Johnstone v Sweeney

Case Report: 1985 SLT (ShCt) 2

The facts: A couple walking on a towpath which was a right of way came to a watercourse running across the path. This had broken up the path and a metal girder had been placed across the eroded section of the path. The couple were both injured when the metal girder gave way as they were crossing it. It was not alleged that the defenders had placed the girder there (or when), nor that they should have known either of its existence or of its rotten state.

Decision: This is an interesting case in relation to occupiers liability and rights of way. The Sheriff dismissed the claim, holding that

- the existence of a right of way does not, in itself, exclude an occupier's liability under the 1960 Act; but
- there is no positive duty on an occupier of ground which is a right of way to maintain the right of way, but only a negative duty to allow passage; and
- the occupier is not liable for an injury caused by the dangerous state of the path except where he is proved to have created the danger himself.