

**NOVA SCOTIA COURT OF APPEAL**  
**Cite as: Rent v. Whitman, 1994 NSCA 128**

**Clarke, C.J.N.S.; Chipman and Pugsley, JJ.A.**

**BETWEEN:**

MICHAEL PATRICK RENT

Appellant

- and -

MICHAEL AND SHARLEEN WHITMAN

Respondents

) Michael Patrick Rent  
) Appellant in Person

) W. Bruce Gillis, Q.C.  
) for the Respondent

) Appeal Heard:  
) June 13, 1994

) Judgment Delivered:  
) June 13, 1994

**THE COURT:** Appeal dismissed, without costs, from the issue of a Writ of Possession, per oral reasons for judgment by Clarke, C.J.N.S., Chipman and Pugsley, JJ.A. concurring.

The reasons for judgment of the Court were delivered orally by:

**CLARKE, C.J.N.S.:**

This appeal concerns the right of the respondents to a Writ of Possession for land at South Williamston. The respondents purchased the land by deed. Their immediate predecessor in title acquired it pursuant to the **Sale of Land Under Execution Act**, R.S.N.S. 1989, c. 409.

The land was owned by the appellant. He continues to occupy it. He resists the respondents from taking possession.

Section 4 of the **Act** provides:

The land of every judgment debtor may be sold under execution after the judgment has been registered for one year in the registry of deeds of the registration district in which the land is situated.

The court issued a judgment against the appellant on March 8, 1988. It was registered at the Registry of Deeds on March 9, 1988. On February 24, 1989, a notice of sale was filed with the court. It was advertised for five consecutive weeks beginning March 1, 1989. An execution order was obtained and delivered to the Sheriff on March 3, 1989. The auction sale was held on April 4, 1989. It was sold to VanGestel who later sold and conveyed the land to the respondents.

The respondents sought and were granted a Writ of Possession by Justice Haliburton on January 25, 1994. He concluded that s. 11 of the **Act** does not require that the whole process leading to sale begin after the expiry of one year from the registration of judgment so long as the sale by the Sheriff occurs one year after registration. In this instance the sale by the Sheriff was almost one month after the expiration of one year from the registration of the judgment. In these circumstances, Justice Haliburton determined the sale was regular and confirmed it.

As earlier noted, Justice Haliburton also decided that the respondents were entitled to a Writ of Possession.

The appellant argued that the respondents, not being a party to the Sheriff's sale, did not inherit a right to the issue of the writ. The Justice reached his conclusion by reference to the provisions of the **Sale of Land Under Execution Act**, above, and the **Conveyancing Act**, R.S.N.S. 1989, c. 97. Section 18 of the **Sale of Land Under Execution Act** provides:

Any person, who has obtained from the sheriff a deed of land sold under execution, may apply to a judge of the court out of which the execution issued for a summons calling upon the judgment debtor, and upon every person in possession of such land, or any portion thereof, deriving title by, through or under the judgment debtor, subsequently to the registry of the judgment, to show cause why a Writ of Possession should not issue to put the purchaser in possession.

After referring to s. 18, Justice Haliburton wrote:

In my view, the **Conveyancing Act** ... provides a full and complete answer to the objection raised by Counsel in that regard. While it is true that 'any person' are words different than 'purchaser' as defined in Section 2 (f) of the Act, I am satisfied that the **Conveyancing Act** makes it clear that all property rights, the title, the hereditaments, the rights and interests of various parties can be conveyed and in this case, they were conveyed by the original purchasers to the Whitmans and the Whitmans, therefore, stand in the stead of and have exactly the same rights, obligations and privileges as the original purchasers that they, therefore, have the right to apply for possession of the property as they have done and that it would be proper that a Writ of Possession issue.

Mr. Rent appeals from the decision and order contending that Justice Haliburton erred in law. After a careful study of the record, the relevant law and the submissions that have been made to the Court, we are unable to agree. In our opinion Justice Haliburton made no errors that are reversible on appeal.

The appellant is concerned about the amount claimed at sale through the execution order and the manner by which an apparent surplus from the sale was distributed by the Sheriff. In our opinion these matters do not invalidate the sale.

The Sheriff, upon application by Mr. Rent, should be able to provide a statement of the distribution of the surplus.

Accordingly we dismiss the appeal, and for the same reasons as Justice Haliburton, without costs.

C.J.N.S.

Concurring:

Chipman, J.A.

Pugsley, J.A.

