

constituted it a safe anchorage and harbour, and therefore was a "public harbour" within the meaning of the section. It was also contended that by virtue of its control of navigation, the Dominion had the right to prevent dredging in that bay. The Judicial Committee of the Privy Council (Lords Haldane, Buckmaster, and Dunedin) without attempting to lay down any exhaustive definition of the words "public harbours" held that it did not include the bay in question. In their Lordships' opinion in order to come within the words of the Act, the harbour must have been at the date referred to in the Act, a going concern, not merely a place that was suitable for a harbour, but a place to which the public had access as a harbour. On the facts they found that the bay in question did not come within that category. And they also held that there was no sufficient evidence that the dredging complained of, did, or would, in fact, interfere with navigation.

NEGLIGENCE—CONTRIBUTORY NEGLIGENCE—SHIP REPAIRERS—
USE OF FIRE—INFLAMMABLE CARGO—OPEN HATCHES.

Ellerman Lines v. Grayson (1919) 2 K.B. 514. This was an action by the owners of a ship to recover damages caused to the ship and cargo by reason of the negligence of the defendants in the course of making repairs to the ship. The defendants were engaged in riveting cleats to the weather deck of the vessel and in order to do so the rivets were heated in a furnace on the weather deck and lowered in a bucket through an open hatch to the 'tween decks where a riveter drove them into holes bored in the weather deck to receive them. The vessel was discharging cargo from a hold below the 'tween decks and a 'tween deck hatch was open immediately below the open hatch on the weather deck so that a cargo of jute in the lower hold was exposed. A boy carrying a red hot rivet in a pair of tongs to the bucket close by the weather deck hatch slipped on the deck, the rivet shot over the coverings and through both of the open hatches and fell on the jute and set it on fire causing damage to both ship and cargo. Roche, J., who tried the action, held that the damage had been caused by the joint negligence of both parties and dismissed the action. The Court of Appeal (Bankes, Duke and Atkin, L.JJ.) reversed his decision but were not agreed on all points involved. All agreed that the defendants were guilty of negligence in carrying on the repairs with the cargo exposed. Atkin, L.J., thought there was no contributory negligence on the part of the plaintiffs. Bankes, L.J., thought that there was. But Duke and Atkin, L.JJ., came to the conclusion that even if the plaintiffs were guilty of negligence in not closing the hatch, they were nevertheless entitled to recover because the negligence of the repairers was the direct cause of the damage.