

NOVA SCOTIA.

SUPREME COURT.

FULL COURT.

FEBRUARY 4TH, 1911.

McDONALD v. BAXTER.

*Sale of Horse—Contract—Infant—Rescission—Necessaries
—Warranty—Jury—Verdict—New Trial.*

Motion on behalf of plaintiff to set aside findings of the jury and for a new trial in an action claiming rescission of a contract for the sale of a horse, and repayment of the purchase money.

J. J. Power, K.C., in support of motion.

W. B. A. Ritchie, K.C., and H. W. Sangster, contra.

The judgment of the Court was delivered by

DRYSDALE, J.:—In this case the plaintiff is an infant, and the action arises out of the purchase of a horse by plaintiff from defendant in April, 1908. In or about June, 1909, the plaintiff attempted to rescind or repudiate the contract and he puts his case in two ways in this action. First, he asserts that the contract not being one for necessaries he had the right in June, 1909, to repudiate, tender back the horse in its then condition and recover back the amount which he had paid as the purchase price in April, 1908. And, secondly, or alternatively, if the contract must stand, that there was a warranty as to the horse's age and condition, and in respect to such warranty he has a right to recover in damages.

On the first branch of the case I would have thought on the plaintiff's own admissions that there was nothing to be submitted to a jury, and that the plaintiff must fail on the undisputed situation. It is clear that the horse was purchased in April, 1908, the money paid and immediate possession taken and the horse used by plaintiff for upwards of one year at the ordinary work of a farm as well as at other work, and it was not until June, 1909, when the horse was in a very different condition, that there was any attempt at repudiation. In an executed contract by an infant apart from necessaries I think it is well settled law that an infant cannot repudiate or rescind the contract if he has derived any