The judgment of the Court was delivered by MEREDITH, C.J.O., who, after briefly stating the facts, referred to Prendergast v. Grand Trunk R.W. Co. (1866), 25 U.C.R. 193; McCallum v. Grand Trunk R.W. Co. (1870-1), 30 U.C.R. 122, 31 U.C.R. 527; Ryckman v. Hamilton Grimsby and Beamsville Electric R.W. Co. (1905), 10 O.L.R 419; Auger v. Ontario Simcoe and Huron Railroad (1859), 9 C.P. 164, 169; Carpue v. London and Brighton R.W. Co. (1844), 5 Q.B. 747, 757; Grant v. Canadian Pacific R.W. Co. (1904), 36 N.B.R. 528; Smith v. Denver and Rio Grande R.W. Co. (1913), 54 Col. 288; Canadian Northern R.W. Co. v. Robinson (1910), 43 S.C.R. 387, [1911] A.C. 739, 745; and concluded as follows:—

None of the cases relied on by counsel for the appellant appears to me to support his contention.

In my opinion, the injury done to the appellant by setting out the fire and failing to prevent its spread to his lands was as much an injury caused by the operation of the railway as the injury caused by the negligent omission of the defendants in the McCallum case to remove the inflammable material on the line "which was ignited by the hot ashes that fell from the locomotive and to prevent the spreading of the fire to the plaintiff's lands" was an injury by reason of the railway.

By sec. 297 of the Railway Act the duty is imposed upon railway companies of at all times maintaining and keeping their right of way free from dead grass, weeds, and other unnecessary combustible matter, and it was in performing that duty that the injury to the appellant was done. That the mode in which the work was done was a negligent one, or even, having regard to the statute, unlawful, is beside the question. If it was negligent, as it has been found to have been, or unlawful, the respondents were answerable for the damage which the appellant suffered; but the act was, in my opinion, none the less an act done in the course of the operation of the railway, and the injury to the appellant none the less an injury sustained by the "operation of the railway."

The performance of the duty imposed by sec. 297 is recognised by the Act itself as part of the operation of the railway; as the group of sections of which that section is one is headed "Operation." This indicates, I think, that the phrase "operation of the railway" was not used in the narrow sense of running trains, but was intended to include such acts as that in which the respondents were engaged, in the doing of which the injury of which the appellant complains was occasioned; and I am of opinion that