sewer was filthy and malodorous in the extreme; that with sufficient warmth in the atmosphere the condition at the outlet of this sewer, if there were germs there, was very favorable for their propagation; but it was said by Dr. Bryce that it was scarcely warm enough at the time the plaintiff's family was infected for them to multiply, and that the only probable way in which they could have come from this sewage was by being sufficiently dried to be taken up into the air and wafted into proximity to the plaintiff's family, and being inhaled by them. It was only, however, by rejecting every other theory as to the origin of the germs that infected the plaintiff's family that this theory was arrived at, and Dr. Bryce said that nothing positive could be affirmed as to their origin—that it was mere matter of speculation. Diphtheria had been alarmingly prevalent throughout the city in the month of November, and had continued to be so until February, when it abated somewhat, and again began to increase about the time that the plaintiff's family became infected with it. Whence the germs came which infected the plaintiff's family seems to us to be wholly conjectural, and that they came from this sewage to be entirely guess-work. These germs being capable of transmission into the human body in so many ways—in food, in drink, and in inhalation of air—it is impossible to say with any sufficient certainty in which way the plaintiff's family became infected, and, if in inhalation of air, whence they came in their journey through the air. We think that there was no evidence from which a jury might fairly or reasonably infer that the germs which infected the plaintiff's family came from this sewage, and that the plaintiff's action must be dismissed; but, as the defendants were wrong-doers in conducting the sewage of the city into the Bay and polluting its waters, thereby causing a public nuisance and one calculated to produce disease, thus endangering the health and lives of the public, there will be no costs."

When the above case is cited, it is usually met with *Grinsted* v. *Toronto Railway Co.*, 24 S.C.R., 570, and it is argued that the latter authority practically overrules the former. A careful scrutiny shows that this is not the fact. In