

Q. B.]

THE QUEEN v. FLIMSOLL.

[Eng. Rep.]

peril to the lives of the seamen. Of course she was lost. . . . She was insured, of course." Particular exception was taken by Mr. Norwood to the last quoted expression, which he considered to imply that he had overloaded the ship so as to get the insurance. He also denied by affidavit the correctness of Mr. Plimsoll's statement as to the *Livonia* in many particulars, and in general terms asserted that he was entirely innocent of the charges made against him. The further facts of the case sufficiently appear in the judgments of Mr. Justice Blackburn and Mr. Justice Quain. The facts and arguments of counsel are very fully reported in the *Times*, but it is unnecessary to give them more at length.

Mr. Serjeant Parry, Mr. Butt, Q.C., and Mr. Lewis, for Mr. Plimsoll, showed cause.

The Attorney-General (*Sir John Coleridge*), *Sir John Karstake, Q.C., Mr. Watkin Williams, Q.C., and Mr. Charles Bowen* supported the rule.

The judgment of the Court was delivered on Saturday, June 14, 1873.

BLACKBURN, J.—I think in this case my brother, Parry would have had a right to reply on the affidavits which have been put in in answer, if they affected our view of the matter; but, as they do not, it is not necessary that he should reply upon them; and therefore we must pronounce our judgment on the facts brought before us.

This is an application for a rule for a criminal information on the ground of libel, and in dealing with that this Court has always exercised a considerable extent of discretion in seeing whether the rule should be granted, and whether the circumstances are such as to justify the Court in granting the rule for a criminal information. I think there are two things principally to be considered in dealing with such an application; the first is to see whether the person who applies to conduct the prosecution—the relator or the informer—I think the common expression is the "relator"—that the person who applies for the rule has been himself free from blame, even though it would not justify the defendant making the accusation; and the other is to see whether the offence is of such a magnitude that it would be proper for the Court to interfere and grant a rule for a criminal information. Both those things have to be considered, and the Court would not make its process of any value unless they considered them and exercised a good deal of discretion, not merely in saying whether there is legal evidence of the offence having been com-

mitted, but also—exercising their discretion as men of the world, I may say—in judging whether there is reason for a criminal information or not. I think it is an old expression, generally attributed to Lord Tenterden, but I believe of much older date, that as far as the opinion of a Judge is concerned he should not have a discretion, but that there should be fixed rules for him to go by in exercising his judgment. We have no fixed rules to go by here, and we do not like it; but, nevertheless, in this case we are obliged to exercise our discretion, and to exercise it with considerable latitude, otherwise I think the system of having criminal information would produce no good at all. Now, turning to this charge, and seeing the libel here, which is produced before us, it is certain that Mr. Plimsoll has written a book, and it is equally certain that he is agitating the matter before the public, and inquiring into the way in which vessels were sent to sea, particularly as to overloading and undermanning, and also as to insuring. He is agitating with a view on his side to get an amendment of the law on the subject, he entertaining the view that it required an amendment of the law. With that view he had a perfect right to take whatever course and whatever steps he thought proper in order to bring the matter before Parliament, and in doing so he had a right to comment on the facts or supposed facts which came before him; and as long as he did it *bona fide* and fairly he is perfectly right and does not transgress the law; but the moment he goes beyond *bona fide* and fair comment, and makes attacks upon private persons for which he has no ground, then he does transgress the law, and he does become the object of proceedings being taken against him for the libel, either upon criminal information, or by action, as the case may be. Now, in the present case I think there can be no doubt Mr. Plimsoll has considerably exceeded what would be right, or what he is justified or excused in from the facts which he has brought before us against Mr. Norwood, and the question whether the magnitude or amount is enough to justify us in granting a criminal information is one with which I have had the greatest difficulty from the beginning to the end of this case; but we must see at present how much of the existing matter is correct which is made out against Mr. Norwood, and then we must see how much is left over which would justify us in granting a rule for a criminal information. Now, many matters are quite clear. The *Livonia* was built in 1865 by Mr. Laing from a design of his, and built, as he says, according to