

Q. B.]

THE QUEEN V. PLIMSOLL.

[Eng. Rep.]

what Mr. Norwood comes to complain of ; on the contrary, I think it is a serious charge against Mr. Norwood that he should have done that—that he should have sent out a ship loaded in that way ; and I think that Mr. Norwood properly resented it, and did complain of that, for I think the 13th and 14th paragraphs of his affidavit distinctly show that that was a very great part of the charge which he complained of—not the whole, but a great part of it. Now, I come to the conclusions which lead me, as a matter of fact, to say that she was overloaded, and that the loss was partly owing to the overloading. It is fair to state that when it had been rumoured that she had been overloaded there had been an investigation by the Board of Trade ; and then, after Mr. Stephenson's letter to the Board of Trade Secretary, calling their attention to it, they made a further investigation. They did not take *viva voce* evidence, but they did look at the protest and the scantlings of the ship, and they did look at many of the papers which we have got. Still, they did not get the whole evidence which we have before us, nor did they hear anybody on the other side ; still, notwithstanding that, I think that is not lightly to be passed by. I think the investigation made by the men of skill of the Board of Trade (two of whom are dead) is not to be passed by ; yet, notwithstanding the conclusion they arrived at from the investigations which they made, I come to the conclusion that they were mistaken, and that there was overloading. I think it is quite true—and it is a fair remark to be made, and Mr. Norwood is entitled to make the remark—that he believed Mr. Laing built the vessel to carry 1,800 tons, and that he might properly be entitled to think that she would carry 1,800 tons ; and I have no doubt he will probably continue to think he did not send out the vessel overloaded and unable to carry the 1,800 tons. I think it is probable he will continue to think so, and I think he will be entitled to say, "Here are underwriters who examined into the matter, and here is the evidence of nautical men and experts, who say that this vessel was not overloaded ; that if it had been a point of law we should have been the best judges of that, but as to a point of seamanship, or a point relating to the capacity of a vessel of a certain build, the persons who built the vessel and nautical men would be better able to judge of that ;" and he will also probably continue to say that the Board of Trade were right and that we are wrong. It is a fair thing to say. We have given that its due weight ; but, notwithstand-

ing that, it is our duty to act upon the opinion we have formed ; and that opinion is—at all events, it is my own, and I think both my learned brothers agree with me—that the vessel was overloaded, and that this was partly the cause of the loss. I think that is the greater portion of the charge made against Mr. Norwood, and that it is substantially true what Mr. Plimsoll has said as far as that is concerned. But then Mr. Norwood asserts, and he with great truth asserts, that Mr. Plimsoll has greatly libelled him—he has gone beyond that, and very considerably and very wrongly beyond what he ought to have done. Now, let us see how that is. Mr. Plimsoll, in his general remarks, makes a strong statement, but, notwithstanding, there is truth in it. An underwriter who has insured a vessel gets his premium and trusts to the good faith of those who are insuring with him, and that they will send out the vessel properly loaded and found ; but if the vessel is lost, and there are suspicious circumstances attaching to her loss, he will probably say, "I do not intend to throw any suspicion on it, or to litigate it," as it is always very uphill work to do so ; but when an underwriter insures a vessel, and the vessel is lost, and he does not say that the vessel has been overloaded, but pays the amount that he has insured, it is by no means to be taken as a proof that she has not been overloaded. It only goes to the extent that he may be afraid to put that forward, and thinks it is hopeless to go on and refuse to pay on that ground. When Mr. Plimsoll has used the argument, "When, therefore, the owner of a lost ship pleads in defence to a charge of overloading, or of any other nature that his claim for insurance has not been disputed by the underwriters, the plea itself is tantamount to a full admission of guilt—when it is stated in that way it is obviously illogical, and it shows what was in Mr. Plimsoll's mind. At page 2 he makes an allusion to this *Livonia* as being one of the particular vessels said to have been sent to sea overloaded. He says, "I make this appeal to the Right Hon. G. J. Goschen, First Lord of the Admiralty, as to whether I have not correctly stated the position of underwriters in this matter to Sir James Elphinstone, M.P. for Portsmouth, as to what he thinks of sending a spar-decked ship so loaded with iron that her main deck was 2ft. 10in. under water, into the extreme east of the Baltic in November." There can be no doubt he was making an assertion that she was a vessel with her main deck 2ft. 10in. under water, which, if she was a spar-decked vessel, in