preferential lien. Now, if this Act of Anne be the source from which the term is taken and introduced into the Insolvent Act, then the construction and effect given to the expression in the latter Act should be analogous to the construction and effect given to it in the former Act, from which it is taken; namely, that as an execution creditor, *after execution levied*, cannot have the benefit of the seizure without payment to the landlord of the rent for the year preceding the taking in execution, that is, preceding the accrual of the execution creditors' title to affect the goods, so neither can the assignee in insolvency remove the goods or appropriate them to the purposes of the Insolvent Act, without payment to the landlord of the rent for one year preceding the accrual of the title of the assignee in insolvency. It is not in virtue of the lessor *having distrained* that the Statute of Anne gives to the lessor a lien on the tenant's goods preferential to the rights of the execution creditor, but in the absence of any distress made. So, upon the like principle, the lien must exist as against the assignee in insolvency, under the Insolvent Act, although no distress had been made. If a distress had been made and levied before the sheriff came in with an execution, the Statute of Anne availed nothing: the distress levied prevailed over the execution. So, upon the analagous principle, the distress levied before insolvency takes place must prevail over the title of the assignee in insolvency. When a distress has been made and levied, the landlord is in possession of the goods distrained, as a pledgee; before the Statute of 2 Wm. & M. as a bare pledgee, but since that Act, as a pledgee with a power of sale. His position, in that case, seems precisely to correspond with the pledgee of the effects of the insolvent, with a lien thereon, mentioned in the above proviso, extracted from the 10th section of the Act of 1869. Mr. Maclennan's argument was, that this lien, acquired by a *previous* distress, was the only lien designated in the 81st section as the *preferential lien*, which was by that section restricted to the one year's rent. He contended that there could be no lien until the landlord, by distraining, had acquired possession; but that construction appears to be not only inconsistent with the proviso to the 10th section, with the terms of which the condition of a landlord who had distrained before insolvency precisely corresponds, but also inconsistent with the latter part of the 81st section itself; for the preferential lien there referred to is regarded as continuing in respect of rent accruing due after the insolvency, during the occupation of the assignee as tenant. This concluding part of the 81st section would seem to exclude the idea contended for by Mr. Maclennan, that the preferential lien arose in virtue of a distress *made and levied before the insolvency*, and would seem to give some pretext for a construction that the term "preferential lien of the landlord for rent," is used as equivalent to "*the right of the landlord to distrain for rent*," which is restricted to the "arrears of rent during the period of one year last previous to the execution of a deed of assignment, or the issue of a writ of attachment, and from thence so long as the assignee shall retain the premises leased." If this be what was meant, then we must, I think, construe the section as referring to the power of the landlord to distrain *after the insolvency takes place*, and not in any manner as impairing and defeating rights fully, and for good consideration, and *bonâ fide* acquired *before* the insolvency, in virtue of a distress, to which is attached by law the right of retaining possession of the goods distrained as a pledgee thereof, with power of sale, which power nothing can divest, short of payment of all rent in arrear, to the extent of six years' arrears. Of such a right, *bonâ fide* acquired before insolvency, nothing but the most express language can, I think, divest a landlord; and this construction is in accordance with the provisions and the policy of all the bankrupt laws which have from time to time been in force in England, which never professed to deprive a landlord of the rights which he had, in due course of law, acquired by a distress made and levied before the act of bankruptcy; and with us the equivalent to the act of bankruptcy is, the executing a voluntary assignment, or the issuing of a writ of attachment in compulsory liquidation.

The sound principle appears to be that involved in the provision above extracted from the 34th section of the Imperial Bankruptcy Act of 1869 (ch. 71), and what is therein embodied is, I think, the construction we must put upon our Insolvency Act of 1869, in the absence of any language more explicit than that contained in the 81st section. It may be, and no doubt is, very hard upon the general creditors, and most probably was never contemplated as an event likely to occur, or against which it was necessary to make provision, that a landlord should suffer his tenant to fall in arrear for six years' rent, and immediately upon the eve of insolvency execute a distress warrant, and so obtain a preference over the general creditors; but it would be a dangerous precedent, upon language such as is used in the 81st section of the Act, to deprive a landlord of the benefit which a distress made and levied before the insolvency has been always held to give to him, and which has never heretofore been interfered with by any of the Bankrupt Acts which have prevailed in England or in our own country.

I think the landlord is entitled to maintain his distress for the six years' rent, admitted to have been in arrear when the distress was made. In *Griffith* v. *Brown*, 21 C P 12, we held that the landlord was restricted to the one year's arrears of rent accrued due prior to the insolvency; but in that case the title of the assignee in insolvency had been perfected *before* the distress was made

Judgment for defendant.

REGINA V. STAFFORD.

License to sell spirituous liquors—Quashing of by-law under which issued—Conviction for selling quashed.

The quashing of a by-law, under which a certificate has been granted and license issued for the sale of spirituous liquors, does not nullify the license; and a conviction for selling without license cannot, therefore, under these circumstances, be supported.

[22 C. P. H. T. 177.]

K. McKenzie, Q C., obtained a rule to quash a conviction for selling liquor without license.

It appeared from the papers and affidavits filed that the defendant resided in the village of Almonte, and was a shop-keeper; that on or