



In the Matter of Watering Place, Kirkoswald,
Cumbria (No.2)

DECISION

This dispute relates to the registration at Entry No 1 in the Rights Section of Register Unit No.CL.133 in the Register of Common Land maintained by the Cumbria County Council and is occasioned by Objection No. 230 made by Messrs. J D and N Murray and noted in the Register on 4 August 1972.

I held a hearing for the purpose of inquiring into the dispute at Penrith on 29 October 1980. The hearing was attended by Mr J O Fenwick, the Clerk of the Kirkoswald Parish Council, the applicant for the registration, and by Mr D Mellor, Solicitor, on behalf of the Objectors.

The registration is of the right of the inhabitants of the parish to use the whole of the land as a public watering place. This is insupportable for two reasons. A right to take water is not a right of common, but merely as easement: See Race v Ward (1855) 4 E. & B. 702 and, even if it were, it could not appertain to a fluctuating body of persons such as the inhabitants of a parish: See Gateward's Case (1607) 6 Co. Rep. 59b. I am not deciding that the inhabitants of the parish have no right to use the land as a public watering place. They may or may not have such a right, but if they have, it is not a right of common.

For these reasons I refuse to confirm the registration.

I am required by regulation 30 (1) of the Commons Commissioners Regulations 1971 to explain that a person aggrieved by this decision as being erroneous in point of law may, within 6 weeks from the date on which notice of the decision is sent to him, require me to state a case for the decision of the High Court.

Dated this 27th day of November 1980

Chief Commons Commissioner