

L & J 23rd May, 1985.

Judgment of the Bailiff on application of Petitioner for costs on an indemnity basis.

BAILIFF: "I will announce my decision and then give brief reasons. My decision is that I award taxed costs to the petitioner and not indemnity costs. As I said a short time ago, I have never fully understood why a successful litigant is not entitled to his or her full costs, subject of course to the costs in question being reasonable, and having been reasonably incurred and not being excessive. I still do not understand why that is not the situation, but I have to accept that it is not the principle upon which the English Courts proceed and no doubt for that reason I have to accept also it is not the principle upon which Jersey Courts proceed. I think that is quite clear, firstly, from the Preston case, and secondly from the fact that there are very few examples, there are one or two, but very few examples in Jersey where full indemnity costs have been given. So obviously, for good reason or bad reason, we appear to have followed the English practice and I feel that I must follow that practice too. There is a right of appeal against my decision and it may be that if an appeal is brought against the ruling I have just given, then perhaps the Court of Appeal will look into it to see whether, in fact, it is a principle which this Court ought to be following, but it does appear to me that it is a principle which we do follow. When I look at the Preston case, which is very similar to this case, I read the judgment of Brandon, L.J. on page 58 where it says (1982:1AER) "It appears to me that it is necessary before the Court departs from the general basis of taxation laid down in paragraph 2, which is of rule 28 and directs taxation on the more generous basis authorised

by paragraph 3 of that rule, that there should be some special or unusual feature in the case to justify the Court in exercising its discretion in that way." When I look at the present case I find that it is a fairly run-of-the-mill divorce case brought on the ground of cruelty. Now, in every divorce case brought on the ground of cruelty, where the petitioner wins, in other words where cruelty is proved, obviously it must mean that the Court has found the respondent to have been at fault. If in fact it is a case where evidence has to be heard it means, of course, that the respondent has denied cruelty and that therefore there has been a considerable amount of evidence heard and the case may have taken a long time and one could argue that if the petitioner, whether it be the husband or wife, is successful in proving cruelty then the successful petitioner ought to be given his or her full indemnity costs. But that does not appear to be the position in England, and certainly has not been the position here because there have been very few incidences where full indemnity costs have been given, although there have been obviously a number of defended divorce cases. And so the fact that the petitioner has succeeded is not a ground for giving her full indemnity costs; the fact that it has been a hard fought case is not by itself a reason; the fact that the case has taken a long time is not a reason because obviously the fact that it has taken a number of days will be reflected in the taxed costs which will eventually be given if the appeal fails; and the fact that the petitioner has only a very modest income again does not seem to me to be a special reason because presumably if she succeeds in her petition and maintains her success then the ancillary matters will reflect her financial situation. What I have had to look for is to see whether there were special or unusual features such as existed in the Preston case and I cannot find those unusual features. The case was defended, and

obviously the Court did not believe the respondent in a number of important matters, as the judgment makes clear. But the fact that the Court did not believe the respondent in a number of important matters, is not, in my view, an exceptional situation which justifies making an exception as regards the costs, because in all cases the Court has to believe one party or the other and where there is a successful party, it means the Court has presumably disbelieved the other party, or has not accepted the view put forward by the other party. There is no question, that I am aware of, of dilatoriness in this case, as there was in the Preston case, and I am not aware of any specific allegation of lack of co-operation. I think it was a run-of-the-mill case, a very long case, a hard fought case, but otherwise there was nothing very special about it and therefore that is the ground for my decision. I do not find the exceptional circumstances which, according to our practice, (whether that practice be good or bad) it is necessary to find in order to grant costs on a full indemnity basis.

