

Q. B.]

NOTES OF CASES.

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never indebted and never served with proceedings in foreign court. During the progress of this suit defendant obtained a discharge in bankruptcy in the District Court for the Northern District of Ohio, and at the trial obtained leave to plead the foreign discharge as a plea of *puis darrein continuance*. Defendant proved that such a discharge would release defendant of all his debts (proveable against his estate) in the United States, including the debt to plaintiff. Plaintiff's only evidence in reply was that defendant resided in Canada for two years previous to the discharge, and that he (plaintiff) had no notice of the defendant's bankruptcy in the United States, and he contended that, as the Bankruptcy Act required the bankrupt to reside, or carry on business in the State where he filed his petition, and as defendant resided in Canada, the Court in Ohio had no jurisdiction to grant a discharge, and that the one produced was therefore bad. *Held*, that the discharge in bankruptcy produced was a bar to plaintiff's action. *Held*, also, that it was not necessary for defendant to prove that all proper steps were taken to obtain the discharge, but that the discharge *prima facie* proved that every step before the discharge had been regularly taken.

J. B. Clarke, for plaintiff.

Caswell, *contra*.

HAYES V. UNION MUTUAL LIFE ASSURANCE COMPANY.

Insurance—Misstatement as to age of insured—Burden of proof—Voluntary admissions separable from others.

One H. had an insurance on his life and died. The plaintiff, his administratrix, in the proofs of death, misstated the age of the insured, which misstatement, if true, would have avoided the policy. In an action on the policy defendants pleaded misrepresentation as to age of insured, and at the trial plaintiff swore that she had no grounds for making this misstatement, except that she had been misled into making it by entries in an old book in the insured's possession at the time of his death.

Held, that she was not bound by this misstatement, but could, on her own evidence,

explain it away, and that the burden of proof was not so shifted as to compel her to shew the true age of the insured to be as stated in the application, but that defendants were bound to prove the misrepresentation. *Held*, also, that the conditions of the policy not requiring any proofs of age at the time of death, the plaintiff's admission as to age being voluntarily made, could be separated from the other statements in the proofs which were required by the conditions, and that defendants were not entitled to have all the statements in the proofs treated as one admission.

Bethune, Q. C., for plaintiff.

W. Mulock, *contra*.

BARNES V. BELLAMY.

Landlord and tenant—Eviction by title paramount.

Prior to the lease of the premises for the rent of which this action was brought, the plaintiff's predecessor in title had mortgaged the same, and the assignee of the mortgagee brought ejectment against defendant, the tenant of the premises, who thereupon gave up possession. *Held*, that this amounted to an eviction, and that plaintiff could only recover the rent up to the date of the writ, which must be looked upon as the date of the eviction.

Osler, Q. C., for plaintiff.

F. B. Robertson, *contra*.

BELLAMY V. BARNES.

Lease—Covenant for quiet enjoyment—Ejectment by title paramount.

Defendant having executed a lease of certain premises to plaintiff, containing the ordinary statutory covenant for quiet enjoyment, plaintiff was subsequently ejected by the assignee of mortgages thereon created prior to the lease, and thereupon brought an action against defendant for breach of the covenant in question; but, *Held*, that he could not recover, as the assignee of the mortgages was not a person "claiming by, from or under" defendant, but by from and under the defendant's predecessor in title.

F. B. Robertson, for plaintiff.

Osler, Q. C., *contra*.