

Q. B.]

THE QUEEN V. PLIMSOLL.

[Eng. Rep.]

at Sunderland, ready to go out. Lying there in that state, the draught which she had fore and aft would be such that everybody could measure it to the tenth of an inch—certainly to an inch. The log, in the handwriting of the mate, who is since dead, as far as regarded that, has been found and produced, and it appears there that the mate wrote down that the depth she drew when loaded was, aft, 21ft. 3in., and forward, 19ft. 6in. That is the statement that the mate makes, and which one can see no reason to doubt he could make accurately; and there is no reason to doubt he did make accurately. The dock master, when applied to as to what time it was safe for the vessel to go out, told us in his affidavit that, being informed her draught was 21ft. 3in., and it being considered what amount of draught it would be safe to take her out with, "being informed of that, then looked to see what was her draught of water for going out, and found that she was 21ft. 3in. for her going out." It is agreed by all the witnesses, that, to enable her to go over the bar, a quantity of coal and iron had been taken out with a view, not of lowering her forward, but with a view of raising her aft, so as to enable her to go over the bar; and, that being so, the pilot is paid for 21ft of water, which was what the hinder part was reduced to. But we have it in addition to that, that when the affidavits were made before the Receiver of Wrecks, when the captain and mate came home, both of them said she went out drawing 21ft. on an even keel; and taking all that mass of evidence together, we must take it as established that the vessel had so much coal and iron on board that she did go out of Sunderland Dock drawing 21ft. of water on an even keel; and, consequently, according to Mr. Harrington's own view, she was 1ft. 3 in. deeper, than she should have been; and every one seems to agree that that was too heavy a load to send in the vessel on any voyage, and therefore too heavy a load to send in the vessel on such a voyage as this across the German Ocean. Now, as to the protest, I do not dwell on that; it certainly looks suspicious in the absence of the log, when there was time to take the log out of the ship. It is true, it is to be assumed in their favour that, being out only three days in this state, and being all very much engaged—and I think it is agreed that the captain and mate had not been in bed during this time—it is true that the log may not have been written up; but it is contrary to the custom that when they had time to take the log out of the ship they did not do so. But I do not think we should

rely too much upon that. On the part of Mr. Norwood, it is said the reason of the loss was the breaking down of the engine, which is certainly a very sensible reason in the absence of anything else, and if the weather was severe as is represented. But the question is whether the loss was to be attributed solely to the breaking down of the engine. I think the state of the weather, as contrasted with the other evidence, was rather exaggerated. The short note which was made by the engineer of the state of the weather, does not represent the true state of the weather. It is not till the 3rd that it approaches anything like heavy weather. On the 3rd the weather again became moderated; and on the 4th he says the weather did blow a hurricane. No doubt that is a very strong phrase, but the other evidence as to the weather leads me to think that was an exaggeration. Now, the mate, in his deposition, does not use the word "hurricane" at all; he uses the expression, "wind blowing heavily and strongly"—a stiff breeze. She went out at four o'clock, and had run six or seven hours, and she might have been fifty or sixty miles from Newcastle-on-Tyne at that time. Now, we find incidentally that it was blowing a fresh breeze when she started from the Sunderland docks, and towards midnight it had risen towards a strong gale—nothing approaching a hurricane at all. At the Spurn Light, which is some way further south, where the account of the weather is registered, there is no weather which would amount at all in any way to a hurricane, and though it is quite possible there might be at the place where the engines were disabled, from which the vessel had drifted down to near Spurn Head—she was about 20 miles from the Spurn Head at the time she was actually lost—though it is quite possible there might have been heavier weather there than at the Spurn Head, it is not likely there would be anything like a hurricane, or anything of that sort; and the result, I think, looking at the whole thing, looking at the note of the engineer of the state of the weather; is that that exaggerates the state of the weather; and, even if it did not, if the vessel at the moment of the engines breaking down, became unmanageable and went into the trough of the sea, that leads me very strongly to think, as a matter of fact, that the vessel must have been loaded to such an extent as to make her unsafe to meet with such weather in the German Ocean; and, taking it that she was overloaded, that she had much less freeboard than she ought to have had. Now, I do not agree with what Mr. Williams has said, that this is no part of