There was a conflict of evidence both as to the former and existing condition of the Wey, the occupiers of mills Nos. 2 and 3 (to whom however the discharge of the sewage water appeared to be sometimes an advantage, when the river above the outfall was dry) supported the defendant's case. Drs. Letheby and Frankland gave evidence for the defendant, and there was no scientific evidence for the plaintiff, whose case rested mainly on the evidence of himself and his servants. Weeds had for some years been allowed to accumulate in the plaintiff's pond, and the scientific as well as local witnesses attributed any offensive smell from the river in summer to this cause. The cause came on for hearing on the 20th February, but as it appeared that some operations were going on which would considerably abate the nuisance, if any then existed, and that much had been done since the evidence was closed, it was on the suggestion of his Honour agreed that a reference should be made to Mr. Bazalgette, to report on the present state of the drainage works and of the river, and whether the latter was in such a condition as to be a nuisance to the plaintiff, and if so to advise what should be done, and that the cause should stand over for that purpose. Mr. Bazalgette accordingly made his report, the substance of which was, that at the time of his visit (in March), no part of the river could be termed offensive so as to create a nuisance, but that he was informed that in summer, when there was little water in the stream, and the weeds and slime rising to the surface accumulated at the mill heads, they were very offensive The quantity of sewage entering the tanks was estimated at from 80,000 to 125,000 gallons per diem. The sewage was so much purified before its discharge into the river that it could not be said to create a nuisance, but, as the filters were apt to become clogged, he recommended that to prevent its becoming injurious hereafter, it should be utilized by way of irrigation on the lands near to the outfall, for which purpose it might be pumped up to a higher level by a small steam engine. Some bottles filled with water taken by him from the outfall were produced, and it appeared to be clear and pure.

Baily, Q. C., *Pearson, J.*, Q. C., and *Stevens*, for the plaintiff. The nuisance might be less at certain periods of the year and in some conditions of the atmosphere than in others, but if there was any nuisance the plaintiff had the right to an injunction: *Attorney General* v. *Council of the Borough of Birmingham*, 4 K. & J. 536, 6 W. R. 811; *Cator* v. *Lewisham Board of Works*, 13 W. R. 254. Referring to Mr. Bazalgette's reports, there is at any rate a prospective nuisance: *Goldsmid* v. *Tunbridge Wells Commissioners*, 14 W.R. 562. The delay was material only when the application was interlocutory: *Johnson* v. *Wyatt*, 2 D. J. & S. 18, 12 W. R. 234. They also referred to *Attorney General* v. *Richmond*, 14 W. R. 686.

Osborne, Q. C., and *Jason Smith* (for *Surrage*), insisted that there was no nuisance except that caused by the plaintiff's neglect in cleaning his pond. The court would not interfere on the ground of anticipated nuisance: *Attorney General* v. *Mayor of Kingston-on-Thames*, 13 W. R. 889. In the cases in which injunctions had been granted there had been no filtering and deodorising works as there were here.

Baily, in reply, relied on the admission in the answer of there being some nuisance, which gave the plaintiff a right to an injunction; and, if the nuisance were not abated, such injunction would do the defendant's board no harm.

MALINS, V. C., said that the principles involved in this case were well settled; that however desirable public improvements might be, if you could not effect them without interfering with private rights, private rights must prevail, and those who desired such improvements must effect them as best they could; but that, on the other hand, if there was any great and important public object to be effected, such as the drainage of a town, one of the difficulties and increasing difficulties of the present age, such objects should not be wholly overlooked, and the court ought not to put any difficulty in the way of effecting such object if it could be avoided. As to the case before him, he was satisfied that the sewage poured in by the sewer constructed in 1840 was of a most offensive character, and that it was a gross exaggeration to say that before 1862 the stream below the town was a perfectly pure stream, the water of which was fit for drinking and domestic purposes, and that such a misstatement by the plaintiff, and the circumstance that against a most important public work being carried out he stood alone in his opposition, were not to be disregarded. Every fact stated by him with regard to the injuries he sustained was contradicted by witnesses who, if he did sustain those injuries, must in the nature of things sustain still greater injuries. In answer to the suggestion of the plaintiff's counsel that there were other means of draining the town, as that recommended by Mr. Bazalgette, no evidence had been brought to show that the Board could acquire the land necessary for that purpose, and when they had previously sought to do so, the plaintiff had stood in their way. It had been pressed upon him that it was a mere question whether there was a nuisance or not; that if there was, he was bound to interfere, and not to regard the extent of the nuisance. He had, however, always understood it to be the doctrine of the court that in all these matters you must have some regard to the balance of inconvenience, and if the extent of inconvenience sustained by the plaintiff was of a trifling nature, such as might be readily compensated for in money, you could not and ought not to interfere with the rights of others in a matter of so much importance as the drainage of a not inconsiderable town.

His Honour then referred to the decision in *Goldsmid* v. *Tunbridge Wells Improvement Commissioners*, in which case he considered the injunction to have been granted because they were causing an unmistakable nuisance by pouring refuse into a stream which they had no occasion to use for that purpose, or which they could have used in such a manner as to produce no material effect, and after reading a portion of the judgment of Lord Justice Turner in that case, continued:—Now, in an analogous case, for it is an analogous case, the interference with ancient lights, we have the rule laid down by Lord Eldon in the case of *Attorney General* v. *Nichol*, and since, after some fluctuation of opinion, established, that you are not to interfere with the operations of the defendant unless you