

a nuisance in conducting the sewage through the Brock street sewer and depositing it or allowing it to be deposited at the outlet of that sewer, as was shown by the evidence, we are unable to hold that there was any evidence from which the jury might fairly or reasonably infer that the sickness with which the plaintiff's family was afflicted was caused by such sewage. There is in every case triable by a jury a preliminary question of law for the Court, whether or not there is any evidence from which the fact sought to be proved may be fairly inferred; and, as was said by the Lord Chancellor in *Metropolitan Railway Company v. Jackson*, 3 App. Cas. 193, 'the judge has to say whether any facts have been established by evidence from which negligence may be reasonably inferred; the jurors have to say whether from those facts when submitted to them negligence ought to be inferred.'

"The medical testimony showed that diphtheria, the sickness with which the plaintiff's family was afflicted, is caused by a germ; that this germ may be received into the throat by food, by drink, or by inhalation; that after infection it takes from five to seven days for the disease to develop. The theory upon which the plaintiffs relied was that there might have been the germs of diphtheria in this sewage; that part of it might have been exposed so as to have been sufficiently dried by the sun and the warmth of the atmosphere to have been taken up as dust into the air; that in the matter so taken up there might have been some of these germs; and that some of the germs so taken up might have been carried by the air into such proximity to the plaintiff's family as to have been inhaled by them; and that thus the plaintiff's family became infected with the disease. The difficulty in supporting this theory is that there was no evidence that there were any germs of diphtheria in this sewage; that, if there were, that any portion of this sewage became sufficiently dry to be taken up into the air; that, if it were, that any of such germs were so taken up; and that, if taken up, they were wafted by the air into proximity to the plaintiff's family; and that they were inhaled by them.

"There is no doubt that the condition of the outlet of this