conveyed; but the learned judge who delivered the opinion of the court, in speaking of this provision relative to the revaluation, describes it as a valuation of the *yearly* value of the land. His language in describing it is, "and after the expiration of the last-mentioned term, that is to say, the term of one hundred and twenty-one years from the time of the first entry on the land, which will be in the year 1857, the full *yearly* value of the land, with its improvements, is to be fairly estimated, and a moiety of what it exceeds the last-mentioned rent is to be added to the last-mentioned rent and become a new rent." (6 Halsted, p. 264.) Though not a decision upon the point here raised, this language shows very plainly that the court in that case understood by this provision that the thing to be estimated was the *yearly* value of the land.

If the *yearly* value is the thing to be ascertained, why should not the referees be permitted to ascertain it according to the truth? And why should they be confined to a method of ascertaining it which is not stipulated for in the deed, which is arbitrary in its character, and does not, as the defendants contend, express the true value? Why should the court be asked to make a contract for the parties which they have not made for themselves?

For these reasons it is respectfully submitted that the plaintiff's bill ought to be dismissed, and the referees left to value the new rent according to the annual value of the land in the method pointed out by the deed.

The decree at Nisi Prius was made without argument, and for the purpose of enabling the parties to have the cause decided by the Supreme Court at the present term. The cause is therefore to be considered as being now heard for the first time by all the judges.

M. Russell Thayer,
For Defendants.