render of the copyhold and an assignment of other property therein mentioned.

The deed contained a covenant by Burgess to surrender the premises to Garrod, subject to the proviso that if Burgess should, on 11th July then next, repay the sum of £850, with interest at 5 per cent, then the deed and surrender should become void It also contained a power of sale—after default in payment—of principal and interest.

Then followed this provision :—It is declared and agreed between the parties that he the said John Burgess, his heirs or assigns, shall, during his or their occupation of the said copyhold, messuages, &c., yield and pay for the same to the said John Garrod, his heirs, &c., the yearly *rent*, or sum of £50, free from all deductions whatsoever, by equal half-yearly payments on, &c.; and that it shall be lawful for the said J. Garrod, his heirs, &c., to have and use such remedies by distress and otherwise for recovery of the said yearly rent of £50 or any part thereof when in arrear, as landlords have for recovering of rents upon common demises, provided that the reservation of such rent should not prejudice the right of the said J. Garrod to enter into and take possession of the said hereditaments, &c., and to evict the said Burgess, his heirs, &c., at any time after default shall be made, &c.

Burgess made default in the repayment of the loan, and became a bankrupt. The defendants were his assignees under the fiat.

Afterwards the lessor of the plaintiff distrained on the premises for £50 "for arrears of *rent* due from the said J. Burgess to the said J. Garrod, for the same house and premises upon and up to 11th July last."

No notice to quit had been given before the action by the lessor of the plaintiff to the defendant.

There was a verdict for the lessor of the plaintiff, with leave to the defendant to move to enter a nonsuit.

A motion was afterwards made to enter a non-suit, pursuant to leave reserved, and it was contended that the clause as to distress created the relation of landlord and tenant, so as to make a notice to quit necessary; and though the sum reserved was not the precise amount of the interest, the Court refused to enter the nonsuit.

Thus it will be seen that the validity of the power was in no manner questioned. The only question raised was as to its effect in regulating the position of the parties.

The case was singular in this, that the power of distress was not for either interest or principal *co nomine*, but for a sum of money described as rent.

The next case to which we shall refer was free from these difficulties; It is *Chapman* v. *Beecham*, 3 Q. B. 723.

On 24th August, 1832, the defendant having lent to the plaintiff the sum of £800, the latter to secure repayment, executed a mortgage, and in the mortgage covenanted that he would repay the sum of £800, with interest for the same at the rate of 5 per cent. on days named; and for better securing the payment of the interest granted to the defendant—that as often as it should happen that the interest should be in arrear for the space of 21 days it should be lawful for the defendant into and upon the said land, &c., to enter and distrain for the same *interest* and the arrears thereof, and the distress and distresses then and there found, to impound and to detain, and in due time to appraise and dispose of the same according to the course of law in the same manner in all respects as landlords are, by Act of Parliament or otherwise, authorized to do in respect of distresses for arrears of rent upon leases for years, to the intent that the defendant should by the same distress or distresses be paid and satisfied all arrears of the said interest and all costs occasioned by the non-payment thereof.

The interest having fallen in arrear, the defendant distrained and the plaintiff replevied.

It was contended by the plaintiff that there was not the relation between the parties that authorized a distress, that after default the land in law became absolutely the defendant's, and that a man cannot distrain on his own lands, and that after default the legal interest of the plaintiff expired, and the rent merged in the estate of defendant.

The Court held that the clause was a simple agreement between the parties that *interest* should be levied by distress, and that plaintiff had the power of granting the right of distress, his possession of the land being undisputed. In other words the meaning of the agreement was held to be that in the event of the money not being paid, the defendant might satisfy himself by securing goods on the premises, and per Coleridge, J. "The whole stands on the agreement of the parties. The title is immaterial. The party in possession says the other may distrain *co nomine*. You may call it what you please; the words make no difference."

The opinion of Coleridge, J., thus wisely and clearly expressed, appears to be the law. The parties agree that interest should be collected by distress. That agreement neither makes the interest rent nor the parties landlord and tenant. If the party who gives the right of distress is in possession no question of title or estate can be raised. The agreement is one that can be legally made, and when made is, like other agreements, construed so as to further the intention of the parties.

In one case where the clause was thus expressed :—And for the better securing the said principal money and all in-