expressly provided by this Act, a thekadar." Now section 8 does not expressly include a thekadar, and therefore that section cannot be applied to the present lease by a zamindar to a thekadar. The covenant in the lease, therefore, is not affected by the provisions of section 73 of the Agra Tenancy Act of 1926. That section 8 does not apply to a thekadar is further shown by the fact that section 219, which is in the chapter for thekadars, and which sets out certain sections of the Act as applying to thekadars, does not state that section 8 applies to thekadars. It is also provided in section 219(1) that the five sections mentioned therein shall apply to thekadars unless there is an express provision to the contrary in the theka. Therefore the situation has changed with the passing of Act III of 1926, and it is now open to a zamindar to grant a theka which contains provisions contrary to the provisions of Act III of 1926 in regard to tenants. The ruling, therefore, for these two reasons has no application to the present case.

The result of our findings is that the correct figures for the years in suit are as follows. [Calculations were made in accordance with the amount claimed by the plaintiff, no deductions being allowed on the head of remission of rent; and the appeal was decreed with costs.]

MISCELLANEOUS CIVIL

Before Mr. Justice Collister and Mr. Justice Bajpai

CHAMBER OF COMMERCE, HAPUR (APPLICANT) *v.* COMMISSIONER OF INCOME-TAX (OPPOSITE-PARTY)*

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Income-tax Act (XI of 1922), sections 4(1), 4(3)(ii), and 6—Association in the nature of a "mutual concern"—Incorporated under section 26 of Companies Act—Members' entrance fees and subscriptions—Receipt of commissions on sales by or through members—Liability to income-tax—Income, profits or gains—Business—Other sources—"Charitable institution"—"Object of general public utility".

*Miscellaneous Case No. 637 of 1934.

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An association of merchants of the town of Hapur was registered as a company under section 26 of the Companies Act; it was limited by guarantee, had no share capital, did not exist for earning profits and was prohibited from declaring dividends. The objects of the company were to promote trade and commerce, particularly that of grain and cotton dealers of Hapur, to settle business disputes among them, etc., and also to spend certain sums on charitable objects or objects of public utility. The income consisted of the members' entrance fees and annual subscriptions, as well as a registration fee for each grain-pit and a commission on purchases and sales on forward contracts by or through the members. The company was assessed to income-tax in respect of its income from the registration fees and commissions, but not from the entrance fees and subscriptions paid by the members; and its claim to a deduction on account of certain expenditure on charity towards the maintenance of a hospital was disallowed.

Held, on a case stated by the Commissioner of Income-tax regarding the assessment of the company to income-tax—

(1) An association incorporated under section 26 of the Companies Act as a company limited by guarantee, not existing for earning profits, and prohibited under the law from declaring any dividends to its members, is not as such exempt from income-tax and is liable to be assessed to income-tax.

(2) The income derived from the members in the shape of the registration fees and the commissions was not income from any "sources other than business" and did not fall under class (*vi*) of section 6 of the Income-tax Act. The Commissioner of Income-tax having held that it was not income from "business" and no question on this point having been referred to the High Court, no opinion was expressed as to whether the Commissioner's view was or was not correct.

(3) The company was not a "charitable institution" within the meaning of section 4(3)(ii) of the Income-tax Act and was not as such exempt from income-tax. The ostensible object of the company was to provide facilities of trade and to improve business and this did not come within the phrase "charitable purpose" as defined in the section. As the persons who were benefited were those particular individuals who were members of the association or such outside merchants as elected to do business through the members, it was very doubtful whether it could be said that an object of "general public utility" as

contemplated in the definition was being advanced by the company. Every institution whose object is to benefit the public or a section of the public is not necessarily "charitable". Further, there must be an element of altruism before an institution can be held to be "charitable", i.e. the beneficiaries must not be able to *claim* the benefit; that element was wanting in the present case.

(4) The company could not, apart from other considerations, claim any exemption or deduction *quoad* any money it might have elected to spend on charity.

Messrs. *S. K. Dar, K. C. Mital* and *M. N. Agarwala*, for the applicant.

Mr. *K. Verma*, for the opposite party.

COLLISTER, J.:—This is a case which has been stated by the Income-tax Commissioner under section 66(2) of the Indian Income-Tax Act (XI of 1922). The assessee is the Chamber of Commerce at Hapur and the case relates to two assessment years, 1932-33 and 1933-34. The assessee is a company limited by guarantee, which was registered in 1923 under section 26 of the Indian Companies Act. The objects for which the assessee was incorporated, as set forth in its memorandum and articles of association, are as follows:

(1) To promote and protect the trade, commerce and manufactures of India, and in particular the trade, commerce and manufactures of Hapur and district Meerut.

(2) To promote unity and friendliness amongst all merchants in general, and dealers in grain in particular, in respect of all subjects of common interest.

(3) To establish just and equitable principles in trade and to form a code or codes of practice to simplify and facilitate transaction of business between merchants dealing in grain, cotton, cotton seed, etc., at Hapur and elsewhere, and persons entering into those transactions with them.

(4) To maintain uniformity in rules, regulations and usages of trade.

(5) In case of mutual quarrels or disputes in business to settle them as between members of the association and between parties willing or agreeing to abide by the judgment and decision of the association.

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(6) To consider all questions connected with trade, commerce, manufactures and affecting the rights and privileges of the whole mercantile community, specially dealers in grain and cotton, etc., and to remove all difficulties in a lawful and constitutional manner.

(7) To acquire by purchase, taking on lease or otherwise lands and buildings and all other property, movable and immovable, which the association, for the purposes thereof, may from time to time think proper to acquire.

(8) To sell, improve, manage, develop, exchange, lease, mortgage or otherwise deal with all or any part of the property of the association, or the business of the association.

(9) To co-operate with other associations and chambers similar to this association and to procure from and communicate to any such association such information as may be likely to forward the objects of the association.

(9*a*) To spend such sums of money as may from time to time be resolved upon by the executive committee or general body of the association on charitable and benevolent objects or objects of public utility with the sanction of the latter.

(10) To do all such other things as may be conducive to the extension of trade, commerce or manufactures or incidental to the attainment of the above objects or any of them.

Article (9*a*) did not originally occur in the memorandum; it was added in pursuance of a sanction to amend the articles of association which was obtained from the High Court on September the 1st, 1933. Application to that effect was made on the advice of the auditors, who had detected that the assessee was incurring without authority certain expenses in maintaining a hospital.

The income of the assessee is as follows: (1) Rs.10 per member as admission fee; (2) Re.1 per member per annum as subscription; (3) Re.1 as registration fee for each *khatti* or grain-pit; (4) Re.0-2-0 commission on every purchase and sale of 25 tons on forward delivery contracts.

The members of the assessee company are merchants of Hapur, some of whom are commission agents. It appears that the bulk of the income is derived from the

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commission which is paid on forward contracts. Any such contract may be entered into by two members *inter se* or it may be entered into by two outsiders or by an outsider and a member; but whenever an outsider is a party to the contract, he has to employ the services of a member of the assessee company who is a commission agent. Each contract is registered in the books of the assessee company, but it can only be registered in the name of a member and it is the member who has to pay the commission. He in his turn recovers it from the outsider or constituent, but so far as the company is concerned it is the member who is responsible for paying the commission.

The assessee objected that it was not liable to assessment under the Act; but the Income-tax Officer of Meerut overruled that objection and assessed the company to income-tax in respect to commission or registration fees, declining at the same time to make any allowance on account of the expenses incurred in maintaining a hospital. The admission fees and annual subscriptions only were held to be exempt. The assessee appealed on the following grounds:

(1) That it was not an association working for profit and that no part of its income was liable to be distributed in the form of dividends or otherwise.

(2) That its income was derived from its own members in the form of contributions for its maintenance and was as such outside the scope of the Act.

(3) That it did not settle any profit or loss, but simply recorded the transactions and was not concerned with any payments.

(4) That it was incorporated under section 26 of the Companies Act as an association limited by guarantee.

(5) That in any case the Income-tax Officer should have allowed the expenditure on charity.

The Assistant Commissioner of Income-tax dismissed the appeal, and thereupon the assessee moved the Commissioner of Income-tax to state a case and refer certain

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questions of law to this Court. The questions of law set out in their application were as follows:

(1) Whether an association incorporated under section 26 of the Indian Companies Act, as an association limited by guarantee not existing for earning profits, and prohibited under the law from declaring any dividends to its members, is liable to assessment, particularly in view of the fact that no relief under section 48 of the Act is available to such an association, as in case of other associations not incorporated under section 26 of the Indian Companies Act.

(2) Whether the income of the Chamber, derived from its members only, in the shape of a certain fixed amount on each transaction registered in the Chamber, can be deemed to be "income, profits or gains" within the meaning of section 4 of the Act, when such amount is to be spent not for distribution of any profits but for maintenance of its office and carrying out of objects enumerated in the memorandum of association.

(3) Whether the income of the Chamber of Commerce, Hapur, can be deemed to be "income of a religious or charitable institution derived from voluntary contributions or income derived from property held under trust or other legal obligation wholly for religious or charitable purposes" within the meaning of section 4, sub-section (3), clauses (i) and (ii) and as such is exempt from assessment.

(4) Whether "income" of the Chamber is in any event derived from "business" within the meaning of the Income-tax Act.

(5) Whether the expenditure on charity, in accordance with its memorandum of association, even prior to its amendment by the Honourable High Court, is liable to assessment.

The Income-tax Commissioner has, however, only referred questions Nos. 1 to 3 and No. 5 to this Court; he has not thought it necessary to refer question No. 4 because in his opinion the income of the assessee is not

from "business" within the meaning of the Act, and he has accordingly conceded that point in favour of the assessee.

I will now proceed to deal with the questions which have been formulated by the Income-tax Commissioner.

Question No. 1—There is no provision in the Act whereby an association incorporated under section 26 of the Indian Companies Act is exempted as such from being assessed to income-tax. In fact, this was admitted before the Income-tax Officer. His assessment order dated 22nd of March, 1934, shows that in the written arguments which were filed before him the following admission found place: "It may be conceded at the outset that the Chamber as such is not exempt from assessment, as it is certainly a company registered under the Indian Companies Act and comes within the scope of section 3 of the Income-tax Act". I agree with the view of the Income-tax Commissioner that there is no exemption in favour of such a company as such, and that the non-applicability of section 48 of the Act is an irrelevant consideration.

Question No. 2—As I have already shown, the income of the assessee, apart from admission fees and subscriptions which have been held to be exempt, is of two kinds: it consists (1) in payment of commission and registration fees which are made by members on their own account and (2) in payment of commission which, though made by members, actually comes from the pockets of outsiders. I will first deal with the former category.

Learned counsel for the assessee contends that the Chamber of Commerce at Hapur is a "mutual concern", i.e., an association whose members contribute to a common fund for their mutual benefit and that the payments which are made by its members are on that account exempt from income-tax, being neither income, profits or gains within the meaning of the Act; they are contributions by individual members to a common fund to be utilised by the aggregation of

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members for a common object. He relies on various authorities. The first case to which we are referred is from the House of Lords and dates back to 1889. It is the case of the *New York Life Insurance Company* v. *Styles* (1). It related to a Mutual Life Insurance Company which had no shares or shareholders; the members were the holders of participating policies, each of whom was entitled to a share of the assets and liable for all losses. A calculation was made by the company of the probable death-rate among the members and of the probable expenses and other liabilities, and the amount claimed for premiums from members was commensurate therewith. An account was annually taken and the greater part of the surplus of such premiums over expenditure referable to these policies was returned to the policy-holders as bonuses, either by addition to the sums insured or in reduction of future premiums. The remainder of the surplus was carried forward as funds in hand to the credit of the general body of the members. It was conceded that the income derived by the company from investments and from all transactions with non-members was assessable to income-tax; but it was held by four out of six of the noble Lords who heard the appeal that no part of the premium income received under participating policies was liable to be assessed to income-tax as profits or gains under schedule D. Schedule D in the Act of 1853 was concerned with "any profits or gains arising to any person whatever from any profession, trade or vocation exercised in the United Kingdom." The above view, namely that no part of the premium income received under participating policies was liable to be assessed to income-tax was held by Lords WATSON, BRAMWELL, HERSCHELL and MACNAGHTEN. Lord HALSBURY and Lord FITZGERALD dissented from that view and were of opinion that the surplus returned or credited to members was liable to

(1) (1889) 14 App. Cas., 381.

income-tax. Lord HALSBURY at the beginning of his address at page 389 stated: "I think the appellants do carry on a concern. . . which brings in profit." Lord FITZGERALD at page 404 stated: "My Lords, we are now dealing with this case not as between the corporation and the individual policy-holders who may happen to be members in respect of their policies, but as between the Crown in respect of a public general tax and the corporation as a trading concern, which it is indubitably." The majority, however, were of the opinion that the association was not a profit-making concern such as would attract income-tax.

In the case of the *United Service Club, Simla* v. *The Crown* (1) a learned single Judge of the Lahore High Court, relying on the case of *New York Life Insurance Company* v. *Styles* (2), held that the income of the United Service Club at Simla, a company registered under the Indian Companies Act, was not liable to be assessed to income-tax under the Indian Income-tax Act (Act VII of 1918) except in respect to its house property. At page 110 the learned Judge observes: "The money received by the Club from its members does not fall within class (*iv*), 'income derived from business', as the Club does not trade with its members, but the object for which it exists is their mutual benefit. If the money which the Club receives from its members were chargeable to income-tax, it could only be so chargeable under class (*vi*) as 'income derived from other sources. The question for determination is whether such money can be regarded as 'income' at all." He goes on to find that it is not income from other sources within the meaning of the Act. At page 113 he observes: "and I do not think that the money received by a club from the members composing it can be properly regarded as 'income', a word which itself seems to imply something received from outside." It will be observed that Act VII of 1918 was then in force and in that Act the words "profits or

(1) (1921) I.L.R., 2 Lah., 109. (2) (1889) 14 App. Cas., 381.

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gains", which find place in section 4(1) of Act XI of 1922, did not occur; but in *Commissioner of Income-tax* v. *Shaw Wallace & Company* (1) their Lordships of the Privy Council held that the expansion of the language into "income, profits and gains" was more a matter of words than of substance.

In *Commissioner of Income-tax* v. *Millowners Mutual Insurance Association* (2) a Bench of the Bombay High Court held that in the case of a mutual insurance company limited by guarantee, and formed by its members for the mutual insurance of members against liability to pay compensation to workmen employed by them and their dependents for accidents, etc., the surplus of the calls or premiums and further sums received by the company from its members over its expenditure of the year was not liable to be assessed to income-tax as profits or gains of business under sections 6(*iv*) and 10 or any other section of the Indian Income-tax Act, XI of 1922. There too the case of *New York Life Insurance Company* v. *Styles* (3) was relied upon. The learned Judges in discussing that case observed that the general principle therein laid down was that "if a body of persons choose to contribute a sum of money for their own purposes, any surplus of that sum remaining after expenses have been paid cannot be regarded as profit".

In *Board of Revenue* v. *Mylapore Hindu Permanent Fund* (4) the capital of a mutual benefit society was made up solely of periodical investments by its members and the income of the society was mainly derived from interest earned on loans given solely to its members, every one of whom was by the rules eligible to take loans; and it was held by a Special Bench of the Madras High Court that such interest earned by the society from its own members was not taxable "profits" within section 9 of the Indian Income-tax Act (Act VII of 1918) in spite of the fact that the society was registered under the

(1) (1932) I.L.R., 59 Cal., 1343.
(2) (1931) I.L.R., 56 Bom., 119.
(3) (1889) 14 App. Cas., 381.
(4) (1923) I.L.R., 47 Mad., 1.

Indian Companies Act. In considering the case of New *York Life Insurance Company* v. *Styles* (1) the learned Judges observed: "The principle of that case is that income to be taxable must come in from outside and not from within." The question does not seem to have been considered whether a mutual concern can trade with its members and whether the payment and receipt of interest on loans advanced might not amount to a money-lending business between the association and its members.

Learned counsel for the department on the other hand strongly relies on the English case of *Liverpool Corn Trade Association* v. *Monks* (2). In that case an association had been formed for promoting the interests of the corn trade and the objects of the association, as set out in the memorandum of association, were *inter alia* as follows:

(1) To promote or oppose legislative and other measures calculated to affect the corn trade generally, and for those purposes to petition Parliament and take such other steps and proceedings as may be expedient, and to define, make and maintain uniformity and expediency in the rules, regulations, usages and customs of the said trade, and to establish just and equitable principles therein.

(2) To adjust and settle disputes between persons engaged in the said trade by establishing a tribunal of reference for the amicable adjustments of such disputes.

(3) To provide, regulate and maintain a suitable building, exchange, market and room for the purposes of the corn trade in Liverpool.

(4) To establish and maintain a clearing house for the clearance of contracts or periodical settlement of contracts, and for facilitating payments between persons engaged in the corn trade.

In order that the facts of that case may be understood I quote the following observation from the begin-

(1) (1889) 14 App. Cas., 381. (2) [1926] 2 K.B., 110.

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ning of the judgment, which was delivered by ROWLATT, J:

"In this case there was a company with a share capital of £60,000 in 400 shares of the unusually large denomination of £150 each, and its object was to maintain, and it did maintain, buildings for the purposes of the corn trade in Liverpool, and afford a number of facilities in those buildings. It made charges to its members and to other people proportionate to the use they made of the facilities; and it could, and at one time it did, declare a dividend upon its share capital. The major part of the clientele of the company, or at any rate the more important part, were, I have no doubt, the members themselves, and I suppose the members joined in order that, as members, they might have the benefit of the facilities upon more reasonable terms than outsiders. They paid an entrance fee when they became members. There is nothing more to be said, I think, about the company, except perhaps this, that a member had to become a shareholder, but that he could not hold more than two shares, and if he had more than one, the extra one might be requisitioned in order to enable a new entrant to obtain his share if he could not acquire a share otherwise.

"The question here is whether the profit which the company makes out of what the members pay to it is taxable income of the business which the company undoubtedly carries on. That alleged profit consists of the amount by which the entrance fees of the members and their subscriptions for the various facilities exceed the cost of keeping up the buildings and affording the facilities. I do not see why that amount is not a profit. The company has a capital upon which dividends may be earned, and the company has assets which can be used for the purpose of obtaining payments from its members for the advantages of such use, and one is tempted to ask why a profit is not so made exactly on the same footing as a profit is made by a railway company who issues a travelling ticket at a price to one of its own shareholders, or at any rate as much a profit as a profit made by a company from a dealing with its own shareholders in a line of business which is restricted to the shareholders. If there were a railway company which only carried its own shareholders, one would say that when it afforded the advantage to a shareholder of performing an act of transit for him, being paid by the shareholder therefor, that the profit thereby made was a profit of the company just as much as if the shareholder was a stranger."

That case is of course distinguishable from the case of *New York Life Insurance Company* v. *Styles* (1) and from the case with which we are now dealing by the fact that there was a share capital and that there were shareholders who had a right to demand dividends, if declared. At the same time it is to be observed that notice was taken of the fact that the company dealt with persons who happened to be the owners of the share capital "affording benefits to those persons individually for which they pay money by way of subscriptions and by way of entrance fees" and the learned Judge accepted the Attorney-General's contention that there was no reason at all for regarding otherwise than as profits the difference which was obtained by dealings between the corporation and the persons who happened to be its members.

It is I think settled—and in fact it is not disputed—that in certain cases at least money paid in by members of a "mutual concern" is exempt from income-tax; and the fact that the Chamber of Commerce at Hapur is in one aspect at least a mutual concern seems to have been recognized by the Income-tax authorities, inasmuch as they have conceded that the admission fees and subscriptions are contributions by members such as did not attract income-tax. At the same time learned counsel for the assessee concedes that a "mutual concern" may trade with its members and that in such circumstances the profits earned thereby will be liable to tax. The Income-tax Commissioner, however, has clearly conceded in his statement of the case that the income from commission and registration fees is not income from "business" within the meaning of section 6(*iv*) of the Act; but he is of opinion that it is taxable on the ground that it is "payments made by members for services rendered to them by the assessee". I refrain from expressing any view as to whether the Income-tax Commissioner was right in conceding that these payments are not income

(1) (1889) 14 App. Cas., 581.

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from business, for I am clearly of opinion that the department is bound by that admission. This Court is only called upon to answer the questions of law which have been formulated by the Income-tax Commissioner in his statement of the case. It is true that the Income-tax Officer and the Assistant Commissioner of Income-tax both held that these payments were income from "business" and on that account the assessee asked the Income-tax Commissioner to refer this question to the High Court; but I do not think that this Court can resurrect a question which has been answered by the Commissioner himself in favour of the assessee. Now if these payments are not income from business, it is difficult to see from what "other source" a mutual concern can derive profits. Since it has been held by the Income-tax authorities that these payments are not income from business, I find myself unable to differentiate between them and the admission fees and subscriptions which have been held to be contributions other than "income" and therefore not taxable.

As regards payments which are made by outsiders through members, learned counsel for the assessee argues that there is no privity between the company and the outsiders and that these payments must therefore be deemed to be payments made by members in the same way as those which are made by members on their own behalf. We are not impressed by this argument. That the Association has direct dealings with outsiders is shown in paragraph 5 of the objects of the Association as set forth in the memorandum and also by rule 7 of Appendix B as reproduced on page 15 of the paper book. At the same time it seems to me that such payments cannot appropriately fall under any head other than "business"; and since it has been conceded—whether rightly or wrongly—by the Income-tax Commissioner that they are not income from "business" I must hold that they are not taxable as income from "other sources" within the meaning of section 4(*vi*) of the Act. For

reasons already given I express no opinion as to whether they do in fact fall under the head of "business".

Question No. 3—Learned counsel for the assessee admits that clause (*i*) of sub-section (3) of section 4 of the Act has no application. There remains clause (*ii*) of that sub-section which provides that "Any income of a religious or charitable institution derived from voluntary contributions and applicable solely to religious or charitable purposes" is exempt from income-tax. "Charitable institution" is not defined, but "charitable purpose" is defined as including "relief of the poor, education, medical relief and the advancement of any other object of general public utility." Obviously the word "charitable" in the Act has a technical significance other than the meaning which it bears in common parlance. The ostensible object of this association is to provide facilities of trade and to improve business. As regards the question of "general public utility", it has been held in numerous cases that the requirements of the law will be satisfied if the benefit goes to a section of the community; *vide* for instance the English case of *In re Mellody* (1). In that case a testatrix bequeathed the income of a fund in trust to provide an annual treat or field day for the school children of a certain locality, or as many of such children as the same would provide for; and it was held that the bequest was a good charitable gift. At the same time every institution whose object is to benefit the public or a section of the public is not necessarily "charitable". In the Privy Council case of *Verge* v. *Somerville* (2) Lord WRENBURY in considering whether a valid charitable trust had been created made the following observation: "To ascertain whether a gift constitutes a valid charitable trust. . . a first inquiry must be whether it is public—whether it is for the benefit of the community or of an appreciably important class of the community. The inhabitants of a parish or town, or any particular class of such inhabi-

(1) [1918] 1 Ch.. 228. (2) [1924] A.C., 496.

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tants, may, for instance, be the objects of such a gift, but private individuals, or a fluctuating body of private individuals, cannot."

Collister, J.

In the present case the persons who are actually benefited are (1) those particular individuals who are members of the association and (2) such outside merchants as may elect, when doing business at Hapur, to do it through the Chamber of Commerce. I feel some doubt as to whether in the circumstances an object of general public utility as contemplated by the Act is being advanced by the assessee. Further, it seems to me that before an institution can be held to be "charitable" there must be an element of altruism; that is to say the beneficiaries must not be able to *claim* the benefit. That condition is wanting in the present case. Moreover, the contention of learned counsel for the assessee that there is no privity between the assessee and outsiders and that this is a "mutual concern" of the members who compose the association appears to me to be inconsistent with his claim that the assessee is a "charitable institution" within the meaning of clause (ii) of sub-section (3) of section 4 of the Act. The whole idea of a "mutual concern" is that the particular members composing it should be benefited.

Without considering whether the other requirements of clause (ii) are or are not satisfied, I am of opinion that for the reasons given above the assessee is not a "charitable institution" within the meaning of the Act and is not as such exempt from tax.

Question No. 5—Learned counsel for the assessee concedes that apart from other considerations the assessee cannot claim exemption *quoad* any money it may have elected to spend on charity.

BAJPAI, J.: I agree.

BY THE COURT:—Our reply to the reference is as follows:

Question No. 1—This question is answered in the affirmative.

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Question No. 2—The answer to this question is that such payments are not income from any sources other than business. We express no opinion as to whether the Income-tax Commissioner's admission that they are not income from business is or is not correct.

Question No. 3—The answer to this question is in the negative.

Question No. 5—The answer to this question is in the affirmative.

APPELLATE CIVIL

Before Mr. Justice Harries and Mr. Justice Ganga Nath

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April, 6

BANARSI DAS AND ANOTHER (PLAINTIFFS) *v.* SUMAT PRASAD AND OTHERS (DEFENDANTS)*

Hindu law—Adoption—Jains—Custom—Jain widow can adopt to her husband without anybody's permission or consent—Extent of estate taken by such adopted son—Agreement that adoptive mother is to remain in possession during her life—Validity—Widow's motive for adoption immaterial where she has an unfettered right to adopt—Proof of a custom well recognized by courts—Judicial notice.

According to a well established and recognized custom among the Jains, a widow can adopt without authority from her husband or permission of his kinsmen. This right of the widow is quite independent of the nature and extent of the rights acquired by her in her husband's estate, and the son adopted by her succeeds to all the property, ancestral as well as self-acquired, of her deceased husband.

A deed of agreement under which the adoptive mother was to remain in possession of the property during her life time was valid and did not affect the validity of the adoption. Custom had sanctioned such arrangements postponing the interest of the adopted son to the widow's interest, even though it should be one extending to a life interest in the whole property.

Where the widow has in herself an unfettered power to adopt without any person's permission, an inquiry into her motives for making an adoption would be purely irrelevant.

*First Appeal No. 220 of 1931, from a decree of Nand Lal Singh, Additional Subordinate Judge of Saharanpur, dated the 30th of March, 1931.