for collection, there is no doubt they were given for collection and the money collected upon them. McGrade sets up in answer to this that $3,000 was owing to him on the Merwin transaction, but there is a receipt produced of 11th June by which McGrade signs in full for any transaction on the Merwin, having received by that time the sum of $500 which he takes as full payment of return price of steamer Merwin. McGrade denies that receipt in this much that he says that it is his signature but the body of the receipt is not his and has been altered. The receipt bears no evidence of any alteration and there is the evidence that it was signed by him and I must take it conclusively. He will have to account for the full value of those notes. The Constantine note he did not collect and of course is not liable for. As to the other note for $2210, I have already dealt with that. There will be credit given for that. Many witnesses were called upon minor points and I might comment at greater length upon the evidence, but the more one reads this evidence the more confused he will probably become. I do not think I ever had a case but one in this territory where I had more difficulty in arriving at a conclusion absolutely satisfactory to myself. The apparent respectability of all the parties would lead one to suppose that all were trying to tell the truth. Every one of them giving evidence was guilty of inconsistencies and upon all their evidence suspicion was thrown by the nature of their conduct and their answers. The dealings with the notes by McGrade and Hamilton after their arrival here, while not important, were still contradicted by the evidence of McGuire who must be taken to be an independent and impartial witness. Some of these minor things perhaps show that Hamilton and McGrade are as little to be believed as McConnell and his wife. There is the evidence of Charles Miller, called by the defense, but it seems to me his evidence is quite as strong for the plaintiff. His evidence is given to say this, that he heard Hamilton say to McConnell between the 8th and 22nd September of last year that he had these notes but that if McConnell thought he had taken certain money which was stolen from the 'Merwin' he (Hamilton) would hand him over these notes. Now, if in that conversation Hamilton and McConnell discussed the fact that Hamilton had these notes in his possession and was willing to hand them over to McConnell and would do so if McConnell would say he suspected him of theft and McConnell did not then and there raise the contention in the presence of Miller that the votes were then his property and should be handed over anyway owing to the former settlement, it seems to me that the evidence of Miller is stronger for the plaintiff than for the defendant. What a pearson swears to in self interest is good evidence. What a person does and can be absolutely proved to have done is the strongest evidence. Here the defendant McConnell contends that the note was released and should have been given up, but his whole course of conduct afterwards and his statements up to the time of trial are directly opposed to the contention which he now sets up. The conduct of Hamilton on the other hand is consistent with his contention and I am compelled to give force to the conduct of the parties rather than to the evidence thay give in the box. I do not think that McConnell owed McGrade anything on the Merwin transaction. I do not think the evidence of McCrimmon throws very much light on the matter. The real contest in this case was over the large note. Another peculiar thing in this case and also a circumstance against McConnell is that he swears he made a demand on Talbot for his share of this note. Why should McConnell make any demand upon Talbot for his share of the note if the note was surrendered because of a defect in title? He had not paid Talbot's note in any way, and how could McConnell on the 15th Sept. have dealt with Talbot's interest in his absence and would Hamilton have surrendered the entire $14,000 note and only received back a transfer from McConnell of one-third interest in the claim which was all he could hand back and for that transfer have released not only McConnell but Talbot which he would do by handing over that note? All this is entirely inconsistent and not understandable on the theory of the defense.

"There will therefore be judgment for the plaintiff for the note for $14,000 and for the other note less the credit given, and the counterclaim of the defendant will be allowed to the extent of the notes collected by McGrade."

TROPHY HUNG UP

Mayor McLennan Offers Prize to Be Contended for.

Mayor-elect R. P. McLennan has donated a silver cup for the one mile skating championship of the Yukon territory. The cup to be the property of the winner must be won three years, not necessarily consecutively. The management of the races will be placed in the hands of the skating committee of the D. A. A. A. and it is probable that the first race for the cup will take place within the next fortnight. There are many flyers in the vicinity of Dawson, and there are also a couple of fast men in the Whitehorse hockey team, part of which is coming to Dawson. A gentleman lately from Duncan creek states that he knows of a man unknown in that vicinity whom he believes can beat any man in the territory. The first race should draw a large crowd.

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