

It was sufficiently established that the flaw in the rail, which had not come to the knowledge of the defendants or any person representing them before the accident, would not have caused the derailment if the fish-plates were in proper order and tightly bolted, which they were not a short time before the accident, and there was no evidence that their condition was otherwise at the time of the accident.

The accident was not shewn to have been the result of want of maintenance or of negligence on the part of the defendants. The accident might have resulted from any one or more of several conditions for which the defendants were not responsible.

Upon another ground also the plaintiffs failed. The action was not brought within one year from the time when the supposed damage was sustained—the claim was for injury sustained by reason of the construction or operation of the railway: Ontario Railway Act, R.S.O. 1914 ch. 185, sec. 265 (1), and Dominion Railway Act, R.S.C. 1906 ch. 37, sec. 306. *Canadian Northern R. W. Co. v. Robinson*, [1911] A.C. 739, 745, distinguished.

*Action dismissed with costs.*

BOYD, C., IN CHAMBERS.

JUNE 24TH, 1916.

WARDLAW v. WEST RYDAL LIMITED.

PEARSON v. WEST RYDAL LIMITED.

*Discovery—Production of Documents—Accounting for Documents which have Passed out of Possession of Party—Documents in Hands of Party Seeking Production—Irrelevancy—Plans and other Documents.*

Appeal by the plaintiffs from an order of the Master in Chambers dismissing applications for better affidavits on production of documents by the defendants.

D. J. Coffey, for the plaintiffs.

Grayson Smith, for the defendants.

THE CHANCELLOR, in a written opinion, referred to *Evans v. Jaffray* (1902), 3 O.L.R. 327, 341, where it was decided that documents material for the plaintiff's case which have been in the possession of the defendant, but have passed out of his hands or have been lost, should be accounted for in the affidavit of documents