with his clenched fist in the presence of one Chetty as will appear from the affidavit hereto attached. I left his house immediately, as I found it was impossible to live with him."

G. B. Stent, for applicant moved.

C. T. Blakeway, for respondent: The particulars disclosed by applicant do not support a *primâ facie* case for a decree of judicial separation. A *primâ facie* case must be made out in an application of this kind. *Everton* v. *Everton* (1910 T.H. 201). As to what is required for a decree of judicial separation, see *Wentzel* v. *Wentzel* (1913 A.D. 55).

Stent, in reply: The allegation that a blow was struck is sufficient.

DE VILLIERS, J.P.: The applicant first came before the Court without any particulars at all of her husband's alleged cruelty. She was given an opportunity of putting an affidavit particulars to show that she had a *primâ facie* case in the action for judicial separation which she proposes to bring. She now says, "I repeat my statement that my husband continually ill-treated me," and gives certain particulars. [His Lordship read the affidavit, and proceeded.] These allegations simply amount to this—that the respondent's mother-in-law interferes in the management of the applicant's home, and that on one occasion the respondent struck the applicant. There is nothing whatever to show that cohabitation between the parties has become dangerous or, at least, intolerable, and the application accordingly fails.

Applicant's Attorney: *J. P. Lambert;* Respondent's Attorney: *H. Solomon.*

[P. M.]

DAVIDOFF v. HOLLAND.

1915. *December* 14, 17. DE VILLIERS, J.P.

Debtor and creditor.—Untaxed costs.—Disbursements.—Law 12 *of* 1899, *sec.* 2.

Law 12 of 1899, sec. 2, requiring bills of costs to be properly taxed before they are claimable, applies to charges not only for services rendered but also for disbursements such as counsel's fees.

A claim made by an attorney against his client in respect of counsel's fees incurred by him on the client's behalf, but not taxed against the client, *Held,* not to constitute a debt on which a petition for sequestration can be based.

Marks and Holland v. *Palmer* (1915, T.P.D. 246), followed.

Return day of provisional order of sequestration.

The applicant and the respondent, both attorneys, had practised in partnership, and during the partnership the respondent was the plaintiff in an unsuccessful libel action. The applicant acted as his attorney of record, and, as such, briefed certain counsel on his behalf. No bill of costs had been taxed by the applicant against the respondent, the latter having appeared before the Taxing Master and objected to taxation. The applicant claimed, however, that the respondent was indebted to him in the sum of £345 9s., being the amount of fees due to counsel for which he, as attorney of record, had become liable and which, he alleged, the respondent had specially agreed to pay. As a creditor to this amount the applicant claimed the sequestration of the respondent's estate.

J. V. Brink (with him *N. E. Rosenberg*) moved for a final order of sequestration.

R. F. MacWilliam, for the respondent: There is no debt on which the applicant can claim to sequestrate the respondent's estate. Law 12 of 1899, sec. 2, requires the taxation of all bills of costs, and there has been no taxation here. See *Savory* v. *Bell* (1909, T.H. 130); *Lubbers & Canisius* v. *Davy* (1907, T.S. 495).

[DE VILLIERS, J.P.: In the case of *Marks and Holland* v. *Palmer* (1915 T.P.D. 246) the full Court held that the provisions of Law 12 of 1899 cannot even be waived.]

Brink, in reply: It is clear law that where a mandate is given the principal must indemnify the agent, and we allege that the respondent expressly agreed to idemnify us. It is not necessary to tax these charges. Law 12 of 1899 applies only to charges for services rendered. It does not apply to disbursements such as these. It was never intended that this law should abrogate the elementary principle of the law of agency that an agent is entitled to be indemnified by his principal. In any event, it is the respondent's fault that no bill has been taxed.

[DE VILLIERS, J.P.: His objection may have been well-founded.]

It is for him to show that; otherwise it does not lie in his mouth to complain of non-taxation.

Cur. adv. vult.

Postea (December 18).

DE VILLIERS, J.P.: The applicant and the respondent practised in partnership as attorneys, and during the partnership the appli-

cant became the attorney of record for the respondent in a libel action, which the respondent brought in this Court against one Greig and others. The applicant claims that the respondent owes him £345 9s. in respect of counsel's fees in connection with this action, which fees, he says, the respondent specially agreed to pay; and on this debt the applicant now seeks to have the respondent's estate sequestrated. It is common cause that no bill of costs has been taxed by the applicant against the respondent, and, after reference to the case of *Marks and Holland* v. *Palmer*, I have come to the conclusion that the debt set up by the applicant is not one on which the respondent's estate can be sequestrated. In *Marks and Holland* v. *Palmer*, the effect of Law 12 of 1899 was considered, and the Provincial Division came to the conclusion that no agreement is valid which purports to dispense with the necessity for taxing a bill of costs, whether in the Supreme Court or in an inferior Court. Law 12 of 1899 is peremptory in its provision that all bills of costs must be taxed if the practitioner wishes to recover. It is said that the applicant's claim differs from an ordinary bill of costs, because it has reference only to disbursements. But that fact cannot, in my opinion, take the case out of the rule laid down in *Marks and Holland* v. *Palmer*. It is also said that the respondent is to blame for the failure to have the bill of costs taxed. It is true that he appeared before the Taxing Master and objected to the taxation, but there is nothing to show what his grounds were. They do not appear on affidavit, and they may or may not have been sound. In any event, when the Taxing Master upheld the objection, the applicant had his remedy. He could have brought the decision under review in this Court, but that he did not do. In these circumstances the provisional order of sequestration must be discharged with costs.

Applicant's Attorneys: *Kessel & Susser;* Respondent's Attorney: *G. Trapowski.*

[P. M.]