What are you currently doing? Well, if you are interested, I am sitting here at my desk on a typically cold Jersey summer morning looking through Judgments on the Jersey Legal Information Board website.

I have happened upon a 16 page Judgment delivered by our Learned Bailiff.

Experience dictates that ordinarily a 16 page Judgment relates to fairly weighty subject matter. However the heading of this Judgment perhaps suggests otherwise. It says this: "Costs – Leave to Appeal sought by the Appellant against assessment of the Greffier".

Really, a Judgment of 16 pages pertaining to a cost assessment?

You know about this Judgment. It has been the subject of some press attention. The "Appellant" rented three units in the Central Market in St Helier. The Treasurer of the States sought to recover GST on the rent payable by the Appellant for the lease of the three units.

The amount in dispute… £268.20.

The background to the proceedings was that the Appellant disputed that GST was payable on the rent for the units and he refused to pay the princely sum charged. Proceedings were issued by the Treasurer in the Petty Debts Court to recover the GST. Due to the complexity of the arguments, the proceedings were transferred to the Royal Court.

Once in the Royal Court, the matter was seized by our learned Master. The Treasurer sought to strike out the Appellant's defence to the proceedings. He applied, was successful and obtained judgment.

The Master clearly had felt that there was no merit to the defence. The Treasurer was thus awarded his costs.

Thereafter there have been various legal battles resulting in a bill to the Appellant of some £25,512.25 from the Law Officers' Department. Yes reader, you are correct. The Appellant was required to pay £25,512.25 in respect of a dispute relating to £268.20.

Our local news hounds have, understandably, had a field day as to the apparent absurdity of this.

It is an easy headline. On the face of it, it cements the perception of the asininity of lawyers and their legal costs. It amplifies the public's misconceived perception of lawyers and their fees generally.

However, by Appeal the Royal Court was asked to clarify important issues in relation to the taxation of costs. This is a very important function of the legal system but it is as dry as sand. I would not wish to draw you into a soporific trance, but suffice it to say that for us practitioners it is very important.

The case also raised a question as to whether there was a distinction between the public, the Treasurer and the Law Officers' Department. The Court did not consider it necessary to make a distinction in this case but did say this*: "There is a very strong public policy imperative to ensuring that costs orders in favour of the public, or a Minister, or the States, when made, are effective, for otherwise private litigants would be able to bring or defend proceedings against the public with impunity as to costs; which would*

have adverse consequences for the administration of justice generally."

In short, the Court is properly protecting the public purse.

The next issue to be determined related to whether the Treasurer was to be treated as a litigant in person or as a normal litigant. For the avoidance of doubt, a litigant in person is someone who does not instruct a lawyer. In essence, I understood the Appellant's argument to have been that because the Treasurer employs in house lawyers, it should not recover its fees as if it was instructing a lawyer privately. The Court rejected this.

The Court then went on to discuss the level of costs which the Treasurer had incurred. After much debate, the Court concluded that there should be proportionality when considering costs and set down the principle *"that in every taxation of costs, the Greffier should apply the test of proportionality to the overall bill which would otherwise be allowable."*

The Court then gave some guidance to the Taxing Master when considering costs.

The outcome of the 16 page Judgment was that the Appellant partially succeeded in his Appeal and the costs award against him were reduced to £12,500. Therefore the Appellant was required to pay back to the public £12,500 in respect of a dispute relating to a £268.20 GST bill.

I agree on the face of it that this whole process seems irrational. I understand that there maybe a further appeal. The risk reward on any analysis is, absurd, but the fact of the matter is that some important points of law for us practitioners can be gleaned from what might be regarded as an act of folly. So, leaving aside the headlines as to the crazy nature of the case, the Court has made some helpful findings in terms of our jurisprudence moving forward. Scrape away the ludicrous veneer and you will find something of value.

Dexter Flynn, July 2016

For further information on any matter relating to Litigation in Jersey contact Dexter Flynn or any member of the Voisin Litigation team.