McCluskey v Lord Advocate

Case Report: 1994 SLT 452 (N)

An Outer House decision by Lord Kirkwood.

The facts: The claimant slipped on a narrow track leading to the Rogie Falls, in the Forestry Commission’s Torrachilty Forest. She fell onto rocks and was injured.

Decision: The action was unsuccessful. The Court found that the path on which the pursuer fell was not in the network of Forestry Commission paths for which the defender was responsible and was not really a path at all but a rough shortcut to the Falls. The Forestry Commission was not in occupation or control of that path and had no duty to prevent people straying off their own network of paths onto it. The court also indicated that if it had found the defender to have any liability it would have found contributory negligence of two thirds on the part of the pursuer for her footwear and choice of route and apportioned damages accordingly.