



In the Matter of Watendlath Fell, Borrowdale,  
Allerdale

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DECISION NO.2

This reference relates to the question of the ownership of land described above being the land comprised in the Land Section of Register Unit No. CL 488 in the Register of Common Land maintained by the Cumbria County Council of which no person is registered under section 4 of the Commons Registration Act 1965 as the owner.

I held a hearing for the purpose of inquiring into the question of the ownership of the land at Keswick on 21 May 1981, at which the only claimant was the National Trust; and I was satisfied (see my Decision dated 16 July 1981) that the National Trust was owner of part of the land. As to the remainder of the land ("the remaining land"), following the issue of my Decision, Lodore Limited ("Lodore") submitted a claim to ownership of part, and I held a further hearing to inquire into the ownership of the remaining land at Keswick on 24 March 1982.

At the hearing Mr P Ling, of the firm of Watson Lewis and Co, Chartered Surveyors, appeared on behalf of Lodore; Mr L C Gardner, of the firm of Browth and Sons, Solicitors, appeared on behalf of another claimant, Mr J A G Tyson; and the National Trust was represented by its Land Agent, Mr G G Hall.

Mr Ling produced a Conveyance dated 4 May 1920 by which the Executors of John Raven Musgrave conveyed to Lodore land which included an area numbered pt. 148 on the OS Map 2nd edn. This area comprises a section of the remaining land edged and hatched red on the plan attached to this Decision ("the red section").

Mr Tyson's claim is to the part of the remaining land which lies to the north of the red section. Giving evidence, Mr Tyson said that he had lived all his life at Watendlath and that his family farmed in the area in the years 1923-80. His father had owned two grazing rights over this part - there was another grazing right which was not used by the persons entitled. This part was not included in land sold to the National Trust. Mr Gardner submitted that the evidence showed occupational use of the part by Mr Tyson and his predecessors, but at best I think the evidence showed no more than exercise of grazing rights and did not establish possession of a kind to give rise to ownership by adverse possession: and I do not accept his claim.

The National Trust did not claim ownership of any part of the remaining land. On the evidence I am ~~not~~ satisfied that Lodore is the owner of the red section and I shall accordingly direct the Cumbria County Council, as registration authority, to register Lodore as the owner under section 8(2) of the Act of 1965. I am not satisfied that any person owns any other part of the remaining land, which will therefore remain subject to protection under section 9 of the Act of 1965.



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

6 May

1982

*L. J. Morris Smith*

Commons Commissioner