

SHERIFFDOM OF SOUTH STRATHCLYDE, DUMFRIES AND GALLOWAY AT  
DUMFRIES

[2019] SC DUM 68

DUM-SD33-19

NOTE by SHERIFF GEORGE JAMIESON

in the cause

MESSRS P & B DICKIE

Pursuers

against

WILLIAM FRAME

Defender

**Pursuers: McLean**

**Defender: Chiwara**

Dumfries 12 July 2019

**The purpose of this Note**

[1] The purpose of this Note is to draw attention to the question whether the *statutory powers* under sections 24(3) and (4) of the Rent (Scotland) Act 1984 (“the 1984 Act”) (originally, section 33 of the Rent Act 1965), are still available to the sheriff in an action of removing of a former agricultural employee.

**The action of removing**

[2] The pursuers brought a summary cause action of removing in respect of the farm cottage which the defender, their former agricultural employee (as defined in section 17 of

the Agricultural Wages (Scotland) Act 1949), and his family continued to occupy after the termination of his contract of employment with them.

[3] The court, rather than the First Tier Tribunal, had jurisdiction in respect of this action as there was no former protected or assured tenancy, and no private rented tenancy. In this case, the defender occupied the dwellinghouse as a former employee under his contract of employment with the pursuers. The court therefore had jurisdiction in respect of this action.

[4] Parties' agents were in agreement that there was no defence to the action, save for the exercise of any statutory or common law powers available to the court to suspend the execution of the decree.

[5] They restricted their submissions to the court's common law power to supersede extract. Having heard and considered those submissions, I granted decree of removing, superseded extract of the decree at common law to 28 June 2019 to allow the defender time to find alternative employment for himself, and alternative accommodation for himself and his family, elsewhere in Scotland. I found the defender liable in the pursuer's expenses of process modified to £250.

#### **Section 24 of the Rent (Scotland) Act 1984**

[6] Section 24 applies to a former tenancy, and to a former right to occupy premises as a dwelling otherwise than under a tenancy (section 24(2A), as inserted by section 39(3) of the Housing (Scotland) Act 1988).

[7] As originally enacted, section 23(3) of the 1984 Act conferred power on the sheriff:

"To suspend the execution of the order [for possession] on such terms and conditions, including conditions as to the payment by the occupier of arrears of rent, compensation to the owner for loss of possession and otherwise as the sheriff thinks reasonable."

[8] If the order for possession was granted within six months of the ending of the former tenancy or right to occupy, the sheriff was obliged to make a section 23(3) order for the remainder of the six month period, unless certain exceptions applied (section 23(4)).

[9] In considering whether to grant an order under section 23(3) of the 1984 Act, the sheriff was to have regard to all the circumstances and, in particular, to certain matters specified in section 24(6).

[10] Where the sheriff suspended the order for possession under section 24(3) or 24(4), the sheriff was in terms of section 24(7) of the 1984 Act to make:

“[No] order for expenses, unless it appears to the sheriff, having regard to the conduct of the owner or occupier, that there are special reasons for making such an order.”

[11] The sheriff’s power to make an order under sections 23(3) of the 1984 Act was:

“Without prejudice to any power of the sheriff apart from this section to postpone the operation or suspend the execution of a decree of removing or warrant of ejection or other like order”.

[12] The sheriff’s power to make an order under section 23(4) of the 1984 Act was:

“Without prejudice to any powers of the sheriff under the preceding provisions of this section or apart from this section to postpone the operation or suspend the execution of the order for a longer period”; or “for the whole or part of the period of six months aforesaid”.

[13] On 1 December 2017, sections 23(3) and 23(4) of the 1984 Act were amended by the Housing (Scotland) Act 2014 (schedule 1, paragraph 8) by the substitution of references to “the court” with references to the First Tier Tribunal.

[14] The Housing (Scotland) Act 2014 (Commencement No 7, Amendment and Savings Provision) Order 2017 (SSI 2017, No 330) did not limit the transfer of these powers from the sheriff to the First Tier Tribunal to protected tenancies and assured tenancies.

[15] Did this mean, therefore, as in the present action, where there was no tenancy but a former right of occupancy under a contract of employment that the sheriff no longer had the powers set out in sections 23(3) and 23(4) of the 1984 Act?

[16] In the event, the question did not need to be answered in this action, for the section 23(3) and (4) powers were “without prejudice” to any other power the court had “to postpone the operation or suspend the execution” of an order for possession.

[17] Parties’ agents therefore invited me, on a pragmatic basis, to consider the matter of postponing execution of the decree *only* under the court’s common law power to supersede extract of decree.

[18] While I commend their pragmatism, this case does highlight whether section 24 of the 1984 Act has been satisfactorily amended.

[19] The statutory powers contained within section 24(3) and (4) of the 1984 Act do appear to me to be a useful supplement to the sheriff’s other powers to suspend execution of a decree of removing; the loss of the additional powers in sections 23(3) and (4) of the 1984 Act, including the protection from an award of expenses in section 24(7), through inadvertence would be unfortunate.

[20] The Scottish Ministers might therefore wish to consider whether to rectify this problem by making a consequential provisions order made under section 102 of the Housing (Scotland) Act 2014.