THE LIBRARY COMPANY OF PHILADELPHIA

vs.

ANDREW J. BEAUMONT, et al.

DECREE OF THE COURT OF NISI PRIUS.

DECREE OF THE COURT OF NISI PRIUS.

THE LIBRARY COMPANY OF PHILADELPHIA, in trust for THE LOGANIAN LIBRARY,
vs.
ANDREW J. BEAUMONT, *et al.*

IN EQUITY.

January Term, 1861.

No. 32.

And now, January 26, 1861, this cause came on to be heard; and thereupon, on consideration thereof, it was ordered, adjudged and decreed, as follows, to wit: That according to the true intent and meaning of the Indenture of May 1st, 1747, set forth in the pleadings, the valuation which it is therein provided shall be made at the expiration of the term of one hundred and seven years therein mentioned, and in like manner at the expiration of every term of one hundred and twenty-one years thereafter, by four persons to be indifferently chosen by the assigns of James Logan and Jonathan Ingham, is of the fair market value of the fee simple of the tract of land, conveyed by the said Indenture, with the improvements thereon free from all incumbrances, and not of the net annual value of the said tract of land and improvements, and that the plaintiffs are entitled to have one moiety of the excess of the interest at six per cent. upon the said valuation of the fee simple of the said tract of land and improvements, to be made, as aforesaid, at the expiration of the said term of one hundred and seven years, over and above the present rent of twenty-five pounds sterling, added to the said rent, to become a new rent for the period of one hundred and twenty-one years, from the first day of March, 1861. And it is further ordered, that the defendants do choose indifferently two

judicious and impartial men on their part, to join with two such men to be chosen by the plaintiffs, to make such valuation as aforesaid, of the fee simple of the said tract of land and improvements.

The Library Company of Philadelphia vs. *Andrew J. Beaumont, et. al.* — *In Equity.* *From Nisi Prius.*

OPINION OF THE COURT, BY THOMPSON, J.

The plaintiffs below are the owners by a devise from James Logan, in trust for the Loganian Library, of a ground rent reserved by the testator in a tract of 396 acres and 120 perches of land in Solesbury Township, Bucks County, and the defendants claim title to the land, subject to rent under and by virtue of sundry conveyances and descents from Jonathan Ingham, the original grantee.

The original rent reserved, in 1747, was £21 sterling, which, by a covenant in the deed of the land, was to remain a rent charge for the period of one hundred and seven years, when a re-valuation of the land and improvements was to be made, and half the increased value was to be added to the existing ground rent, which was to be the rent for another period of one hundred and twenty-one years and so on under periodical valuation at intervals of one hundred and twenty-one years, forever.

The difficulty here has arisen in a difference of opinion as to the mode of valuation to be adopted. Is it to be according to the estimated *annual value* of the premises, or by a valuation of the fee of the land and improvements, half the interest of which to be added to the preceding rental? The plaintiffs contend for the latter and the defendants for the former.

The words in the deed in which the difficulty has arisen

are as follows: At the end of the first period, which was to be in 1861, "the said tract of land and plantation, with all the improvements thereon, are to be valued, by four judicious men, to be indifferently chosen by the heirs and assigns of the said James Logan, of the one part, and the executors, administrators and assigns of the said Jonathan Ingham, of the other part; 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 said rent reserved, and from that time become a new rent," and be paid, yearly, to the heirs and assigns of the grantor for a further period of one hundred and twenty-one years, and so on forever.

In construing this reservation we should bear in mind that the parties had in view the creation of a ground rent, unextinguishable, but subject at long intervals to be changed and increased by a re-valuation of the property out of which it was to issue. This the parties might legally do, although it is somewhat novel.

In conveying land on ground rent a valuation of the premises in some cases is necessary. This fixes what may be called the capital, and a rate of interest agreed upon ascertains the rent reserved. If extinguishable, the capital which would produce an interest equal to the rent would be the sum necessary to be paid to extinguish the charge. This is the usual course of such transactions, and we have not a word to show that any different mode for ascertaining the rent was to be observed. If the words allow it, then the construction will be that the usual mode was intended.

The deed to the grantees provides, "that the land and plantation with all the improvements thereon are to be valued," not at what they would rent for by the year; the words used have a greater scope than this, and there is nothing else where discoverable which would qualify them. The suggestion that 6 *per cent.* is too high a rent for a farm may be true, or not, owing to many circumstances. It

might be a high rent now, and a very low one fifty or a hundred years hence. This consideration is too vague to be allowed to alter the obvious import of the words used. Having valued the land and plantation, then the future rent is to be ascertained, by *so much* as the "*true value*" of said land and improvements "shall exceed the rent reserved, by adding one full half or moiety of such excess" to the existing rent. The valuation is to get at a capital, the interest of which is to be the rent reserved. It is not pretended that the half value of the premises is to be paid as rent every year. This would be absurd, but the fee was to be valued to get at the sum the half of the interest would represent, which being added to the existing rent, was to be the future charge.

The words used, and the object intended, both look to this as the meaning of the parties. There are certainly no words limiting the valuation to what the farm would rent per year, which would involve calculations for taxes and repairs, as contended for by the defendants. The consideration that 6 per cent. would be a high rent we have seen is not sufficient to require the interpretation contended for. On the other hand, in addition to the difficulty in estimating what the taxes might be and the repairs in the future, the process might result in great injustice, as has been well suggested by the plaintiff's counsel, by letting the farm and improvements so run down at the period for estimating the annual value as to be of little worth. Thus, although the fee might have greatly appreciated in the general prosperity of the country, or advance of property in the neighborhood, the rental might be very little if any advanced. Tested by the words used, and supported by the object of the parties and the mode in which such matters are usually transacted, we think the decree at Nisi Prius was based on the true construction to be given to the deed.

I do not appreciate the difficulty suggested, of the possible change of the rate of interest. It is the same now that it was one hundred and seven years ago, when the

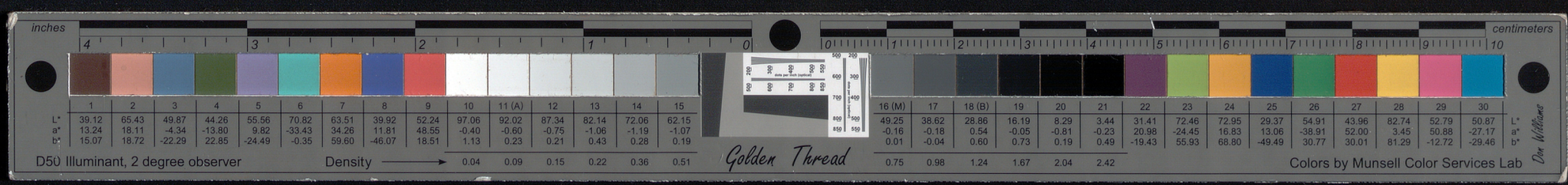
ground rent was reserved, and we can predicate nothing of the possible contingency that the rate per cent. may be changed. If it shall be so before 1982, the period of the next valuation, we may trust the court of that day to discover the proper rate per cent. on the capital necessary to constitute the rent by the law regulating the rate which existed at the making of the covenants.

The decree at Nisi Prius is affirmed at the costs of the Appellants.

I certify the foregoing to be a true, full and accurate copy of the Decree of the Court of Nisi Prius, and the Opinion of the Supreme Court, on appeal delivered by THOMPSON, J., on the sixth day of May, A. D., 1861, in the case of The Library Company of Philadelphia in trust for the Loganian Library *vs.* Andrew J. Beaumont, et al., in the Supreme Court of Pennsylvania, for the Eastern District of January Term, 1861. No. 32. In Equity.

In testimony whereof, I have hereunto set my
[SEAL.] hand and affixed the seal of the Supreme Court of Pennsylvania for the Eastern District, at Philadelphia, this fourteenth day of May, A. D., 1861.

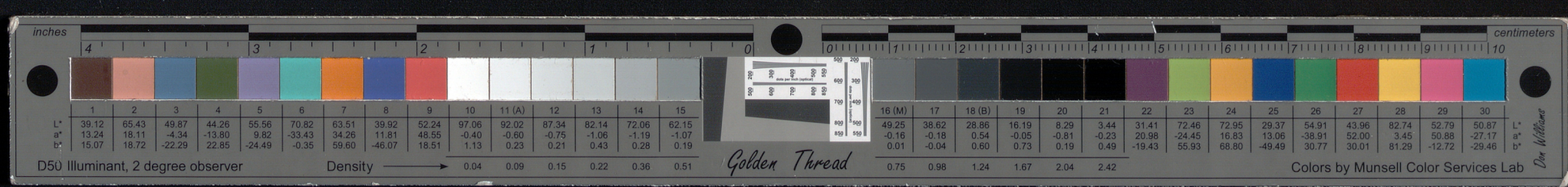
JOHN F. BELSTERLING,
Pro Proth.



	1	2	3	4	5	6	7	8	9	10	11 (A)	12	13	14	15
L*	39.12	65.43	49.87	44.26	55.56	70.82	63.51	39.92	52.24	97.06	92.02	87.34	82.14	72.06	62.15
a*	13.24	18.11	-4.34	-13.80	9.82	-33.43	34.26	11.81	48.55	-0.40	-0.60	-0.75	-1.06	-1.19	-1.07
b*	15.07	18.72	-22.29	22.85	-24.49	-0.35	59.60	-46.07	18.51	1.13	0.23	0.21	0.43	0.28	0.19

	16 (M)	17	18 (B)	19	20	21	22	23	24	25	26	27	28	29	30
L*	49.25	38.62	28.86	16.19	8.29	3.44	31.41	72.46	72.95	29.37	54.91	43.96	82.74	52.79	50.87
a*	-0.16	-0.18	0.54	-0.05	-0.81	-0.23	20.98	-24.45	16.83	13.06	-38.91	52.00	3.45	50.88	-27.17
b*	0.01	-0.04	0.60	0.73	0.19	0.49	-19.43	55.93	68.80	-49.49	30.77	30.01	81.29	-12.72	-29.46

Density	0.04	0.09	0.15	0.22	0.36	0.51	0.75	0.98	1.24	1.67	2.04	2.42



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L*	39.12	65.43	49.87	44.26	55.56	70.82	63.51	39.92	52.24	97.06	92.02	87.34	82.14	72.06	62.15
a*	13.24	18.11	-4.34	-13.80	9.82	-33.43	34.26	11.81	48.55	-0.40	-0.60	-0.75	-1.06	-1.19	-1.07
b*	15.07	18.72	-22.29	22.85	-24.49	-0.35	59.60	-46.07	18.51	1.13	0.23	0.21	0.43	0.28	0.19
Density										0.04	0.09	0.15	0.22	0.36	0.51

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L*	49.25	38.62	28.86	16.19	8.29	3.44	31.41	72.46	72.95	29.37	54.91	43.96	82.74	52.79	50.87
a*	-0.16	-0.18	0.54	-0.05	-0.81	-0.23	20.98	-24.45	16.83	13.06	-38.91	52.00	3.45	50.88	-27.17
b*	0.01	-0.04	0.60	0.73	0.19	0.49	-19.43	55.93	68.80	-49.49	30.77	30.01	81.29	-12.72	-29.46
Density	0.75	0.98	1.24	1.67	2.04	2.42									