

Q. B.]

THE QUEEN V. PLIMSOLL.

[Eng. Rep.]

what Mr. Norwood then required; that Mr. Norwood required and intended that she should carry 1,800 tons dead weight, and Mr. Laing says that he built her to carry 1,800 tons dead weight in fulfilment of Mr. Norwood's requirements. She was built, and is called a "spar-decked" vessel, but it appears that the description of a spar-decked vessel which Mr. Plimsoll had taken from the Lloyd's Rules did not exist at that time; and though the vessel was a spar-decked one, yet that the portion of her sides under the spar-deck were altogether stronger than the Lloyd's Rules required, and that the vessel was altogether a stronger vessel than was required for a spar-decked ship; and in that state of things she was sent to sea by Mr. Norwood, who seems to have loaded her at different times with nearly 1,800 tons of cargo, but not quite, and she does not seem to have met with any misfortune until the time that this disaster happened. Now, that occurring, Mr. Norwood does, in the month of September, 1869, enter into a contract or a charter-party, in which he engages this vessel to take 1,600 tons of railway iron to the Baltic; in fact, she loads a cargo of 1,600 tons, or the merest trifle within 1,600 tons, of railway iron and coals, and with that she does not leave the port of Sunderland until the 2nd of November, 1869. Therefore, she starts on a winter voyage across the German Ocean to the Baltic with that quantity of iron on board; and that, I think, is uncontroverted. She does go out, and after being seven or eight hours at sea, one of the engines breaks down or gives way—and I may say that the giving way of that engine in that way is in no way connected with the overloading—but when the engine gives way and the ship is disabled, she does fall into the trough of the sea and becomes unmanageable, and after drifting from the 2nd of November, as the Attorney-General has truly said, till the morning of the 5th. She finally, on the morning of the 5th, sinks and goes down. That is the mode in which she goes down. If the weather was blowing a hurricane, or anything of that sort, that might have accounted for her going down without her being overloaded, but if the weather was fine or moderate it is scarcely possible to conceive, if she were not overloaded, that she should become so unmanageable that they should be obliged to abandon her and that she should go down; because when steamers are despatched on a voyage the parties must contemplate the possibility that the engines may be disabled, and if that be so, she must not be so loaded that the weight will be so much that the vessel will become un-

manageable in the event of any accident arising to the engines. It must be recollected that she was crossing the German Ocean and going to the Baltic. My impression is that the worst part of that voyage would be before she reached the Baltic, at all events in November, when she would be pretty sure to meet with rough weather. If her engines were disabled, and she was not able to act with her sails, and she was loaded in such a way as that in moderate weather she became unmanageable and went down, I should say she was overloaded in that state of things. Now, I must see whether she was overloaded; but before I go into that, I must go to the conclusiveness of fact that we draw, looking at the affidavits. I think I may state now that the result of the skilled evidence is this—that although, I think, it is made out that this vessel was stronger than what is commonly called a spar-decked ship, and although the rule of 1870 about spar-decked vessels was not then in force, yet I think, according to the ordinary rules by which vessels are loaded, and which are expressed in Lloyd's Rules of 1851, that "No vessel bound on any over-sea voyage should on any account be loaded beyond that point of immersion which will present a clear side out of the water when upright of three inches to every foot depth of hold amidships from the height of the deck at the side to the water." Now, treating this vessel as being stronger than an ordinary spar-decked ship, I do not think it is quite made out to my mind that she was a ship of which the upper deck was a main deck, and, consequently, that this rule should apply, and I think, according to the calculations which have been made, applying that rule which says that she ought to have three inches of clear side to every foot depth of hold, she ought to have had at least 6ft. 3in. of clear side, and I think all the witnesses go to that extent. Not only is that the rule which all the witnesses lay down, but that is the rule and practice; and not only that, but Mr. Harrington, who is the skilled witness on that subject, makes out that if a vessel, according to his calculation as to displacement, had the quantity of cargo on board that is mentioned she would draw 19ft. 9 in., I think it is, and consequently she would have 6ft. 3in. of freeboard—that is, taking it in that view, that would be the extreme that she would be drawing—19ft. 9in., which would be just on the very edge of this rule. Now, on the evidence of this part of the case I really have no doubt at all. We have evidence that the vessel, lying in the dock at Sunderland, when loaded was measured. She was lying loaded in the dock