

Sir CHARLES TUPPER. The *M. C. Upper* was in the canal, having paid her dues, and she was properly moored. The schooner *Louise* came in contact with the gates, broke them away and led to the damage which was inflicted on the *Upper*. The official arbitrators reported that the *Upper* was in no degree to blame, and that while there might not be a strictly legal claim there certainly was an equitable one. The schooner *Louise* which led to the disaster, owing to mismanagement, carried away part of the gates, and bonds were taken for the damage inflicted. Subsequently the amount claimed on the bonds was considerably reduced, evidence having been given that the gates were considerably decayed. Under these circumstances, and considering that the *Upper* had paid her canal dues and that there was no negligence contributory or otherwise on her part the Government felt that there was a substantial and fair ground for the favorable consideration of the claim.

Mr. MILLS. Who was the owner?

Sir CHARLES TUPPER. The hon. member for Monck (Mr. McCallum).

Mr. MACKENZIE. I think the legal claim should have been against the other vessel and not against the Government, who were not to blame in the matter. As it is the Dominion loses this money because the *Louise* broke the gates and placed the *Upper* in this position. With regard to damages of this kind the principle I laid down was, that they should be paid for according to the age of the gates and their condition of decay.

Mr. RYKERT. I do not agree with the hon. Minister that there was no legal claim. Mr. McCallum paid all the dues and conformed with all the regulations; and he was fairly entitled to go through without interference; and if this damage was caused by another person's carelessness, surely Mr. McCallum should not be the sufferer. The Government were in the position of common carriers, and the claim was legal as well as equitable or moral. It was stated in the report sent to the Department by the superintendent that Mr. McCallum had not complied with the regulations. It was upon that chiefly that the claim of Mr. McCallum was refused. That report was contradicted by Mr. Bodwell under oath. In his report Mr. Bodwell says:

"In the first place the damage sustained was occasioned by no defects in the Government works, nor by any neglect of duty on the part of the officials in charge of the works. * * * It is stated by the lock-tenders that the *M. C. Upper's* lines with which she was snubbed at the time were not taut, giving the vessel room to get under headway before the strain upon the lines commenced, and it is their belief that if the lines had been taut they would not have parted. Of this I have no personal knowledge as I was not on the spot at the time of the accident. Upon the above considerations I fail to see any grounds for Mr. McCallum's claim. * * * The vessel lay moored within 110 feet of the lock, whereas (see No. 19 of Canal Regulations) it is provided that when several boats or vessels are lying by or in waiting to enter any canal, they shall lie in single tier at a distance of not less than 300 feet from such lock or entrance. Had the *M. C. Upper* been moored 300 feet above Lock 21, the chances are that if she had parted her lines, loaded as she was, the rapidity with which the water lowered would have caused her to rest on the bottom of the canal before she reached the breast wall, and no damage would have been sustained."

When Mr. Bodwell was on oath he did not make the same statement. Mr. Bodwell says that the *M. C. Upper* was further from the lock at the time of the break than his officers reported her to be, and that the gate had been two years longer in use. He further says that if the toe-post was in such condition—and as much worn as Bernard Clarke in his evidence represents it—it should certainly have been reported to him by the division overseer; and his omission to do so would be a serious neglect of duty. He says that it is necessary to have the gates strong in all other parts, and to see that a sufficient strength is kept up in all other parts subjected to a pressure of the water. Some of the gates had given way, although they had been in the lock but for a short time only, as in the case of the gates of Lock

22. He had removed nearly half of the old gates and replaced them by new ones; he found it necessary for the safety of navigation to remove the old gates. It turns out that these gates which he reported as being only in use a short time had been long in use, and some of the gates had been carried away before and were replaced in the lock without being thoroughly repaired. The facts are that the vessel was moored in a particular position, and strictly in accordance with the rules and regulations of the canal. The valves of the upper gates were left open nearly a foot by the lock-tender, and the lower gates struck by the *Louise* were old gates so far decayed that it was utterly impossible to use them with any safety to the navigation of the canal. The arbitrators make this report:

"In coming to the conclusion that the damage to the *M. C. Upper* was directly caused by the mismanagement of those on board the schooner *Louise*, and not by the generally defective condition of the gates of Lock 21 on the Welland Canal; still considering the very contradictory evidence, and the fact that the Government virtually admitted the unsound condition of the gates by reducing the amount of Battle's bond in settlement with them—the fact that there is no corroborative evidence in support of either McAvoy's or Ferris's different statements as to the cause of the accident, in consequence of the death of McTaggart, the lock-tender, the only other party present—the fact that the *M. C. Upper* was moored in the proper place, and the absence of any proof that her lines were not taut—the fact that Mr. McCallum had paid his canal dues, and that there was no negligence contributory or otherwise on his part or on the part of those acting for or under him at the time of the accident; we have also come to the conclusion that there are substantial and fair grounds for the favorable consideration of the claim."

It will be in the recollection of this House that a return was moved for some time ago, and when that was brought down it showed that when the accident took place the late Minister of Public Works ordered a bond to be given by Mr. Battle for \$2,000, and when the matter was referred to the Superintendent he fixed the amount to be paid by Mr. Battle at \$1,100; but by some strange manoeuvring on the part of the hon. gentlemen opposite, and through the negotiations of Mr. Thomson, then member for Welland, the amount was reduced to \$600. The Superintendent did not know the reason of that change. He reported that the amount should be \$1,100, but Mr. Thomson, then high in the favor of the Government, came to Ottawa, and by some strange manipulation induced them to reduce the amount to \$600, and that amount was paid unknown to the superintendent. I say, I believe Mr. McCallum had a legal claim; he had paid his dues, and did everything he was called upon to do to entitle him to the free use of that canal, and if anything is damaged by the carelessness of the officials the Government are bound to make it good. The evidence shows that the Government were wrong in their action; they were trying to economize, and the result was that the whole canal ran down, and it became in such a bad state that it was almost unsafe for a vessel to enter the locks. Lock-gate after lock-gate was knocked over simply by the touch of a vessel. Had the canal been properly looked after by Mr. Bodwell the result would have been quite different. It was shown by the arbitrators that the lock gates could hardly stand by themselves, the posts were so rotten. If there was negligence on the part of the Government, they are to blame and ought to pay all the damage. Why was not Mr. Battle held responsible for this faulty condition of the work? It was because he was a strong supporter of the late Government. He came down here and got the amount reduced \$500 or \$600. The less the hon. member for Lambton says about the matter the better, because everybody who knows all the facts will conclude that Mr. McCallum did everything he could, and that the accident was wholly caused by the carelessness of the canal officials.

Mr. MACKENZIE. I utterly deny that the canal was not in a proper state of repairs.

Mr. RYKERT. You deny everything.