Action by plaintiff alleging that the defendants negligently allowed grass, weeds, logs and other combustible materials to accumulate during the dry season of 1913 on the streets of the municipality near the plaintiff's property; and that they were further negligent in unduly delaying to respond to an alarm of fire sent in by the plaintiff, which if promptly responded to would have averted the destruction of his house and stables, whereby he sustained a loss of $700.

HON. MR. JUSTICE LATCHFORD:—At the close of the evidence, I expressed opinion that upon the facts, as I found them, as well as upon the law, as I understood it, the plaintiff had failed to make out a case. However, I deferred giving judgment, so that the plaintiff's counsel might have an opportunity of submitting authority to support the contention he so vigorously advanced at the time. He now informs me that no such authority can be found. Even had a clear case of neglect of duty by the fire chief been made out, and not merely as established, a slight error in judgment as to the imminence of the danger, and some delay on the part of the fire department in arriving on the scene, the plaintiff would still be without redress. The municipality had power to clean the streets of grass, weeds and other materials, but it was not obliged to exercise that power. It had and exercised the right to establish a fire brigade, but here again the statute is merely permissive. No legal obligation rested on the town to have its fire department vigilant in protecting the property of the ratepayers from fire. Indeed, had the firemen refused, instead of delayed, to respond to the plaintiff's call for their aid, the town would not be responsible for the damages which he sustained. It is not a case where a direct tort was occasioned by the firemen acting as servants of the municipality. If the firemen had caused damage to the plaintiff while employed in the performance of their duties, the defendants might be liable, as was held in *Hesketh* v. *Toronto* (1898), 25 A. R. 449. In that case the plaintiff's son was killed while standing in a public street by the runaway horses of a steam fire engine of the defendants. The jury found that the horses had not been kept under proper control. The *maxim respondeat superior* was held applicable; but it was at the same time pointed out—Burton, C.J. O., at p. 451—that no private action would lie against a