reported was not referred to in the arguments of Counsel. For these reasons, in my opinion, this petition must be allowed with costs. MUNISAWMI v. KUTTI.

BARDSWELL J.—I agree.

A.S.V.

INCOME-TAX REFERENCE.

Before Sir Owen Beasley, Kt., Chief Justice, Mr. Justice Cornish and Mr. Justice Bardswell.

THE MADRAS PROVINCIAL CO-OPERATIVE BANK, LTD., MADRAS (ASSESSEE), PETITIONER,

1933, January 5.

v.

THE COMMISSIONER OF INCOME-TAX, MADRAS, RESPONDENT.*

Indian Income-tax Act (XI of 1922), ss. 8 and 10—Government of India Notification, dated 25th August 1925, under sec. 60 of the Act—Exemption from income-tax given by—Scope of—Investment in Government securities—Interest derived by Co-operative Bank from—Applicability of exemption to—Bye-law of Bank making purchase and sale of Government Promissory Notes one of its main objects—Effect.

The exemption from income-tax given by the Notification of the Government of India, dated 25th August 1925, is to the profits made by a Co-operative Bank from its business of a Co-operative Bank. The interest derived by a Co-operative Bank from its money invested in Government securities cannot be regarded as part of the profits of its business *qua* such Bank and is not exempt from tax. The fact that a bye-law of the Bank makes the purchase and sale of Government Promissory Notes one of its main objects does not alter the position.

Per BEASLEY C.J.—When an assessee is under a section of the Income-tax Act assessable to income-tax, it is for him to show that he has been exempted.

Per CORNISH J.—The bye-law making the purchase and sale of Government Promissory Notes one of the main objects

* Original Petition No. 44 of 1932.

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of the Bank is to empower the Bank to deal in Government Promissory Notes as part of its business. Any profits made by the Bank from the purchase and sale of these securities on its own account or as broker for a constituent would be profits from the business of the Bank and exempt from tax under the notification. But an investment in Government Promissory Notes of money lying idle in the Bank cannot be deemed to be one of the declared objects of the Bank.

Per BARDSWELL J.—The exemption in the notification is meant as an encouragement to the employment of as much capital as possible for the financing of Co-operative Societies and to extending the scope of co-operation. The investing of money in Government securities does not further the cause of co-operation.

Under section 66 (3) of the Indian Income-tax Act XI of 1922.

M. Subbaraya Ayyar for petitioner.

M. Patanjali Sastri for Commissioner of Income-tax.

Cur. adv. vult.

JUDGMENT.

BEASLEY C.J.

BEASLEY C.J.—The question referred to us is as follows:—

"Whether on the finding that investment in Government securities forms a necessary part of the business of the assessee, the sum of Rs. 56,810 forms the 'profits of any Co-operative Society' within the meaning of the Notification of the Government of India, dated 25th August 1925."

The notification referred to exempts from income-tax

"the profits of any Co-operative Society other than the Sanikatta Salt Owners' Society in the Bombay Presidency for the time being registered under the Co-operative Societies Act (II of 1912) or the dividends or other payments received by the members of any such society on account of profits."

The assessees invest large sums received by them in Government securities and the income derived from

such investments has been assessed to income-tax. The main objects of the Society, as set out in its bye-laws, are (1) to collect funds for financing Co-operative Societies, (2) to serve as the Provincial Apex Bank for the province of Madras, (3) to purchase and sell Government Promissory Notes and (4) to carry on general business of banking not repugnant to the provisions of the Co-operative Societies Act and the rules framed thereunder for the time being in force. The Society derives its income (1) from interest on the loans and advances made mainly to Central Banks and depositors, (2) from interest on investments in Government securities, (3) from interest on deposits and (4) from commission and fees. The money used to purchase Government Promissory Notes is the money collected by the Society in excess of the money required to finance Central Banks and depositors. The assessees claim that the dividends received from investments in Government securities are the profits of the Society and are therefore under the Government of India Notification exempt from payment of income-tax. This claim is based upon the contention that the purchase and sale of Government Promissory Notes is part of the business of the Society and that the Assistant Commissioner of Income-tax has found that such investment is a necessary part of the business of the Society. The bye-laws of the Society were amended on the 21st December 1929 by the inclusion of object 3 to bye-law No. 1, namely, "to purchase and sell Government Promissory Notes". It is argued that the purchase and sale of Government Promissory Notes, therefore, is a part of the business of the assessee and that the profits derived from such purchase and sale are the profits of the Society. With regard to this argument, the interest derived from such securities must, of course, be taken

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as an item of receipt in arriving at the Society's profits and gains from the business, but it does not, however, follow from this that the interest is a profit of the Society.

It is contended by the Commissioner of Income-tax that interest on Government securities has always to be taxed under section 8 of the Indian Income-tax Act, whereas the profits of a business have always to be taxed under section 10 of the Act, and that it is the latter profits alone that are exempt under the notification. The Indian Income-tax Act in section 6 states the heads of income chargeable to income-tax as follows:—

(i) Salaries.	(iv) Business.
(ii) Interest on securities.	(v) Professional earnings.
(iii) Property.	(vi) Other sources.

In respect of these the tax is payable on (i) under section 7, on (ii) under section 8, on (iii) under section 9, on (iv) under section 10, on (v) under section 11 and on (vi) under section 12. Thus all the six sources of income are dealt with by separate sections. Section 8, as before mentioned, provides for the taxation of "Interest on securities" and there is no other section which does; and it has been the custom ever since 1904, when the exemption of profits similar to those contained in the Government Notification came into force, to interpret the exemption as it has been in this instance; and it is argued that the observations of Lord MACNAGHTEN in the *Commissioners for Special Purposes of Income-Tax* v. *Pemsel*(1) bear usefully upon this case. They are as follows:

"I cannot help reminding your Lordships, in conclusion, that the Income-tax Act is not a statute which was passed once for all. It has expired, and been revived, and re-enacted over and over again; every revival and re-enactment is a new Act.

(1) [1891] A.C. 531, 591.

It is impossible to suppose that on every occasion the Legislature can have been ignorant of the manner in which the tax was being administered by a department of the State under the guidance of their legal advisers, especially when the practice was fully laid before Parliament in the correspondence to which I have referred ("Charities", 1865). It seems to me that an argument in favour of the respondent might have been founded on this view of the case. The point of course is not that a continuous practice following legislation interprets the mind of the Legislature, but that when you find legislation following a continuous practice and repeating the very words on which that practice was founded, it may perhaps fairly be inferred that the Legislature in re-enacting the statute intended those words to be understood in their received meaning. And perhaps it might be argued that the inference grows stronger with each successive re-enactment."

There is nothing new in the exemption contained in the Government Notification. For years, the practice has been to interpret "profits" as not including interest on Government securities. Since 1904 such interest has always been taxed under section 8 and it is difficult to imagine that Government's latest notification was intended to alter that practice. When an assessee is under a section of the Income-tax Act assessable to income-tax, it is for that person to show that he has been exempted; and, in my view, the assessees here have failed to show that it was the intention of Government to exempt such interest. The mere fact that the bye-laws of the Society have recently been amended making the purchase and sale of Government Promissory Notes one of its main objects does not, in my view, alter the position. It is conceded that for years this Society has, even in the absence of such a bye-law, been investing its surplus collections in Government securities and that the interest received has been assessed to income-tax. An attempt was made recently by this Society to challenge that position in Original Petition No. 202 of 1928 reported as *Commissioner of Income-tax, Madras* v. *Madras*

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Central Urban Bank, Limited, Mylapore(1). There the meaning of the same notification had to be considered by a Full Bench of which I was myself a member. In that case, under orders of Government, the Society was bound to keep 40 per cent of its total liability under call deposits in a liquid or fluid form and instead of keeping these fluid assets in their safe or till it kept them in as nearly a fluid form as possible in Government securities upon which as in the present case they received interest. It was claimed by the Society that this was a part of the business of the Bank and that unless this interest was received the activities of the Bank would be seriously handicapped, exactly the same contention as has been put forward here, and it was held that this investment in Government securities was not a part of the business of the Bank but that such investment fell under section 8 of the Act. In the course of the judgment reference is made to some English decisions, two of which were relied upon here by Mr. Subbaraya Ayyar for the assessees, viz., *Norwich Union Fire Insurance Co.* v. *Magee*(2) and *Liverpool and London and Globe Insurance Company* v. *Bennet*(3). In the former case the Company besides carrying on business in the United Kingdom carried on business in America and elsewhere. The laws of the United States in reference to the carrying on of insurance business there required the maintenance of a reserve fund there and in order to provide that reserve fund investments were made and interest earned. It was clear that the business of insurance could not be carried on in America without those investments being made there and it followed that the interest on those investments necessarily made for the purpose of the trade was part of

(1) (1928) I.L.R. 52 Mad. 640 (S.B.). (2) (1898) 3 T.C. 457.
(3) [1913] A.C. 610; 6 T.C. 327.

the gains of that trade. As appears from the judgment in that case the Company did not invest in those foreign securities for the sake of investment or for the sake of making profit by those investments but for the sake of having a fund invested in America to answer the requirements of the American Law. In the latter case the Company carried on business at home and abroad. As in the former case, by the laws of certain of the foreign countries in which it conducted its business the Company was required to deposit with the Governments of those countries certain sums of money and to invest those sums in accordance with the local laws. The Company also voluntarily invested certain other sums. It was held that interest on both classes of investments was assessable as being part of the business. As is observed in the judgment of the Full Bench, HAMILTON J. held that the voluntary investments were not for the sake of investments but for the sake of having a fund abroad readily realizable to meet the liabilities of their business and that the making of the investments was just as much part of their mode of conducting the business as the taking of risks and in the event of the current account at the bank being insufficient to meet the liabilities all the investment funds might have to be called upon at some time or other. The object of the investment was to extend the business, so the making of them was part of the business. This, the Full Bench held, clearly distinguished *Liverpool and London and Globe Insurance Company* v. *Bennett*(1) from the case before them. The Full Bench judgment goes on as follows :—

" It seems to me impossible, at least without a great deal more information than has been presented to us, to say that

(1) [1913] A.C. 610 ; 6 T.C. 327.

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these investments of more or less amounts for a longer or shorter time on the part of the Bank in order to prevent their fluid assets from lying absolutely idle in their coffers formed part of the business of the Bank. It seems to me that they are in the same position as any private person who with a large credit balance in his private account desires to put it into a remunerative form which shall at the same time be readily realizable and therefore invests for shorter or longer periods in Government paper.",

and further:

"The obligation on the Bank to keep 40 per cent of its total liabilities in a fluid form is in consequence of an administrative order of Government and does not oblige them, although it may permit them, to invest the fund at all, and it seems to me that, as they are to hold the fund in readiness to meet some particular liability which is specified, it cannot be said to be part of their business as a Bank to invest these liquid assets in the interval."

It seems to me that no new facts are present now. The Society has continued to do that which it was then doing. No one suggests that the purchase and sale of Government Promissory Notes by the Society was, before the amendment of its bye-laws, *ultra vires* and, in my opinion, the amendment does not in the least alter the position as it was at the time of the Full Bench decision already referred to

For these reasons, in my opinion, the question referred to us must be answered in the negative. The assessees must pay the costs of the Commissioner of Income-tax, Rs. 250.

CORNISH J.

CORNISH J.—I am of the same opinion. I think there is no real substantial distinction between this case and *Commissioner of Income-tax, Madras* v. *Madras Central Urban Bank, Limited, Mylapore*(1). The exemption from income-tax given by the Notification is

(1) (1928) I.L.R. 52 Mad. 640 (S.B.).

to the profits made by the petitioner from its business of a Co-operative Bank. Unless, therefore, the interest derived by the Bank from its money invested in Government Promissory Notes can be regarded as profits from the business carried on by the Bank it will not be exempt from tax. The petitioner relies on Rule 1 of the bye-laws which states that one of the main objects of the Bank is "to purchase and sell Government Promissory Notes". Taking this to mean that the Bank has been empowered to deal in Government Promissory Notes as part of its business, I should say that any profits made by the Bank from the purchase and sale of these securities on its own account or as broker for a constituent would be profits from the business of the Bank and exempt from tax under the Notification. But in the case before us nothing else appears except that the Bank has invested part of its funds in Government Promissory Notes and derived interest therefrom. If there was no opportunity of employing the money by lending it out to Central Banks (which is by Rule 12 of the bye-laws declared to be the primary purpose for which the Bank's funds are to be utilized), or by lending it to shareholders or constituents of the Bank (which the Bank is authorized to do by Rule 13), the prudent course would undoubtedly be to invest the money in some easily realizable security. But there is nothing peculiar to the business of banking in taking this course. As a matter of construction of the bye-laws I hardly think that an investment in Government Promissory Notes of money lying idle in the Bank can be deemed to be one of the declared objects of the Bank. The petitioner having failed to shew that the investment was made for carrying out some purpose for which the Bank has been founded, the only ground, as it seems to me, on which the

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interest from the investment might be held to be profits from the business disappears.

BARDSWELL J.—I agree that the interest derived by a Co-operative Bank from its investments in Government securities is not to be regarded as part of the profits of its business *qua* such Bank. I would take it that the exemption is meant as an encouragement to the employing of as much capital as possible for the financing of Co-operative Societies and to extending the scope of co-operation. The investing of money in Government securities does not further the cause of co-operation but is only a means of keeping from lying idle funds that cannot immediately be used for such a purpose.

A.S.V.

APPELLATE CIVIL—FULL BENCH.

Before Mr. Justice Ramesam, Mr. Justice Anantakrishna Ayyar and Mr. Justice Cornish.

1933, January 18.

M. N. NAGENDRAN CHETTIAR (PETITIONER-AUCTION-PURCHASER), APPELLANT,

v.

LAKSHMI AMMAL (RESPONDENT), RESPONDENT.*

Mortgage—Several mortgages on the same property—Decrees on the several mortgage bonds in suits in which other mortgagees were not parties—Suit for possession without impleading all parties interested—Priority of purchase—Priority of possession.

Where immovable property is mortgaged without possession to one person and thereafter a second mortgage without possession is created over the same property by the mortgagor in

*Appeal against Appellate Order No. 182 of 1931 and Appeal against Order No. 481 of 1930.