

**NOVA SCOTIA COURT OF APPEAL**  
**Citation:** *Crittenden v. MacLean*, 2003 NSCA 121

**Date:** 20031114  
**Docket:** CA 192997  
**Registry:** Halifax

**Between:**

Frederick Walter Crittenden

Appellant

v.

Ian H. MacLean

Respondent

and

Evelyn Laurena Turner

Third Party

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**JUDGE:** Chipman, J.A.

**APPEAL HEARD:** November 12, 2003

**JUDGMENT DELIVERED:** November 14, 2003

**SUBJECT:** **Property - Execution of Deed - evidence rebutting presumption of delivery**

**SUMMARY:** John Forward MacNeil, prior to his death, attended at the office of the respondent solicitor and instructed him to prepare a deed of property in favour of himself and the appellant as joint tenants. The respondent discussed with Mr. MacNeil the effects of the proposed conveyance. Mr. MacNeil signed the deed but instructed

the respondent not to do anything with it until he heard further from him. Shortly after Mr. MacNeil died, the respondent dealt with his Estate on the footing that the deed was not valid as he had received no further instructions. The appellant brought an application before Scanlan, J. for a declaration that the deed was valid. After reviewing the evidence and the authorities Scanlan, J. concluded that the deed was not valid. Under the authorities it was clear that very strong evidence was required in order to justify a court setting aside a deed which is valid on its face on the ground of non-delivery. However, the evidence here indicated that the grantor did not yet intend it to be delivered, but rather, to retain the right to rethink his decision. The appellant appealed.

**ISSUE:** Whether Scanlan, J. erred in his conclusion that the evidence was strong enough to rebut the inference that the deed had become effective.

**RESULT:** The Nova Scotia Court of Appeal reviewed the circumstances and the decision of Scanlan, J. and concluded that he had not erred in concluding that the evidence was sufficient to rebut any inference that might otherwise arise that the deed became effective. The appeal was dismissed with costs.

**This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 5 pages.**