

*Special War Revenue Act*

contract was for cash on delivery, with the six per cent sales tax, and that is the reason the price of automobiles in some places has increased to some extent—the sales tax has been increased from six to eight per cent, involving an additional two per cent on the purchase price of the commodity.

That is the case with which I am trying to deal. I was not sure how it had been covered by the late government, but I think in some cases, where the facts reported by the auditors conformed to what I have said, rebates were made. However, I am not sure about that; the commissioner of excise will be able to tell us. The minister will see that if the contract is complete, and the risk is no longer that of the vendors, even if the insurable interest in the property has passed to the purchaser, then it is quite clear on that set of facts that we are putting an intolerable burden on the purchaser when we compel him to pay an additional two per cent. In a country the size of this it is extremely difficult, and I believe—I speak subject to correction—that in some instances, where the facts have been as I have indicated, adjustments have been made. Obviously there would be no necessity to make an adjustment where the facts are that the risk is that of the vendors, and that in point of law there has been no delivery. But I do say to the minister that under the Sale of Goods Act the question of delivery is complicated, depending primarily upon the set of facts which, of course, we have not before us at this time. But I desire to deal with the set of facts which must necessarily arise, where the vendor has no further interest in the property except in the payment of the bill of exchange which he has drawn upon the purchaser. That bill of exchange must be paid before the bill of lading can be taken away and the goods possessed by the purchaser.

There is a clear distinction between delivery in law and delivery as an expression indicating a change of possession. The old statement about possession being nine points of the law arises because possession is always regarded as one of the greatest possible factors in determining whether or not delivery has been completed. But there may be delivery—that is, in which there has been no change of possession—if possession has been given to a common carrier. That is dealt with in our Sale of Goods Act. If delivery is referable to a contract, and the facts are as I have indicated, then the vendor has no longer any interest in the subject matter of the contract, beyond payment of the draft, which must be paid before the bill of lading, the document of title, can be delivered to the purchaser.

[Mr. Bennett.]

When the bill of lading has been handed over to the purchaser on payment of the draft, then that factor in delivery known as possession is complete, and he has possession as well as the right to possession which he has under his contract. This constitutes delivery in point of law. That is the case I am trying to make clear to the minister.

Mr. ILSLEY: I do not know whether I can add much to the discussion, but my recollection of the principles applicable is somewhat different from that indicated by the leader of the opposition. My understanding of delivery is that it means a change of possession. Ordinarily a change of possession from vendor to purchaser takes place when the vendor delivers the goods to the carrier, who, in the absence of any special or extraordinary circumstances, is presumed to be the agent of the purchaser.

Mr. BENNETT: That is constructive possession.

Mr. ILSLEY: Yes, that is constructive possession. But when the vendor sells to a purchaser and retains control over the goods by attaching to the bill of lading the draft for the purchase price, then he retains a lien upon the goods. In that instance the carrier is not the agent of the purchaser but is the agent of the vendor, and the goods are still in the vendor's possession. It would be inconsistent with a vendor's lien if the goods were out of the vendor's possession, because the vendor's lien is a possessory lien and depends upon possession before it can be exercised. The point at which the tax attaches is the point of delivery. In the case we have in mind, where the draft is attached to the bill of lading, change of possession does not take place until the draft is paid and the documents are delivered to the consignee. Therefore the rate of tax applicable at that time is the proper rate of tax, and the rate we have to collect. It may be that the question as to who has the risk is somewhat different; that is to say, the goods may nevertheless be at the risk of the purchaser, even though they are in the possession of the vendor or the vendor's agent. That is a matter of agreement between the vendor and the purchaser. I must admit I have not looked at the cases, nor have I read carefully the Sale of Goods Act—

Mr. BENNETT: Neither have I.

Mr. ILSLEY: But I believe that that must have been the view accepted by the department when some years ago it was put forward, as it must have been, by car manufacturers and dealers.