

The plaintiffs thereupon filed their bill, and the defendants put in their answer. The cause was not argued before the judge at Nisi Prius.

ARGUMENT FOR DEFENDANTS.

The question is, In what manner is the new rent to be valued and ascertained?

The plaintiffs contend that the referees are to value the fee simple of the land, free from all incumbrances; that they are then to calculate six per cent. interest upon that value, and to add one-half of the excess of such interest over the old rent to the old rent.

The defendants contend that the referees are to ascertain the present *annual* value of the land, that is, what sum would now be a fair and just rent for it, and to add one-half of the excess of such value over the old rent to the old rent. They contend that the referees are not bound to fix the new rent by the process of calculating interest at the rate of six per cent. upon the gross value of the land, but that they are to fix the new rent by ascertaining the present annual value of the land, which annual value is to be arrived at by examination of witnesses, examination of the property, and by any other evidence which may assist them in the inquiry.

The defendants submit to the court that there can be no doubt upon the language of the deed, that the new rent is to be adjusted by ascertaining the annual value of the land at the expiration of the 107 years, and adding to the old rent one-half of the excess of the new value over the old rent. The words are, "*And by how much the true value of the said land and improvements shall, in the estimation of the said four persons, exceed the rent herein reserved, one full half or moiety of such excess shall be added to the said rent herein reserved.*" The words "true value of the said land" plainly do not mean the gross value of the land or of the fee simple. That would

