to be an "appurtenance" to defendants' premises, which passed from J. D. by the deed under which defendants claimed; and that the plea therefore was good.

On appeal this judgment was reversed, on the ground that the plea could not be read as alleging an apparent and continuous easement necessary for the proper enjoyment of defendants' premises, without which it would not pass under the deed.

Per Burton, J.—Upon a severance of tenements, easements used as of necessity, or in their nature continuous, will pass by implication of law; easements not continuous or apparent, but used from time to time only, will not.

Per Patterson, J.—A right of way is not such a continuous easement as to pass by implication of law with a grant of the land; only a way of necessity will so pass. A way used by the owner of two tenements over one for access to the other, is not in law appurtenant to the dominant tenement, so as to pass with a grant of it under the word "appurtenances," unless the deed shows an intention to extend the meaning of that word, and to embrace the way, or the grant is of all ways "used and enjoyed," or words are used shewing an intention to include existing ways, in which case a defined existing way will pass.

Ritchie, for plaintiff.

Beaty, Q. C., for defendant.

Erratum.—In the note of *Gilleland* v. *Wadsworth* ante page 84, the names of counsel were omitted: they were, *Maclennan*, Q. C., for appellant; and *Boyd*, Q. C., and *W. Cassels* for respondent.

QUEEN'S BENCH.

Wood et al. v. Chambers.

[Sept. 26.

Guarantee—Construction.

Defendant's son, living at St. Catherines, applied to the plaintiffs, merchants in Hamilton, to supply him with goods, and on the 12th April they wrote to him that they would execute his order if he could get the endorsation of his father. On the 13th the son wrote to them to send the goods, and that he would get his father's endorsation if required. On the 17th the plaintiffs wrote proposing, in view of future business, and to save the trouble of getting an endorsement with each transaction, that the father should give a continuous guarantee. The son on the 19th wrote that he would get this, and urged them to send the goods at once, which they did on the same day, with a form of guarantee for the father to sign. On the 21st the son wrote to his father, who lived at Woodstock, "I am buying some goods" from the plaintiffs, and enclosed the guarantee for his signature. The father, not liking this form, wrote another, as follows: "Woodstock, 20th April, 1875. Gentlemen—In consideration of your supplying my son with what goods he may from time to time require of you this season, on your usual terms of credit, I do hereby guarantee the payment of the same." The defendant, as the Court inferred from the evidence, was not aware when he signed this that his son had already obtained any goods from the plaintiffs. After the guarantee, in May and June, further goods were purchased by the son.

Held that the guarantee applied only to the goods purchased after it, not to those previously furnished.

McKelcan, Q.C., for plaintiff.

Osler for defendant.

Devlin v. Hamilton and Lake Erie Railway Company.

[Nov. 27.

R. W. Co.—Train passing along a street—Houses injuriously affected—Right to compensation.

A railway company was permitted by the corporation to run their track along Cherry street in the city of Hamilton, which was only thirty feet wide. The plaintiff, owning a brick cottage and frame house on the street, complained that the trains passing caused the houses to vibrate, and the plaster to fall off the walls, and alleged loss of tenants thereby; but the evidence as to any structural injury caused by the railway was contradictory, and the Court held that it was not sufficiently made out.

Held, affirming the judgment of Hagarty, C.J., that the plaintiff was not entitled to compensation under the Railway Act.

McMichael, Q.C., for appeal.

C. Robinson, Q.C., and *Walker*, contra.

Watson v. Charlton.

[Dec. 29.

Order to hold to bail—Sufficiency of affidavits—Rule nisi.

In order to support an order to hold defendant to bail, the plaintiff need not disclose in his affidavit the name of the persons on whose information he founds his belief that defendant is about to leave the province, where he files also other affidavits, stating facts which would justify such belief. In that case, it is the same as if the plaintiff had stated that these deponents