

and one 142 feet. From the latter a large quantity of sewage was deposited in the bay, and owing to the lowness of the water, it became exposed for a large area during 1891, and up to the time of the illness in the plaintiff's family. There was an intolerable smell from the sewage, and the whole thing was beyond doubt a serious nuisance of the foulest character. The plaintiff had, prior to 1891, been supplied by the defendant with disinfectants to spread over the accumulation, and afterwards it had been dredged away, but in the year in question nothing seems to have been done towards abating it.

Diphtheria was alleged to be the result; three children died, and the father and mother were both taken sick with the same disease, but recovered. Medical evidence stated that the condition of the deposit at the outlet of the Brock street sewer was a condition that would favor the development of the disease and the propagation of the germs of diphtheria, and that the disease could only be communicated by a germ. Other medical testimony was given to show the probability of these germs having been transmitted from this exposed sewage into the air, and thence to the plaintiff's family. Upon this state of affairs the jury found for the plaintiff. The judgment in question was delivered on the motion for a non-suit, or for judgment for the defendant, or for a new trial.

The following is the leading portion of the judgment of Armour, C.J. :—

"The plaintiff's case is not put, in the statement of claim, upon the ground that the defendants had no legal right to conduct the sewage of the city into the waters of the Bay, and to thereby pollute such waters, and that they were guilty of a public nuisance in so doing, and that the sewage so conducted and deposited at the outlet of the Brock street sewer was a public nuisance for which the defendants were responsible. But the case is put as if the defendants had a legal right to so conduct the sewage into the waters of the Bay, and were only liable for an alleged breach of duty in not cleansing and disinfecting the outlets of the sewers.

"Assuming, however, that the case were put most strongly against the defendants and that they were guilty of