

Q. B.]

THE QUEEN V. PLIMSOLL.

[Eng. Rep.]

think it would have been very much better if Mr. Plimsoll, when he found out how that was, had frankly stated it. I agree with what has been strongly urged by the counsel for Mr. Norwood, that neither Mr. Plimsoll in his affidavits nor his counsel have ever said, "It is true I have accused Mr. Norwood of having fully insured his vessel and of being the sole owner, but I find that is not so, and I am sorry that I made the statement." Neither he nor his counsel have ever said or intimated, "I am sorry for that," and it is a very great aggravation that having made that statement he does not now apologize for it. Then Mr. Plimsoll goes on, and from what appears in the libel, he was dwelling principally on the shipowners who were Members of Parliament, and he was dwelling upon Mr. Norwood and upon the others who brought actions, and more particularly upon the case of the *Livonia*—and he goes on to say that two or three of "what they call in the North the greatest sinners in the trade have got into the House, and that it is from them that opposition to reform is to be expected." Then he proceeds to state he will give an instance of it; and then he relates that he had a conversation with the other members, which is not material, and then he states a conversation with Mr. Norwood, although he does not give his name, yet he is the person referred to. He says: "After turning away from the members I have referred to, I encountered another, and told him I thought he would do well to stay, because it was probable I should refer to a case of a spar-decked ship being sent to Cronstadt in November, with a cargo of iron nearly twice as many tons as her registered tonnage, with her main deck between 2ft and 3ft. under the water-line. He threatened me with an action for libel if I did, but the voters of Derby had made me strong enough to defy him;" and so it goes on. It is quite plain, I conceive, when he avers that—indeed, it is pretty well clear that when he makes that statement he had the object in view of deterring two members of Parliament from speaking in the House of Commons, and of making their statements of very much less weight. I think that was a very improper thing, and that I think was an interference with the conduct of the members in Parliament, which, to my mind, was very wrong indeed. But to my mind the House of Commons is quite strong enough to protect itself, and the House has been appealed to on this very matter, and the House has taken action to protect what it considers its privileges and rights, and this part has been left out in the other books. Now, taking that

view of the matter, there comes the question which I have felt throughout; I feel where there is an imputation made in a libel upon a person, and part, and a really serious part of the charge which has been made, is really true, and while a large part is left besides, which is not excused or justified, but is stated to be true when it is not, it becomes a question of whether, more or less, there should be a criminal information allowed by the Crown to punish the party for that part which is certainly unexcused and unjustified. I think I have stated several times that we have hesitated as to whether we ought not to let the rule go. But it seems to me in the view I hold, as I pointed out, that in my opinion—and I believe my brothers on either side of me agree in that opinion—clearly the statement that Mr. Norwood was insured is incorrect, and that the amount of overloading, or rather the nature of the ship, which would make that ship overloaded, is greatly exaggerated. So far as the overloading goes, it is clear Mr. Plimsoll is right; yet, although it is clear that a substantial part of the libel, as to the vessel being overloaded, is made out to our satisfaction, I think we ought not to refuse the rule for a criminal information without expressing our opinion that Mr. Plimsoll is deserving of some censure, in the only way in which we can mark it, and that is by saying, that though the rule nisi must be discharged, yet that it should be discharged without costs.

QUAIN, J.—I am of the same opinion. I think, although we have found (which I have arrived at with great difficulty) that this vessel was lost because she was overloaded, yet we cannot consistently proceed to make this rule absolute. The rule is well laid down in the expression my brother Blackburn has quoted, in the 4th volume of Blackstone, that the Court will not permit this information to go,—

"Except in serious cases, as for gross and notorious misdemeanors, riots, batteries, libels, and other immoralities of an atrocious kind, not peculiarly tending to disturb the Government, for those are left to the care of the Attorney General, but which, on account of their magnitude and pernicious example, deserve the most public animadversion, and moreover the Court always consider an application for a criminal information as a summary extraordinary remedy, depending entirely upon their discretion, and therefore not only must the evidence itself be of a serious nature, but the prosecutor must appeal promptly or must satisfactorily account for any apparent delay. He must also come into court