

suitably equipped for such purposes. The unloading of the rails was for the convenience of the company in using them to replace other rails already in use on the constructed tracks. An action was brought to recover damages, under the Manitoba Employers' Liability Act, R.S.M. 1913, c. 61, within two years from the time of the accident, the limitation provided by section 12 of that Act, but after the expiration of the limitation of one year provided in respect of such actions against railway companies by the first sub-section of section 306 of the Railway Act, R.S.C. 1906, ch. 37. The fourth sub-section of section 306 provides that such railway companies shall not be relieved from liability under laws in force in the province where responsibility arises.

Held, affirming the judgment appealed from (25 Man. R. 655), that, in the exercise of authority in respect of railways subject to its jurisdiction, the Parliament of Canada had power to enact the first sub-section of section 306 of the Railway Act, R.S.C. 1906, ch. 37, providing a limitation of one year for the recovery of damages for injury sustained by reason of the construction or operation of the railway. *Grand Trunk Ry. Co. v. Attorney-General for Canada* (1907) A.C. 65, applied.

Per Fitzpatrick, C.J., and Davies, Anglin and Brodeur, JJ. (Idington, J., *contra*). The fourth sub-section of section 306 of the Railway Act, R.S.C. 1906, ch. 37, does not impose such a qualification in regard to the limitation of actions provided by the first sub-section thereof as may permit the application, in such cases, of a different limitation provided under provincial legislation. *Greer v. Canadian Pacific Ry. Co.* (51 Can. S.C.R. 338), followed.

The unloading of rails for the convenience of a railway company in replacing those already in use on the constructed permanent way constitutes "operation of the railway" within the meaning of the first sub-section of section 306 of the Railway Act, R.S.C. 1906, ch. 37.

The judgment appealed from (25 Man. R. 655), was reversed, the Chief Justice and Idington, J., dissenting.

O. H. Clark, K.C., for the appellants; *M. J. Gorman*, K.C., for the respondents.

Province of Quebec.

COURT OF SESSIONS.

Langelier, J.S.P.] REX V. POULIN. [31 D.L.R. 14.

Desertion from military unit—Evidence.

Under the Order-in-Council of January 6, 1916, the proof of