



In the Matter of Watering Place, Kirkoswald,  
Cumbria (No. 1)

DECISION

This dispute relates to the registration at Entry No. 1 in the Land 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. 229 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 at Entry No. 1 in the Rights section of the Register Unit, and by Mr D Mellor, solicitor, on behalf of the Objectors.

The registration was made in consequence of the application for the registration of the right of the inhabitants of the parish to use the whole of the land as a public watering place. This registration is insupportable for two reasons. A right to take water is not a right of common, but merely an 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

12<sup>th</sup>

day of

November

1980

CHIEF COMMONS COMMISSIONER