

## ENGLISH REPORTS.

## LILLYWHITE V. TRIMMER.

*Nuisance—Sewage—Injunction—Material injury.*

An injunction which would interfere with an important public object, such as draining a town, will not be granted on the ground of nuisance to a private individual, unless there is an existing nuisance which materially diminishes the enjoyment of health or the value of property. But, some nuisance at the time of filing the bill being admitted, the dismissal was without costs.

[V. C. M., April 29. 30.]

This was a suit by the owner and occupier of a mill, dwelling-house, and premises, on the banks of the river Wey, to restrain the Local Board of Health for the district of Alton, in Hampshire, from causing or permitting a nuisance to his premises, or injury to the health of himself and his family, by pouring the sewage of the district into the said river, and from diverting the rainfall and the spring-water which would have flowed into the river into their sewers. The defendant was clerk to the local board.

It appeared that the river Wey rose between two and three miles above the plaintiff's mill, and after passing through Alton, a town with the adjacent parish containing about 4,000 inhabitants, was checked in its course by three mills, which may be designated by the numbers 1, 2, and 3, before it reached the mill of the plaintiff. Between mills No. 2 and No. 3 a stream of some size flowed into the river. Above the town the Wey was admitted to be a clear and rapid stream, but between the mills its flow became sluggish, and the mud and weeds in it increased. The average width, exclusive of the mill-ponds, was about fifteen feet, and depth three or four feet in the middle of the stream.

The drainage works of which the plaintiff complained consisted of a main pipe or sewer proceeding from the town near and almost parallel to the course of the river to some tanks a short distance above mill No. 2, whence the sewage matter passed through filters composed of stones and charcoal into the river.

The plaintiff complained of the nuisance in July, 1863, by a letter to the defendant, and receiving an answer to the effect that the board were making considerable alterations in the filter tank at the outfall, which, when completed, they trusted would obviate all ground of complaint, he alleged in his bill that, relying on such representation, he made no further complaint until March, 1865. Some correspondence then ensued between the plaintiff's solicitor and the defendant with reference to a plan then contemplated for irrigating certain meadows adjoining the river with the sewage, instead of discharging it directly into the river, but the plaintiff was the owner of some and occupier of others of these meadows, and refused to consent, and for this reason, and on account of the low level of the meadows, the plan was given up. The bill was filed on the 5th June, 1865.

The plaintiff's case was, that before the construction of the drainage works in 1862, the water of the river down to his mill was perfectly pure, and abounded with fish, especially trout; that it was until then used not only for watering cattle, but for drinking, washing, and other domestic purposes; that the weeds growing in the stream were clean and easy to cut, and when cut floated away without causing any offensive smell; and that the mud deposited in the channel of the

stream and mill-pond was not offensive; that the sewers made in the year 1862 diverted much of the rain and spring water which would have found its way into the river in a pure state; that soon after the construction of the works the river became so foul by reason of the sewage poured into it, that a peculiar fungus and scum floated upon it; that the numbers of the fish had been greatly reduced, the trout had almost entirely disappeared, the character of the weeds had changed, the channel being nearly choked by masses of the *anacharis* or American weed, which was very difficult to cut, and when cut gave off a most offensive gaseous vapour, so that it was very difficult to induce any labourers to undertake the work of cleaning the stream; and that the health of the plaintiff and his family had been seriously affected, and that they were no longer able to drink or use the water even for watering cattle.

The defendant's answer was in substance to the effect that the river had always within the memory of persons living been polluted by drains and refuse from the houses in Alton, and in particular from the paper-mill No. 1, and been quite unfit for drinking, brewing, or cooking; that in 1840 a large brick sewer was constructed, and a quantity of filth thereby discharged into the King's mill-pond, and that actions having been brought in 1860 by the owners and occupiers of mill No. 1 on account of the nuisance, the board was constituted for the purpose of effectually draining the town; that in consequence of the use of chloride of lime, and other chemicals, at the paper-mill No. 1, and the sheep-washing and poaching, the fish had diminished in numbers some years previous to 1862. The defendant admitted that some subsoil and percolating water might be intercepted by the main sewer, but believed that below the outfall the river was fuller than before. After the plaintiff's complaint, and in August, 1863, the board made some considerable improvements in the filter-tanks, and believed that they were satisfactory, the effect being that all solid matter was arrested, and the liquid passed into the river almost colourless and inodorous. The discharge of the sewage might have had a trifling effect on the weeds, but not a material one. That the vicinity of the plaintiff's house and premises were affected in some degree by the works of the board was admitted, but the injury was denied to be excessive, and the occupiers of mills 2 and 3, the effect on which must have been far greater, had not complained, nor had the rents of those mills (held on yearly tenancies) been raised. The board had abandoned their scheme of irrigation, and in June, 1865, by the advice of the Local Government, Act Office in London, called in the assistance of Mr. Lawson, C. E. He recommended another pipe for the sewage, and that the subsoil water passing through the existing pipe should be used to work a turbine for pumping up the sewage to a higher level, whence it might be applied for purposes of irrigation. This plan was not adopted, the water power being considered insufficient, and several other plans were considered and rejected. The board claimed to have consulted the interests of the inhabitants of Alton, and that the sewerage works had been and were acknowledged to be very beneficial.