A **SHAHDARA (DELHI) SAHARANPUR LIGHT RAILWAY CO. LTD.**

v.

THE MUNICIPAL BOARD, SAHARANPUR

B *March* 21, 1967

[M. HIDAYATULLAH, S. M. SIKRI AND C. A. VAIDIALINGAM, JJ.]

Indian Tramways Act, 1886 (11 *of* 1886) *and Indian Railways Act,* 1890 (1 *of* 1890)—*Narrow-gauge railway between Shahdara and Saharanpur—Originally registered as a Tramway under the* 1886 *Act—Railways Act made applicable to it in* 1907—*Company whether a 'railway'* C *or a 'tramway' for the purpose of exemption from terminal tax levied by Saharanpur municipality under item* 2 *of Schedule B to the rules under the U.P. Municipalities Act I of* 1918.

The appellant company ran a narrow-gauge railway between Shahdara and Saharanpur. As it operated partly within the Municipal area of Saharanpur the Municipal Board of that place sought to subject railway stores and materials brought within the municipal area to terminal tax D as provided by the Rules framed under the United Provinces Municipalities Act, 1916, as amended by Act I of 1918. The exemption from terminal tax given to railway stores and materials by item 2 to Schedule B of the said rules was denied to the appellant company on the ground that it was a 'tramway' and not a 'railway'. The company had been originally registered in 1905 under the Indian Tramways Act, 1886, (Act 11 of 1886); in 1907 the whole of the Indian Railways Act, 1890, (Act 1 of 1890) with the exception of s. 135 had been extended to the com- E pany by the Governor-General-in-Council. The Company's claim that it was a 'railway' entitled to the exemption under item 2 of Schedule B aforesaid, was rejected by the Municipal authorities as well as in appeal, by the Additional District Magistrate. The company therefore filed a writ petition before the High Court which was rejected. By special leave appeal was filed to this Court.

It was contended on behalf of the appellant that: (i) in the absence F of any special definition contained in the provisions granting the exemption in question, the expression 'railway' occurring in item 2 of Schedule B of the Terminal Tax Rules must bear the commonly understood meaning of a "carriage of passenger and goods, on iron rails"; (ii) by virtue of the definition in s. 311(2) of the Government of India Act, 1935, and the provision corresponding to it in the Constitution *viz.*, Art. 366(20) the appellant's system though registered under the Tramways Act, was a railway, (iii) the mere fact that s. 135 of the Railways Act G had not been applied to the appellant's system was not a decisive factor against the appellant as assumed by the High Court. It was not in dispute that appellant's system had all the features of a railway.

HELD: Neither the Municipal Act nor the Terminal Tax Rules give any special definition of the expression 'railway' and there is nothing in the said Act or Rules to indicate that the word 'railway' in item 2 of H Schedule B is used only to refer to a 'railway' registered under the Railways Act or to limit the generality of the expression 'railway' in any way. Under those circumstances, if the appellant was a 'railway' in fact, as commonly understood—there did not appear to be any controversy on the point—it would be a railway notwithstanding the fact that it was re-

gistered as a 'tramway' under the Tramways Act. The legislature itself had applied the provisions of the Railway Act to the appellant, and the appellant also satisfied the definition of a 'railway' under the Government of India Act, 1935 and the Constitution. [254B-D] A

If the appellant was a 'railway' otherwise, the mere fact that the provisions of s. 135 of the Railways Act had not been applied to it, was of no consequence. [251H] B

Blackpool and Fleetwood Tramroad Company v. *Thornton Urban Council*, L.R. [1907] 1 K.B.D. 568, *Thornton Urban Council* v. *Blackpool and Fleetwood Tramroad Company*, L.R. [1909] A.C. 264 and *Tottenham Urban Council* v. *Metropolitan Electric Tramways, Ltd.*, L.R. [1913] A.C. 702, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1323 of 1966. C

Appeal by special leave from the judgment and order dated September 10, 1965 of the Allahabad High Court in Civil Miscellaneous Writ No. 3567 of 1965.

Niren De, Addl. Solicitor-General and *N. H. Hingorani*, for the appellant. D

R. K. Garg, D. K. Agarwala and *M. V. Goswami*, for respondent No. 1.

The Judgment of the Court was delivered by

Vaidialingam, J. In this appeal, by special leave, the short question, that arises for consideration, is as to whether the appellant railway is entitled to claim exemption from payment of terminal tax, under item 2, of Schedule B, of the rules framed by the Municipal Board of Saharanpur. The appellant will be so entitled, if it is held to be 'a railway', as contended, on behalf of the appellant. E F

The High Court of Allahabad, in its order and judgment, under appeal, has held that the appellant is not a railway, but only a tramway and, as such, not eligible for exemption, from the tax, in question. The short facts, leading to this appeal, may now be briefly set out. The appellant is a limited liability company; and it runs a railway, between Shahdara, in Delhi, and Saharanpur, in the State of Uttar Pradesh—a distance of about 95 miles or 148.865 kilo meters. The appellant company also operates within the municipal area of Saharanpur. The company was, originally, registered as a tramway, under the Indian Tramways Act, 1886 (Act XI of 1886) (hereinafter called the Tramways Act), on November 20, 1905. By Notification, No. 5752, dated July 5, 1907, the Governor General in Council extended to the appellant company, the whole of the Indian Railways Act, 1890 (Act I of G H

A 1890) (hereinafter called the Railways Act), excepting the provisions of Section 135.

The Municipal Board of Saharanpur, the first respondent herein, imposes a terminal tax, under the provisions of s. 128(1)(xiii) of the United Provinces Municipalities Act, 1916, as amended by Act I of 1918. Under the said Act, the first respondent has pro-
B hibited the importation of goods, within the local limits of the Saharanpur Municipality, by rail, until the tax leviable thereon, or in respect thereof, has been paid, in accordance with the provisions of the Act and the Rules. The Board has also framed rules for the assessment and collection of Terminal Tax, as authorized by the Government Notification No. 856/XI-D.T. 3, dated May 1,
C 1919. The rules have been amended, as per another notification, No. 5965/XI-D.T. 3, dated September 21, 1939.

Item 2, of Schedule B, of these rules, provides for a list of articles being exempted from payment of Terminal Tax. The said item is as follows :

D "Railway stores and materials, which are required for use on Railways, whether in construction, maintaining or working the same and which are not removed outside the Railway land boundaries but not stores imported into Municipal limits for purchase and consumption by Railway employees nor stores with which Railway Coope-
E rative Stores are stocked for sale to Member."

It is the claim of the appellant that, till 1961, the first respondent has never imposed any terminal tax, on 'railway stores and materials' required for use on the railway of the appellant company, for the purposes mentioned in item 2 of Schedule B. But, for the first time, in January 1962, according to the appellant, the first respondent
F imposed tax on such stores and attempted to make the appellant liable. The appellant company protested against this levy, on the ground that, it being a railway, was entitled to the exemption provided in respect of 'railway stores and materials, which are required for use on railway'. But, the first respondent, by its order, dated October 11, 1962, over-ruled the appellant's objections in
G this regard. An appeal, taken by the appellant company, to the Additional District Magistrate, Saharanpur, under s. 160 of the Municipalities Act, read with the relevant Rules, did not meet with success, as the said Magistrate rejected the appeal, by his order dated May 25, 1965.

The appellant company filed Civil Miscellaneous Writ No. 3567
H of 1965, in the High Court of Allahabad, challenging the levy of terminal tax and claimed exemption, under item 2, of Schedule B, referred to earlier. The learned Judges of the Allahabad High Court, by their judgment, dated September 10, 1965, dismissed

the writ petition. They were of the view that the appellant company was not 'a railway', but 'a tramway' constructed under the Tramways Act. In this connection, the learned Judges adverted to the Railways Act, which defines both the terms 'tramway' and 'railway'. It is their view that when a tramway and a railway, are both separately defined in an Act, a tramway cannot also be a railway.

The learned Judges, of the High Court, then referred to the fact that so far as the appellant company was concerned, the Central Government had not applied s. 135 of the Railways Act, though all the other provisions of that Act had been applied. They further held that a mere application of the Railways Act, in whole or in part, to a tramway, will not convert the tramway into a railway and that, in order to be a railway, it has to be opened, in accordance with the provisions contained in Chapter IV, of the Railways Act. So, they concluded that, inasmuch as the appellant railway was not opened, in accordance with the provisions of the Railways Act, it had been, from its inception, and it continued to be, not a railway, but only a tramway. On this line of reasoning, the High Court further held that in the rules framed by the Municipal Board, the expression 'railway' must be intended to refer only to 'railways' coming under the Railways Act, and could not include a 'tramway', like the appellant, opened under the Tramways Act. In consequence, the claim of the appellant, for exemption, was, according to the High Court, rightly rejected by the authorities. The result was the dismissal of the appellant's writ petition, by the High Court.

We shall now refer to the main features of the appellant company. The appellant railway is worked by steam, or other mechanical power, and is not wholly within a Municipal area. The railway line comprises narrow gauge track of 2' 6" gauge, and consists of main line, transportation sidings and commercial sidings. The line passes through four districts *viz.* Saharanpur, Muzaffarnagar, Meerut and Delhi, within the provinces of Uttar Pradesh and Delhi. The system has about 155 level crossings, comprising of Special Class, A-class, B-class and C-class. Some of the level crossings are provided with signalling and interlocking arrangements and the system takes in 406 bridges, and 26 railway stations, in all. The bridges and culverts are maintained, in accordance with the instructions contained in 'Way and Works Manual' of the Indian Railways, and the railway stations are fitted with Morse speakers and instruments, for working trains, as per general rules applicable to all railways. There is annual inspection of the railway line, by the Additional Commissioner of Railways Safety, appointed by the Government, to inspect Indian Railways. There are arrangements for through booking of goods and passengers. From

A what is stated above, it will be seen that the appellant company is a 'railway', as commonly understood, and described in ordinary parlance.

The Tramways Act was an Act passed to facilitate the construction and to regulate the working of Tramways. Section 3(5) B defines 'tramway' as follows :—

> " 'tramway' means a tramway having one, two or more rails, and includes—
>
> (a) any part of a tramway, or any siding, turnout, connection, line or track belonging to a tramway;
>
> C (b) any electrical equipment of a tramway; and
>
> (c) any electric supply-line transmitting power from a generating station or sub-station to a tramway or from a generating station to a sub-station from which power is transmitted to a tramway."

D The expression 'order', under s. 3(6), means an order authorizing the construction of a tramway under the Act, and includes a further order substituted for, or amending, extending or varying, that order. There are various other provisions in this Act relating to the construction and maintenance of tramways, orders authorizing the construction of tramways, and other incidental matters.

E The Railways Act was an Act to consolidate, amend and add to the law relating to Railways in India. Section 3(1) defines 'tramway' as meaning a tramway constructed under the Tramways Act, or any special Act relating to tramways. Section 3(4) defines 'railways' and is as follows :

> " 'railway' means a railway, or any portion of a rail-
> F way, for the public carriage of passengers, animals or goods, and includes—
>
> (a) all land within the fences or other boundary-marks indicating the limits of the land appurtenant to a railway;
>
> (b) all lines of rails, sidings or branches worked over
> G for the purposes of, or in connection with, a railway;
>
> (c) all stations, offices, warehouses, wharves, workshops, manufactories, fixed plant and machinery and other works constructed for the purposes of, or in connection with, a railway; and
>
> H (d) all ferries, ships, boats and rafts which are used on inland waters for the purposes of the traffic of a railway and belong to or are hired or worked by the authority administering the railway."

This Act also contains various provisions relating to the opening of railways, inspection of railways, construction and maintenance of works, working of railways and several other incidental matters. Section 135, occurring in Chapter X, containing supplemental provisions, relates to taxation of railways by local authorities. That section reads :

> "135. Notwithstanding anything to the contrary in any enactment, or in any agreement or award based on any enactment, the following rules shall regulate the levy of taxes in respect of railways and from railway administrations in aid of the funds of local authorities, namely :—
>
> (1) A railway administration shall not be liable to pay any tax in aid of the funds of any local authority unless the Central Government has, by notification in the Official Gazette, declared the railway administration to be liable to pay the tax.
>
> (2) While a notification of the Central Government under clause (1) of this section is in force, the railway administration shall be liable to pay to the local authority either the tax mentioned in the notification or, in lieu thereof, such sum, if any, as an officer appointed in this behalf by the Central Government may, having regard to all the circumstances of the case, from time to time determine to be fair and reasonable.
>
> (3) The Central Government may at any time revoke or vary a notification under clause (1) of this section.
>
> (4) Nothing in this section is to be construed as debarring any railway administration from entering into a contract with any local authority for the supply of water or light, or for the scavenging of railway premises, or for any other service which the local authority may be rendering or be prepared to render within any part of the local area under its control.
>
> (5) 'Local authority' in this section means a local authority as defined in the General Clauses Act, 1887, and includes any authority legally entitled to or entrusted with the control or management of any fund for the maintenance of watchmen or for the conservancy of a river."

The point to be noted, in this provision, is that unless a notification has been issued by the Central Government, under sub-s. (1) of s. 135, declaring a railway administration to be liable to pay a tax, a railway administration shall not be liable to pay any tax in

A aid of the funds of any local authority. Section 146, giving power to the Government to extend the Railways Act to certain tramways, is as follows:

> "146. (1) This Act or any portion thereof may be extended by notification in the Official Gazette :—
>
> B (a) to any tramway which is wholly within a municipal area or which is declared not to be a railway under clause (20) of article 366 of the Constitution, by the State Government; and
>
> (b) to any other tramway, by the Central Government.
>
> C (2) This section does not apply to any tramway not worked by steam or other mechanical power."

We have already pointed out that all the provisions of the Railways Act, except s. 135, have been extended to the appellant company.

D The next enactment to be referred to is the Indian Railway Companies Act, 1895 (Act X of 1895), which provided for the payment, by railway companies, registered under the Indian Companies Act, 1882, of interest out of capital during construction. Section 2(1) defines 'railway' as meaning a railway as defined in s. 3, cl. (4) of the Railways Act. Section 3 provided for a railE way company paying interest on its paid-up share capital, out of capital, for the period, and subject to the conditions and restrictions contained in that section. There are other consequential provisions, in this Act.

The Indian Tramways Act, 1902 (Act IV of 1902) was one to apply the provisions of the Indian Railway Companies Act, F 1895, to certain tramway companies. The preamble to this Act IV of 1902, stated that it was expedient to apply the provisions of the Indian Railway Companies Act, 1895, to companies formed for the construction of tramways 'not differing in structure and working from light railways'. This preamble will clearly show that, even as early as 1902, the Legislature considered that G though certain systems were called 'tramways', substantially they did not differ, in structure and working, from light railways.

The expression 'railway' is defined, in s. 311(2) of the Government of India Act, 1935, as follows :—

> " 'railway' includes a tramway not wholly within a
> H municipal area."

It is to be noted that if a system, though a tramway, is wholly not within a municipal area, that system will be a 'railway'. Entry

58, of List I (Federal List) of the Seventh Schedule to the 1935 Act, was : A

"Terminal taxes on goods or passengers carried by railway or air; taxes on railway fares and freights."

It is, again, to be noted, that under this Entry, in respect of a tramway, which is not wholly within a municipal area and which will, therefore, be a 'railway', under s. 311(2), the levy of terminal tax on goods or passengers carried by such a system, will be within the competence of the Federal Legislature. B

Under Art. 366(20) of the Constitution, the expression 'railway' is dealt with, as follows :

" 'railway' does not include— C

(a) a tramway wholly within a municipal area, or

(b) any other line of communication wholly situate in one State and declared by Parliament by law not to be a railway."

It may be noted here that the appellant's system does not come within the exclusions mentioned in cls. (a) or (b) of this definition. D Entry 89 of List I (Union List), of the Seventh Schedule to the Constitution, is as follows :

"Terminal taxes on goods or passengers, carried by railway, sea or air; taxes on railway fares and freights."

It may be noted that the competent legislative body to levy terminal taxes on goods or passengers, carried by the appellant's system, E which will be a 'railway', under Art. 366(20), is the Parliament.

The only other Act to be referred to is the Railways (Local Authorities' Taxation) Act, 1941 (Act XXV of 1941), which was an Act to regulate the extent to which railway property shall be liable to taxation imposed by an authority. Section 3(1) of that F Act provided that a railway administration shall be liable to pay any tax in aid of the funds of any local authority, if the Central Government, by notification in the Official Gazette, declared it to be so liable. Section 4 provided for the Central Government, by notification in the Official Gazette, revoking or varying any notification issued under s. 135(1) of the Railways Act. G

The learned Additional Solicitor-General, appearing for the appellant, pointed out that the expression 'railway' had not been defined in the United Provinces Municipalities Act, or in the Terminal Tax Rules. In the absence of any special definition contained in the provisions, granting the exemption, in question, the expression 'railway', occurring in item 2, of Schedule B, of the H Terminal Tax Rules, must bear the commonly understood meaning of 'a carriage of passenger and goods, on iron rails'. By virtue of the definition, in s. 311(2) of the 1935 Act, and the provision,

corresponding to it, in the Constitution, *viz.*, Art. 366(20), the appellant's system, though registered under the Tramways Act, was a railway. The mere fact that s. 135, of the Railways Act, had not been applied to the appellant's system, is not a decisive factor against the appellant, as had been assumed by the High Court. In view of the various features of the appellant's system, and pointed out by us earlier, it is argued that the appellant's system is a 'railway', both in law and in fact. It satisfies all the ingredients of a railway and, if that is so, the appellants are entitled to the exemption provided for, under item 2 of Schedule B, of the Terminal Tax Rules.

On the other hand, Mr. Garg, learned counsel appearing for the respondent Board, pressed before us for acceptance the various reasons, given by the High Court, for holding that the appellant is not entitled to claim the exemption. In particular, counsel pointed out that there were two different enactments, one dealing with 'tramways' and the other with 'railways', being the Tramways Act and the Railways Act, respectively. Therefore, there were two different systems, under two different names, namely 'tramways' and 'railways', which was clearly known to the authorities concerned at the time when the Terminal Tax Rules were framed, and so when the expression 'railway' was used in the exemption clause, it must have been the intention of the framers of the Rules to bring, within its ambit, only the 'railways' constructed under the Railways Act. The appellant's system, though called a 'railway' and though it might have all the features of a railway, it is pointed out, nevertheless, that inasmuch as it has been constructed under a different enactment, *viz.*, the Tramways Act, it cannot be treated as a 'railway' for the purposes of the exemption. Counsel also stressed that s. 135 of the Railways Act had not been applied to the appellant.

We are not impressed with the approach made by the learned Judges of the High Court, for negativing the claim for exemption, made by the appellant. It must be borne in mind that the expression 'railway' has not been defined either in the concerned Municipalities Act, or the Rules; if such is the case, the definition must hold the field. Going by the definition of the expression 'railway', contained in s. 311(2) of the Government of India Act, 1935, and the corresponding provision in Art. 366(20) of the Constitution, the appellant's system is a 'railway'. All the provisions of the Railways Act have been extended to the appellant, excepting s. 135. In our opinion, if the appellant is a 'railway', otherwise, the mere fact that the provisions of s. 135, of the Railways Act, have not been applied, is of no consequence. We have already referred to the fact, which is not in dispute, that the appellant's railway passes through four districts in U.P. and

Delhi, and that it has got all the features of a railway, as ordinarily understood. A

In this connection, we may refer to certain English decisions, where the claim, made on behalf of a system, for being taxed at a concessional rate, had come up for consideration.

In *Blackpool and Fleetwood Tramroad Company* v. *Thornton Urban Council*(1), the Court of Appeal had to consider as to how far the Blackpool & Fleetwood Tramroad Company, the appellant before them, was entitled to the assessment, at a lower rate under s. 211(1)(b), of the Public Health Act, 1875 (38 & 39 Vict. c. 55). The material portion of that section was : B

> "the occupier of any land . . . used only as a canal . . . or as a railway, constructed under the powers of any Act of Parliament, for public conveyance, shall be assessed in respect of the same in the proportion of one-fourth part only of the net annual value thereof." C

The question was as to whether the appellant, in that case, was a 'railway', to whom the said provision would apply. The appellant company had constructed and maintained a tramroad connecting two systems of tramways, under the local Acts of 1896 and 1898. Various provisions of the Railways Clauses Consolidation Act, 1845, had been applied to the tramroad. The tramroad, in that case, was on rails laid on sleepers, fenced off from adjoining land, excepting at the level crossings of roads. The Divisional Court had rejected the claim of the appellant; but the Court of Appeal held that the tramroad was land 'used only as a railway constructed under the power of an Act of Parliament for public conveyance', within the meaning of s. 211(1)(b) of the Public Health Act, 1875, and that the company was, consequently, entitled to be assessed, in respect of the said 'railway', at one-fourth of its net annual value. The appellants contended that the tramroad was and could only be worked as a railway and was, in fact and in law, used as a railway, and, in consequence, they urged that the tramroad, maintained by them, is 'land' used only as a railway. The Court of Appeal noted that the rails were raised and laid on sleepers, just as a railway is laid, and that was the main distinction between the appellant's system, and a tramway, which ran along public streets and in grooved rails. No doubt, it was pointed out for the Urban Council, that the appellant company had been incorporated under the Tramways Act and the very fact that certain provisions of the Railway Clauses Consolidation Act were applied to the appellant's system showed that the appellant was not a railway. The Court of Appeal held that it was impossible to distinguish the piece of tramroad, owned by the D E F G H

(1) L. R. [1907] 1 K.B.D. 568.

A appellants, from a railway and that the exemption provided for in the Public Health Act applied to the tramroad of the appellants as it would, to any ordinary railroad passing through parts where it was not deriving the full benefit from the district rates in those parts. The Court of Appeal also rejected the contention of the Urban Council that the tramroad, owned by the appellants could B be treated as a 'railway' only for particular purposes, and not for the purpose of claiming the exemption under the Public Health Act; because, according to the Court of Appeal, a reading of s. 211(1)(b) of the Public Health Act, showed that it applied to land used as a railway, *i.e.*, constructed as a railway in fact.

C This decision was taken up in further appeal, before the House of Lords, whose decision is reported as *Thornton Urban Council* v. *Blackpool and Fleetwood Tramroad Company*(1), and the decision of the Court of Appeal was confirmed. In the course of the judgment, after referring to s. 211 of the Public Health Act, Lord Macnaghten observed, at p. 267 :

D "Now it cannot be denied that the rails on which the tramcars run, with the embankment or foundation on which they rest, and everything that supports them, do form a road or way, and that that road or way was constructed under parliamentary powers for public conveyance. Is it 'a railway' ? There is nothing in the Public Health Act, 1875, or in the earlier Acts, in which the E same provision is found, to confine the word 'railway' as used in those Acts to a particular kind of railway, or to limit the generality of the expression in any way."

His Lordship, further observed at p. 268 :

F "It seems to me that if it is a railway in fact, not differing from other railways in any material particular, it is nonetheless a railways because the promoters in their special Act chose to call it a 'tramroad'—a very convenient term to use for the title of their Act and the name under which they sought incorporation. Nor is it the less a railway because some only of the sections of the G Railways Clauses Consolidation Act are incorporated in the special Act, or because, if one did not know what the thing really was, the language used for the purpose of applying the sections which are incorporated might seem to import that it was not, properly speaking, a railway at all. You must look at the special Act to see that it confers the appropriate powers of construction. Every- H thing else in the Act is, I think, beside the question which this House has now to determine."

(1) L.R. [1909] A.C. 264.

In our opinion, the observations of the House of Lords, extracted above, are apposite, to the case on hand. We have already pointed out that neither the Municipal Act, nor the Terminal Tax Rules give any special definition of the expression 'railway', and, so far as we could see, there is nothing in the said Act or the Rules to indicate that the word 'railway', in item 2 of Schedule B, is used only to refer to a 'railway' registered under the Railways Act or to limit the generality of the expression 'railway' in any way. Under those circumstances, if the appellant is a 'railway' in fact, as commonly understood—there does not appear to be any serious controversy on that point—it will be a 'railway', notwithstanding the fact that it is registered as a 'tramway', under the Tramways Act. The legislature itself has applied the various provisions of the Railways Act to the appellant, and the appellant also satisfies the definition of a 'railway' under the Government of India Act, 1935, and the Constitution. The provisions of the Indian Railway Companies Act, 1895, have also been applied to the tramways constructed, under the Tramways Act, by the Indian Tramway Act of 1902. The second preamble to the last mentioned Act, clearly shows that the tramways, to which the Indian Railway Companies Act was made applicable, 'do not differ in structure and working from railways'.

The object underlying the exemption under item 2, of Schedule B, to the Terminal Tax Rules, is also not far to seek. The railways pass through areas where it is not deriving the full benefit of all the amenities provided by the Municipal Boards. Therefore, in our opinion, the appellant satisfies the definition of a 'railway', so as to be entitled to the exemption provided under item 2 of Schedule B.

Before we close the discussion, we will also refer to the decision of the House of Lords in *Tottenham Urban Council* v. *Metropolitan Electric Tramways, Ltd.*(1). The same question regarding the eligibilty of a 'tramway' for exemption, under s. 211(1)(b) of the Public Health Act, 1875, came up for consideration in that case. From the judgment, it will be seen that the company were working, as a connected system, a tramway and a light railway, which were constructed in and along certain public streets and roads, in the district of the urban Council. The 'tramway' was constructed under the Tramway Acts and Orders and the 'railway,' under the Light Railways Act, 1896. Both were identical as to the mode of construction and materials used. The claim of the company in respect of the 'railway', as such, for assessment at a lower rate, was accepted; but, so far as the 'tramway' was concerned, the House of Lords held that it is not a 'railway', within the meaning of s. 211(1)(b), of the Public Health Act, 1875. The

(1) L. R. [1913] A. C. 712.

A reason given by the House of Lords, for not accepting the claim of the tramway, was that in the great bulk of public legislation, relating to railways, the legislation has universally been understood and interpreted by Courts as applying only to that which is popularly known as a 'railway', and not to that which is popularly known as a 'tramway'. And special emphasis is laid by the House B of Lords that the legislature has used the word 'railways' and not 'railways and tramways', in s. 211 of the Public Health Act, 1875.

We are only adverting to this decision to show that, on the basis of an interpretation placed by the Courts, the House of Lords held that the word 'railways', in the Public Health Act, 1875, will not take in 'tramways'. But, no such circumstances, as pointed C out by the House of Lords, in the said decision, exist in the present case before us. On the other hand, the position is exactly the opposite, as will be seen from the Government of India Act, 1935, and the Constitution. Even applying the popular test, adopted by the House of Lords, in this case, the appellant is undoubtedly a 'railway'.

D

In our opinion, the principles laid down by the House of Lords in *Thornton Urban Council* v. *Blackpool and Fleetwood Tramroad Company*(1), apply to the particular matter on hand and, we hold that the appellant, being a 'railway', is entitled to the exemption under item 2, of Schedule B, to the Terminal Tax Rules, in question.

E

We, accordingly, allow the appeal and set aside the judgment of the High Court, and further direct that a writ will issue, as prayed for by the appellant. The appellant will be entitled to its costs, from the first respondent, both in this Court and in the High Court.

G. C. *Appeal allowed.*

(1) L. R. [1909] A. C. 264.