



## COMMONS REGISTRATION ACT 1965

Reference No. 262/D/366

In the Matter of Todbank Hill,  
Kirkoswald, Eden District,  
Cumbria

DECISION

This dispute relates to the registration at Entry No. 1 in the Rights Section of Register Unit No. CL 144 in the Register of Common Land maintained by the Cumbria (formerly Cumberland) County Council and is occasioned by Objection No. 111 made by Mr J C Deakin and noted in the Register on 2 October 1970.

I held a hearing for the purpose of inquiring into the dispute at Penrith on 24 October 1980. At the hearing Kirkoswald Parish Council on whose application the registration was made, were represented by Mr J Fenwick their clerk.

The disputed registration is of a right not attached to any land, of the inhabitants of Kirkoswald to take sand and gravel. The grounds of Objection are that the mineral rights in the land "belong to my client who is Lord of the Manor and it is not a common quarry". The objector does not in any way in the Objection identify his client.

Mr Fenwick who has been clerk of the Parish Council for the last 8 years, said (in effect):- The Parish Council made the registration because they had for years understood that the inhabitants of Kirkoswald had the right claimed. However he had at Carlisle inspected the Kirkoswald Inclosure Award dated 1875 from which it appeared that this land and other lands had been allotted to the Surveyors of the Highway of the Township of Kirkoswald and that it was thereby directed that such allotments should be appropriated and used as Public Quarries for supplying stone and gravel for the repair of roads in the said Parish. ~~He had also~~ a decision dated 4 June 1980 reference 262/U/198 (therein mistakenly said to be U/192) ~~by which~~ the Chief Commons Commissioner said he was satisfied that Mr R and Mrs S M Armstrong are the owners of this land. Although the land looks as if it were at one time used as a quarry it is now overgrown with gorse and scrub. In these circumstances he considered that the registration was not supported by the Award. The Parish Council had no other document which supported the registration.

Upon the above considerations, Mr Fenwick being agreeable, 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



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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 24<sup>th</sup> — day of November — 1980

*a. a. Baden Fuller*

Commons Commissioner