

think that his appointment will eliminate opportunities of obstructing the proper and efficient liquidation of the Company's affairs. At any rate, we are satisfied that it will afford the several creditors an opportunity of having their debts discharged.

For these reasons, we confirm the order appealed against. The appeals are accordingly dismissed.

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M. E.  
MOOLLA AND  
SONS, LTD.  
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CHARTERED  
BANK OF  
INDIA,  
AUSTRALIA  
AND CHINA.  
RUTLEDGE,  
C.J., AND  
CARR, J.

## APPELLATE CRIMINAL.

*Before Mr. Justice Darwood.*

MAUNG HLA MAUNG

v.

MA ON KIN.\*

1927  
Aug. 13.

*Res judicata, doctrine of—Specific enactment and not general principle—Criminal Procedure Code (Act V of 1898), s. 488—Previous dismissal whether a bar to fresh application.*

*Held*, that *res judicata* does not bar any proceedings by general principle but only by specific enactments and that dismissal for default of a formal application under section 488, Criminal Procedure Code, would not bar a fresh application.

*Ma Su v. Paul Sassoon*, 1 U.B.R. (1892-96) 64—*referred to*.

*Po So v. Ma Kyin Ma*, 4 L.B.R. 337—*followed*.

DARWOOD, J.—The petitioner has been ordered to pay maintenance at the rate of Rs. 20 per month for each of his two sons who are eight and seven years old respectively now. He complains of the order on two grounds: one is that it is in the nature of *res judicata* by virtue of the result of a similar application which was filed on the 10th January 1925 and was dismissed for default. The case of *Ma Su v. Paul Sassoon* (1), is no doubt an

\* Criminal Revision No. 310B of 1927.

(1) 1 U.B.R. (1892-96) 64.

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authority in favour of the petitioner's contention, but even in that case the learned Judicial Commissioner ordered a further enquiry on the ground that there may have been a change of circumstances which would entitle the applicant to come into Court again not on the same ground correctly speaking, but on a new ground.

The case of *Po So v. Ma Kyin Me* (1) is a ruling to the opposite effect and the words of Irwin, J., on the question are apposite to the present case :—

“Petitioner relies on the case of *Laraili v. Ram Dial* (3) in which Mr. Justice Mahmood said that on the general principle of *res judicata* the Magistrate was wrong in law in re-opening a matter of maintenance, which had already been adjudicated on by another Magistrate. The second Magistrate did not know of the proceedings of the former Magistrate.

“With all respect I would say that *res judicata* does not bar any proceedings by general principle, but only by specific enactments, as contained in section 13 of the Code of Civil Procedure and section 403 of the Code of Criminal Procedure. It is not contended that either of those sections applies to the present case. I would certainly say that when a Magistrate to whom an application is made known or has reason to believe that a similar application on the same facts has previously been adjudicated on, he ought not to act on the application without considering the previous decision, but I am unable to say that he is wrong in law when he does so, and that his proceedings are therefore bad and void regardless of the merits.”

I am in entire agreement with those remarks and would hold that the former application which was never adjudicated upon does not bar the present one which was not filed till the 14th October 1926.

The next point for consideration concerns the amount of maintenance payable for the two minors. The learned Magistrate has fixed it at Rs. 20 per

mensem for each minor. The petitioner's salary is Rs. 220 per mensem. The maintenance may be reduced to Rs. 15 per month for each child for the present. The Magistrate's order will be varied accordingly.

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## APPELLATE CIVIL.

*Before Mr. Justice Heald.*

U PO THEIN AND OTHERS

v.

O.A.O.K.R.M. FIRM.\*

1927  
 Aug. 18.

*Specific Relief Act (I of 1877), s. 42—Declaratory suit without consequential relief—Bare declaratory suit under O. 21, r. 63 of the Civil Procedure Code (Act V of 1908) when permissible.*

*Held*, that a person is bound to make a claim or objection under O. 21, R. 58 if he desires to sue for a bare declaration under O. 21, R. 63 of the Civil Procedure Code and that, although the provisions of O. 21, R. 63 would not debar him, in case he failed to make a claim or objection under O. 21, R. 58, from suing for any relief to which he might be entitled, his suit, if it was a suit for a bare declaration, would be barred by the proviso to section 42 of the Specific Relief Act if he was able to seek further relief than a mere declaration and omitted to do so.

*Chan Tat Thai v. Ma Lat*, Civil 2nd Ap. 126 of 1915, Ch.Ct.; *Krishnam Sooraya v. Pathna Bee*, 29 Mad. 151; *K.R.M.A. v. Po Thein*, 4 Ran. 22; *Ragunath Mukund v. Sarosh Kama*, 23 Bom. 266; *Societa Coloniale Italiana v. Shree Le*, 4 L.B.R. 252; *Wamanrao Damodar v. Rustomji Edalji*, 21 Bom. 701—*distinguished*.

*U Pu*—for Applicants.

HEALD, J.—The facts of this case are set out in my judgment in Civil Second Appeal No. 493 of 1926 of this Court. In that judgment I said in effect that because the present applicants had not applied for removal of the attachment, when the property which they claimed was attached, they were not entitled to institute a suit under the provisions

\* Civil Miscellaneous Application No. 99 of 1927.