reputed owner during this period. After his mother's death he was in sole possession; and in 1862, he executed a mortgage on the property to a person who had no notice of the will or of the widow's title.

Held, that the widow's heirs could not claim the property against the mortgage. (*A. Wilson*, J. dissenting)—*Stephen* v. *Simpson*, 16 U. C. C. R. 594.

INDICTMENT.—1. It is not error that the caption of an indictment states that the grand jurors were sworn and affirmed without alleging who were sworn and who were affirmed.—*Mulcahy* v. *The Queen*, Law Rep. 3 H. L. 306.

The 11 Vic. c. 12, declares if felony "to compass, imagine, invent, devise, and intend to deprive and depose our Lady the Queen." In an indictment under this statute it is sufficient to allege as overt acts that the defendants conspired, combined, confederated, and agreed to commit the offence; and the allegation in one count of several different overt acts of felony is not objectionable.—*Ib.*

ACCOMMODATION INDORSERS — CONTRIBUTION. — Where two persons indorse a note for the accommodation of the maker, and the second indorser knows when he indorses that the first indorser is, like himself, an accommodation indorser, he must share equally the loss occasioned by the maker's default.—*Cockburn* v. *Johnston*, 19 U. C. C. R. 577.

R. W. CO.—LOSS OF LUGGAGE.—The plaintiff was a passenger on defendants' railway from Paris to Seaforth, with two trunks, for which he had checks. At Seaforth the trunks were put on platform, and he assisted defendants' servant to carry them into the baggage room, and went up in an omnibus to the hotel; this was about 3 p.m. In the evening, about 8, he sent his checks for the trunks, but one of them had disappeared, and the evidence went to show that it had been stolen: *Held*, that the defendents were not responsible: that their duty as common carrier, ended when the trunk had been placed on the platform, and the plaintiff had had a reasonable time to remove it, as he clearly had here. A nonsuit was therefore ordered.—*Penton* v. *Grand Trunk Railway Co.*, 28 U. C. Q. B., 367.

GUARANTY.—A. drew bills on B., who accepted them, and C. gave B. a guaranty that funds should be supplied to take them up. S. discounted the bills, being informed by A. of the guaranty; but S. never notified B. or C. *Held*, that S. had no equity to claim as a creditor against C. on the guaranty. — *In re Barned's Banking Co.*, Law Rep. 3 Ch. 753.

ONTARIO REPORTS.

QUEEN'S BENCH.

Reported by CHRISTOPHER ROBINSON, ESQ., *Barrister-at-Law, Reporter to the Court.)*

PATTERSON v. THE CORPORATION OF THE TOWN OF PETERBOROUGH.

Town corporation—Obstruction of water-course—Liability.

The declaration charged that the defendants, the municipal corporation of a town, on the 1st March, 1868, and on divers other days, penned back the water of a stream in the town, on which the plaintiff had a tannery, so that it flooded his land, &c. The obstruction complained of was a bridge along a street in the town, where there had been a bridge for about 30 years. One D., who owned land on the stream below the bridge, had a wheel in the stream, and parties above him cut away and sent down the ice in the spring, which formed a jam at D.'s, and filled the stream from thence up to and under the bridge. The weight of evidence tended to shew that but for this obstruction at D.'s, the plaintiff would not have been injured. It was left to the jury to say whether the injury complained of was caused by the bridge, or by the ice jam at D.'s, irrespective of the bridge, and they found for the plaintiff.

Held a misdirection: that they should have been told, if the damage was caused by persons sending ice down, which lodged against the bridge, and not by the ordinary action of the ice, defendants were not liable.

And *Semble*, that upon the declaration and evidence the plaintiff could not recover, for it was defendants' duty to build the bridge there, and no negligence was charged.

[28 U. C. Q. B., 505.]

Declaration—First count, that the plaintiff on the 1st March, 1868, and thence hitherto, was possessed of a tannery and land adjoining the stream or water-course in the town of Peterborough, known as the creek, and was entitled to have the waters of such water-course flow away from the tannery and land; and the defendants on the 1st of March and divers days thereafter, penned back the water of the stream or water-course, and obstructed the same, so that it could not flow by and away from the said tannery and land, whereby the water of the stream overflowed and flooded the said tannery and land, and remained thereon for a long time, and spoiled the tan vats, hides and liquors therein, and the stock, machinery and materials of the plaintiff therein, and the land and tannery thereon were much injured and damaged, and the plaintiff was deprived of the use thereof, and incurred expense in removing the water from the same and repairing the same, and the same were thereby much injured and diminished in value, and the plaintiff was by means of the premises much injured in his said trade or business and otherwise.

The second count was in effect the same as the first, except that it averred that the plaintiff was in possession of land adjoining the water-course, and had the right to have the waters flow away from the same, and that defendant penned back the water of the creek on his lands, causing damages, &c., as in the other count, but omitting the tannery. The plaintiff claimed $500 damages, and an injunction against the continuance of the injury, and against the commission of injury of a like kind to the same property.

Defendants pleaded,

1. Not guilty.

2. That the plaintiff was not possessed of the tannery and land as alleged.