5th. If the mortgagor had been held to be tenant at will after January, or there had been evidence to show such a tenancy, would it have been at a rent equivalent to rate of interest, made payable before 1st January? The appellants contended that as, after 1st January, interest was not made payable at all, it could not be claimed as of right at any *certain* rate, but only to be given as damages, and therefore not well reserved as a rent certain. This point was not raised in the cases in the Court below, and on this alone, Gwynne, J. agreed to reverse the judgment. The other learned Judges on this point also held that no rent was payable.

The best mode of creating the position of landlord and tenant, giving a right to distrain on any goods (not exempt) on the premises for arrears of interest, would be by what is termed an Attornment clause. I subjoin such a clause, which may answer the purpose. The conveyancer, who desires to create any such position, will need exercise some little care. If a tenancy be created for a term certain, as, till the day named for payment of principal, and the default is then made, and the tenant continues in possession, then, by such mere fact, he, as decided in the above case, is a mere overholding tenant, and so not liable to any rent. To make him so liable there must be some evidence of a new tenancy at a rent.

It is, therefore, perhaps more to the interest of the mortgagee to constitute the mortgagor his tenant, either at will, or from year to year; the latter tenancy is to be preferred, as the former is defeasable by the death or alienation of either party with notice to the other, and consequently the rent is precarious. If a tenancy from year to year, or for a fixed term, as to the day for payment of principal, be created, care must be taken to introduce a clause enabling the mortgagor at any time after default to determine the tenancy, as otherwise, unless intent to the contrary were apparent on the mortgage, the ordinary right given to the mortgagee to enter might be over-ridden, and the mortgagor might, notwithstanding default by him, be entitled to the usual half-year's notice to quit, incident to a tenancy from year to year, before the tenancy could be determined; or, if the tenancy were for a fixed term, then to possession to the end of the term. If an Attornment clause, as above, creating a tenancy, be introduced, it will be unnecessary, perhaps, indeed improper, to insert the usual clause authorizing the mortgagor to retain possession till default.

In the above case there was but one day fixed for payment of principal and interest, and the possessory clause gave right to possession till default in payment. There was, therefore, no uncertainty as to the *terminus* or duration of the redemise, from which it could be contended that it was void. If the possessory clause had been, as is sometimes the case, that the mortgagor might retain possession till default *and notice* demanding payment, or other notice, then it would seem such clause would be void as a lease for a term, for the uncertainty as to when the notice might be given. It would seem also that where, as is usual, a mortgage appoints a day for payment of principal, and earlier days for payment of interest, with a proviso for possession to the mortgagor till default, there is no uncertainty as to the limit of the term to prevent its taking effect. The day named for payment of the principal is the terminus or limit beyond which it does not last as a term, though it may end sooner by non-payment of interest. This latter possibility, however, creates no uncertainty