BRITISH VIRGIN ISLANDS

IN THE COURT OF APPEAL

CIVIL APPEALS NOS. 2 and 3 of 1984

BETWEEN:

JAMES SKELTON et al - Appellants

and

TORTOLA INVESTMENT TRUST LTD - Respondent

and

ODEAN SKELTON & Others - Appellants

and

TORTOLA INVESTMENT TRUST LTD
EGYPT CONSTRUCTION LTD
CHASE MANHATTEN BANK LTD - Respondents

Before: The Honourable Mr. Justice Bishop - Chief Justice (Acting)
The Honourable Mr. Justice Moe
The Honourable Mr. Justice Williams (Acting)

Appearances+ Mr. K.Foster for Appellants
Mr. J. Archibald for Tortola Investment Trust Ltd with Miss Janice George-Creque
Mr. M. Todman for Egypt Construction Co. Ltd with Mr. Paul Webster.

1986: June 24, 25.

JUDGMENT

BISHOP, C.J. Acting

On the 24th June, 1986 this Court dismissed the appeal and stated that its reasons would be reduced in writing and delivered on a later date. We do so now.

The appeal was against the decision of Joseph J. delivered on the 16th April, 1984 in which she ordered that (1) James Skelton and Esmie Hyman (nee Skelton) deliver up, forthwith, possession of a parcel of land in Registration Section Road Town, Block 2938B, Parcel 46 to Tortola Investment Trust Ltd (hereinafter also referred to as T.I.T. Ltd) and (2) James Alfred Skelton, Odean Skelton, Esmie Hyman (nee Skelton), Lindo Skelton and Mary Augustus Francis (nee Skelton) give up forthwith possession of parcels of land in the same Registration Section and Block,

/numbered....

numbered 147 and 148, to Egypt Constructaion Ltd. The Skeltons were also ordered to pay the costs of the other parties, to be taxed if not agreed. In addition, the Registrar of Lands was directed to remove cautions entered in respect of Parcels 147 and 148, in the Land Registry.

At the hearing before us, learned Counsel for the parties agreed that a decision by this Court on whether or not the matter before the learned trial Judge was res judicata would be a final determination of the case.

The facts which led to the trial in the High Court and which emerged from the evidence adduced there, were as follows:

On the 23rd May, 1921, by virtue of a Crown Grant and in consideration of the sum of £160.0.0 paid by him, William Campbell Roy, his heirs and assigns, acquired ownership in 178 acres of land known as Pasea Hall and Fahie Hill. The boundaries of that land were set out in deed No. 39 of 1921.

Between 1921 and 1928 William Campbell Roy and James Skelton of Frett Yard, disagreed over the ownership of land in the area, and litigation was started in the High Court. However, a spirit of compromise prevailed and on the 23rd November, 1928, they entered into a written agreement whereby James Skelton agreed to relinquish all claim to an area of land in Pasea Hall, bounded as follows: On the North a public road, on the East lands of James Skelton, on the South by the sea, and on the West by Jackass Ghaut. It may be noted here that Parcel 46 referred to above, had the sea as its southern boundary and Jackass Ghaut as its western boundary. James Skelton also agreed that he would abandon all law suits between himself and William Campbell Roy and would not enter into any further litigation in respect of the same land. William Campbell Roy agreed to pay sums of money to James Skelton towards full settlement and as compensation for the expenses incurred in earlier litigation. In addition he agreed to lay no claim to the portion of land on which houses of James Skelton were not erected.

/In December.....

In December 1952 William Campbell Roy died, testate; and on the 6th July 1953 probate of his will was granted to executors Christine Scott Roy and John Rowan Scott Roy, his widow and son, respectively.

On June 6th 1961, by deed of conveyance (No. 101 of 1961) the executors conveyed to the devisee Christine Roy, 90 acres of land known as Pasea Hall. Its boundaries on the east, south, and west were identical with those set out in the Crown Grant.

On the 10th November 1964, by deed of conveyance (No. 288 of 1964) Christine Scott Roy conveyed specific areas of land at Pasea Hall to a company called Pasea Plantation Ltd.

On the 23rd September, 1969, Pasea Plantation Ltd. brought an action against James Skelton (No.30 of 1969) for wrongful possession of land at Pasea Hall Estate, delineated in the Statement of Claim. Skelton defended the action and it was heard in the High Court by Renwick J., who, in his decision delivered on the 19th October, 1970, found, inter alia,

> "The nub of the question in this case is the extent of Frett Yard. There is no doubt that the land conveyed to William Campbell Roy included Frett Yard and that at some stage William Campbell Roy tried to get possession from the defendant's father who then occupied Frett Yard. This he failed to do and Frett Yard had been occupied by the defendant and his predecessors for a considerable period of time ..... Acting on the defendant's instructions as to boundaries of Frett Yard, a survey of Frett Yard was carried out by Mr. Harold Lewellyn a licensed surveyor and a plan drawn up. This plan showed the boundaries and extent of Frett Yard as follows: On the north by the public road and measuring 92 feet, on the south by the sea and measuring 106 feet 6 inches, on the east by Pasea Hall Estate and measuring 84 feet 8 inches and on the west by Pasea Hall Estate and measuring 75 feet, the whole amounting to 7810 square feet in extent. This evidence is uncontroverted and clearly shows that the defendant's lands do not include the said lands.....
>
> I consequently order.....that the defendant deliver up immediately to the plaintiff the said lands, that the plaintiff is granted the injunction as prayed....."

/The lands.....

The lands to be delivered up amounted to 7000 square feet and its boundaries were stated in the Statement of Claim. Skelton was not ordered to deliver up 7810 square feet, the area found to be Frett Yard. That was found to be owned by James Skelton and indeed in 1972 he laid claim to it under the Land Adjudication Ordinance 1970. He held no rival claimant and learned Counsel for the appellants submitted before us that it was later Parcel 80.

The boundaries of the land that Skelton was ordered to deliver up to Pasea Plantation Ltd. were: "On the east by other land of the plaintiff, on the west by Frett Yard, on the north by the public road, on the south by the sea;" and it was clear that the western boundary of Frett Yard itself was not found by the trial Judge to be Jackass Ghaut; nor was its eastern boundary found to be either a mango tree or Johnson's Ghaut.

James Skelton was dissatisfied with the decision of Renwick J. He appealed to the Court of Appeal on the 27th November, 1970.

On the 9th March, 1971, the appeal was dismissed with costs and therefore the findings of fact referred to above were upheld. However because of the wording of the formal order that was drawn up, the Court of Appeal made an order that the order of Renwick J., as filed, must be differently worded so that it set out unequivocally the area of the land mentioned and the exact terms of the injunction. It was important that persons generally, and James Skelton in particular, be in the position where they, and he, could know with certainty the specific area of land that he was ordered to give up to Pasea Plantation Ltd., and precisely what he was enjoined from doing.

I digress here to observe that this Court did not have before it a filed and signed copy of the order of March, 1971 in the terms ordered. In answer to a question from the Court we were informed that that order had not yet been obeyed. The failure to do so, for whatever reason, must be frowned upon especially after more than 15 years. Clearly the

/necessary.....

necessary action ought to be taken by the party disobeying, to rectify the omission.

It may also be pointed out that save for Parcel 80,neither James Skelton nor any other member of the Skelton family claimed any other land under the Land Adjudication Ordinance 1970.

The findings of fact that James Skelton had wrongful possession of the 7000 square feet of land delineated as stated earlier, and on the area and boundaries of Frett Yard unquestionably owned by James Skelton, must stand and must be binding on the Skeltons. So too must the order made by the Court.

Following the decision of the Court of Appeal,Pasea Plantation Ltd. took further steps. On the 15th June 1972, through its solicitor, it claimed ownership of the lands it purchased from Christine Scott. Claims No. 59/1569A and No. 59/1569B were filed under the Land Adjudication Act 1970. Demarcation of the boundaries of the lands was completed on the 5th October 1972 and the adjudication record dated 17th November 1972 showed, among other facts, that there were two sections in Road Town, Block 2938B and these were parcels numbered 46 and 48. They had a common owner, Pasea Plantation Ltd., and the same list of documents was produced to the recording officer in respect of each claim. There were no rival claimants in respect of either of these two parcels of land.

On the 19th October, 1973, Pasea Plantation Ltd. was registered, under the Registered Land Ordinance 1970 as the sole owner of Parcels 46 and 48 with absolute title. This registration was not challenged until there was an allegation in the amended defence filed in suit No. 12/1973 on March 15, 1978 that Parcel 46 was wrongly registered in the name of that company "in that the adjudication officer in error wrongly considered that the Pasea Hall Estate lands were part and parcel of the Frett Yard lands which said lands are separate and distinct."

/It was.....

It was on the 21st February, ~~1874~~ 1974, that Pasea Plantation Ltd. transferred the lands known as Parcel 46 and Parcel 48 to T.I.T. Ltd.; and on the 20th March, 1974 by deeds No. 186 of 1974 and No. 187 of 1974 T.I.T. Ltd. was registered as sole owner with absolute title - of Parcels 46 and 48 respectively. Thereafter, and until about 15th October, 1974 T.I.T. Ltd., through its estate manager James Smith, entered on the lands and performed acts consistent with ownership. However, there was interruption of the company's possession by James Skelton and Esmie Hyman (nee Skelton), and eventually (in February 1976) an action was filed by Tortola Investment Trust Ltd, against these Skeltons claiming possession of Parcel 46.

Although judgment in default of defence was entered after more than a year had elapsed, eventually, with leave of the Court a defence and an amended defence were filed, the latter in May 1978. The Skeltons alleged inter alia that (a) they were in lawful possession and that they and their predecessors have always been in lawful possession of the lands mentioned in the Statement of Claim nec vi, nec clam, nec precario as far back as the year 1920; and (b) that the claim of T.I.T. Ltd. is barred by effluxion of time.

There was an amended Reply filed on the 29th June 1978; and there the matter rested until it was consolidated with a case brought in 1982 by Odean Skelton, James Alfred Skelton, Esmie Hyman (nee Skelton), Lindo Skelton and Mary Augustus Francis (nee Skelton) against Tortola Investment Trust Ltd (suit No. 92 of 1982). Now in March 1981 T.I.T. Ltd. the sole registered owner of Parcel 48 successfully applied for partition of that land so as to show two separater Parcels numbered 147 and 148.

On 2nd April 1981 T.I.T. Ltd. was registered as the sole owner of each of these Parcels, with absolute title, and by 15th May 1981 the ... Registry Map had been appropriately amended and entry made in the Register of Lands.

/I come.....

I come now to the year 1982. On the 1st September T.I.T. Ltd, transferred to a company called Egypt Construction Ltd. Parcels 79 147 and 148, all in the Road Town Registration Section, Block 2938B; and on the 14th September the five members of the Skelton family mentioned earlier, brought an action against T.I.T. Ltd. claiming not only what had been asserted by way of defence in suit 12 of 1976 but also that (1) they were, at all material times, the owners in lawful possession of the land "commonly known and referred to as Frett Yard" and which is erroneously referred to as Lots 46, 47, 80 and 48 (or Lots 147 and 148) and (2) the boundaries of Frett Yard were: "On the north by the public road, on the south by the sea, on the west by Jackass Ghaut, on the east by a mango tree and Johnson Ghaut". It needed no more than a quick glance to see that by seeking a declaration that they were owners of the Frett Yard lands as described in suit 92/1982 that the Skeltons were seeking to re-open a consideration that had been given twelve years earlier by Renwick J. who had already found what was the area and extent of Frett Yard, and against whose finding an appeal had failed. As might be expected, T.I.T. Ltd. in its defence in suit 92 of 1982 referred to the decisions of Renwick J. and of the Court of Appeal and traced the title of Parcels 46, 48 (later to be divided into 147 and 148) and 80.

Suits 12 of 1976 and 92 of 1982 were consolidated after Egypt Construction Ltd. and Chase Manhattan Bank were made co-defendants with Tortola Investment Trust Ltd.

On the 4th October 1982, Odean Skelton, James Skelton, and Esmie Hyman entered a caution forbidding the registration of dealings and the making of entries in the register with respect to the land comprising Parcel 48 or Parcels 147 and 148, unless they consented or the caution was removed by order of the Court or Registrar, or withdrawn by them.

At the trial which lasted several days in June 1983 and July 1983 the learned Judge heard evidence from, on the one side, John Smith (estate manager for T.I.T. Ltd.). Harold Lewellyn (licensed Land Surveyor mentioned in the Judgment of Renwick J.), and on the other side Clifford Callwood (a life-long friend of the Skelton family), Odean Skelton, James Skelton,

/Lindo.....

Lindo Skelton, Esmie Hyman (interested parties to the action), Walter de Castro (a qualified civil engineer), and also Joan Fahie (sole director of Egypt Construction Ltd.). The learned Judge also visited the area of land under consideration. Now having done so and having heard learned Counsel's addresses, Joseph J. in her Judgment reviewed the respective claims, considered the pertinent facts, and found:

> "from this evidence it is clear that the Skeltons are claiming the parcel of land extending from Jackass Ghaut to John's Ghaut. I am satisfied that the issue in the instant case is the same as that decided in suit No. 30 of 1969 and Civil Appeal No.4 of 1970; that is, whether Frett Yard extends from Jackass Ghaut on the west to a mango tree in Johnson's Ghaut.....on the east"

Then, after quoting from the judgment of Renwick J. to show what he found to be the boundaries and extent of Frett Yard, the learned Judge said:

> "I identify the areas that the learned Judge ordered the defendants to deliver up as Parcels 46, 147 and 148."

Before this Court learned Counsel for the appellants submitted that "although in the 1969 case evidence had been led by the Skeltons to show that they were owners of Frett Yard, stretching from Jackass Ghaut on the west to Johnson's Ghaut on east, nevertheless that was merely a description of the lands they owned; and it could not and was not considered to be the issue in the case." Learned Counsel contended that the sole issue in that case concerned trespass by James Skelton on 7000 square feet possession of which he was ordered to deliver up. Mr. Foster submitted that, like Renwick J. the Court of Appeal confined its consideration and adjudication to the specific area of 7000 square feet on the eastern side of "what the Skeltons called Frett Yard". Counsel urged that the issue of estoppel was not raised and that res judicata could not be successfully pleaded as a defence to the consolidated action. He asked this Court to hold that Joseph J. did not decide the issues raised in that action. Consequently, he said, the case ought to be remitted to the High Court for the trial of the issues.

/Learned Counsel.....

Learned Counsel for Tortola Investments Trust Ltd. submitted that in the light of the law on the doctrine of Res Judicata and of the facts and circumstances related to the evidence before the trial Judge, it was clear that the issue raised in the instant action had already been considered and determined by a court of competent jurisdiction in suit No. 30 of 1969 and by this appeal court in civil appeal No. 4 of 1970. Mr. Archibald cited several passages in the evidence but it is unnecessary to set them out. He contended that the Skeltons were again trying to have adjudication on the area and boundaries of their property known as Frett Yard, and to have the High Court say that Frett Yard included lands that were already determined to be outside of the area decided as Frett Yard. Counsel urged the defence of Res Judicata had been established and so the appeal should be dismissed.

Learned Counsel for Egypt Constructioin Ltd. adopted the submissions and arguments of Mr. Archibald in so far as they concerned the defence of Res Judicata. Like Mr. Archibald, Mr. Todman also sought to deal with the case if this court held that the matter should be remitted for trial of issues that had not been considered by Joseph J. It is not necessary to deal with those points.

In my view, in suit No. 30 of 1969, in order to reach a decision on the area of land on which there may have been a trespass the trial Judge had to, and did decide upon the area of land that James Skelton could properly retain; and in keeping therewith he decided that, (a) Frett Yard belonged to James Skelton (b) the area and boundaries of Frett Yard were as he stated in his judgment (quoted earlier) and (c) possession of the remaining area had to be delivered up by James Skelton. These findings of fact having been confirmed by the Court of Appeal were binding on all.

In the instant case the evidence which Joseph J. heard and considered was replete with statements from one or other, if not from

/all of.....

all of the Skelton family who testified, and from the witness Callwood, which indicated clearly that the Court was being asked to determine the boundaries of Frett Yard as being those already considered and rejected.

There must be an end to litigation. The essential issue raised by the Skeltons in the suit brought on their behalf in 1982, had been decided before.

I agree with the learned trial Judge from whose judgment I quoted earlier. I also agree that she was obliged to accept and follow the decision of the Court of Appeal in March 1971. The Skeltons were already told, in no uncertain terms, that Parcels 46 and 48 (now 147 and 148) did not belong to them as they were not a part of Frett Yard.

Joseph J. was correct in holding that the doctrine of Res Judicata must succeed; and, the appeal must in the result, fail. So it was dismissed on the 24th June, 1986. The order of the trial Judge stands.

The respondent's costs here and in the court below must be taxed and paid by the appellant if they cannot be agreed.

E.H.A. BISHOP,
Chief Justice (Acting)

I agree.

G.C.R. MOE,
Justice of Appeal

I also agree.

L. WILLIAMS,
Justice of Appeal (Acting)