

Macdonald, J.]

[Nov. 16, 1910.]

PHILLIPS v. SUTHERLAND.

Infant—Repudiation of contract made by—Repayment of money received under voidable contract—Nonsuit, effect of.

An infant who has made a sale of real property, and afterwards during infancy repudiated the contract, may, after attaining majority, maintain an action to cancel the contract, although such action is not brought immediately, provided that he has done nothing since attaining full age to avoid the previous avoidance; but in order to succeed in the action he should return any money received from the purchaser.

If, in such a case, the money is not paid back or offered, the plaintiff should be nonsuited, with a direction, however, that the nonsuit should not have the same effect as a verdict on the merits for the defendant.

Robson, K.C., and Laidlaw, for plaintiff. Wilson, K.C., and Hamilton, for defendant.

Robson, J.]

[Nov. 24, 1910.]

HART v. DUBRULE ET AL.

Attachment of debts—Garnishment—Action for unliquidated damages.

The right to proceed under Rule 759 of the King's Bench Act for the attachment of debts before judgment is confined to cases in which the amount of the plaintiff's claim can be definitely ascertained at the time the action is brought and the rule does not apply when the claim is for unliquidated damages whether arising from tort or breach of contract.

Where, therefore, the plaintiff's claim was obviously partly made up of unascertained damages and neither the statement of claim nor the affidavit contained any definite allegation of a certain amount having been earned by plaintiff at the time the action was brought, an order attaching debts before judgment was set aside with costs.

McIntyre v. Gibson, 17 M.R. 423, followed.

Heap, for plaintiff. *Galt*, K.C., for defendant.