

Present : Shaw J.

1921.

BEEBEE v. MAHMOOD.

197—P. C. Colombo, 11,652.

*Maintenance—Application by mother for children dismissed as she was not ready with evidence—Subsequent application—Is dismissal bar?—Application by person other than mother.*

An application for maintenance of children may be made by other persons besides the mother.

Where an application made by a mother was not heard on the merits, but was dismissed as she was not ready with evidence, and subsequently an application was made by the grandmother,—

*Held*, that the previous application was no bar to the subsequent application.

“The Magistrate should have entertained the present application even had it been made by the mother.”

THE facts appear from the judgment.

*Cooray*, for appellant.

March 3, 1921. SHAW J.—

This is an appeal from a refusal of the Magistrate to entertain certain maintenance proceedings on the ground that there had been a previous application which had been dismissed. The previous application was made by the mother of the two children, and it was never heard on the merits, her case being dismissed because she was not ready with her evidence on a date to which the hearing had been adjourned. The present application is made by the grandmother of the children, who says that the same are under her care for the last seven months, and that the defendant has failed to maintain them. The case of *Ana Perera v. Emaliano Nonis*<sup>1</sup> shows that where an application for maintenance is struck out without inquiry into the merits, the applicant may make a fresh application, provided the time limit prescribed by section 7 of the Ordinance has not expired. The Magistrate, therefore, should have entertained the present application even had it been made by the mother, who was the applicant in the previous case. In fact, however, the applicant is the grandmother of the children. She could not in any way be said to be precluded by the previous case, and an application may be made for maintenance under the Ordinance by other persons besides the mother. In the case that I have cited this is referred to in the judgment of Wood Renton J. at page 271.

I send the case back to the Magistrate for the purpose of proceedings in due course.

*Sent back.*

<sup>1</sup> (1908) 12 N. L. R. 263.