LAW COMMISSION OF INDIA

SECOND REPORT

(PARLIAMENTARY LEGISLATION RELATING TO SALES TAX)

GOVERNMENT OF INDIA ● MINISTRY OF LAW

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CHAIRMAN
LAW COMMISSION.
NEW DELHI;
July 2, 1956.

Shri C. C. Biswas,
Minister of Law &
Minority Affairs,
NEW DELHI.

MY DEAR MINISTER,

I have great pleasure in forwarding herewith the Second Report of the Law Commission dealing with the principles to be embodied in Parliamentary legislation relating to Sales-tax.

2. On the 23rd March 1956 the Ministry of Law referred to the Commission the question of the principles that should be formulated by Parliamentary legislation for determining when a sale of goods takes place (a) outside a particular State, (b) in the course of import or export, or (c) in the course of inter-State trade or commerce.

3. The reference was considered at a meeting of the Statute Revision Section of the Commission held on the 14th April 1956 and a Committee consisting of Sri G. S. Pathak and Sri G. N. Joshi was appointed to make a preliminary study of the question. The subject was again discussed at the next meeting of the Section held on the 11th May 1956. Thereafter a note prepared by the Committte was circulated to all Members of the Commission and their views invited thereon. The views solicited and the note prepared by the Committee were fully and finally discussed at a meeting of the Statute Revision Section held on the 9th and 10th June 1956. Certain conclusions were reached at that meeting and it was left to the Chairman to prepare the Report in the light of the discussion.

4. In view of the request of the Ministry that the Report might reach them early so that the preparation of the necessary Parliamentary legislation might be expedited, the Report is being submitted though it has not yet been formally signed by the Members. The Report has, however, been circulated to all the Members and the concurrence of all the Members excepting that of Sri S. M. Sikri who is out of the country has been obtained. The Report will be signed by the Members at the ensuing meeting of the Commission to be held on the 21st July 1956. Dr. N. C. Sen Gupta will sign the Report subject to a separate note a copy of which has been annexed to the Report.

5. The Commission wishes to acknowledge the services rendered by its Joint Secretaries Sri K. Srinivasan and Sri D. Basu in connection with the preparation of the Report.

Yours sincerely,
(Sd.) M. C. Setalvad.

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REPORT

I. Preliminary

1. The Law Commission was invited to offer its suggestions for formulating principles for determining when a sale of goods takes place—

(i) outside a State;

(ii) in the course of the import of the goods into, or export of the goods out of, the territory of India;

(iii) in the course of inter-State trade or commerce.

2. At the date of the reference to the Commission the Constitution (Tenth Amendment) Bill had been introduced in Parliament and under it Parliament was to be empowered to formulate by law principles for determining when a sale or purchase of goods takes place in any of the ways mentioned above. The Bill has since been passed by both Houses of Parliament.

3. Broadly speaking the proposed Constitutional Amendment seeks to curtail the power of States to levy taxes on the sale or purchase of goods other than newspapers by providing that that power is to be subject to the power of the Union to levy taxes on the sale or purchase of goods other than newspapers where such sale or purchase takes place in the course of inter-State trade or commerce. The taxes levied by the Union in exercise of this added power are to be assigned to the States. The Amendment seeks to empower Parliament by law to formulate principles not only for determining when a sale or purchase of goods takes place in the course of inter-State trade or commerce but also for determining when a sale or purchase takes place in the course of import into, or export out of the territory of India or outside a particular State.

4. The proposed Constitutional Amendment closely follows the recommendations of the Taxation Enquiry Commission in this respect. Their main purpose in recommending that Parliament should have power to tax inter-State transactions and that it be empowered by law to determine the principles above mentioned was to ensure that the tax, if any, on these transactions should not exceed limits which Parliament in the interest of the country as a whole considers reasonable and that the principles laid down not having the rigidity of Constitutional provisions may be varied in accordance with the economic needs of the country from time to time. (Report of the Taxation Enquiry Commission, Vol. III, pp. 48-60, paras 7-22).

II. Sales or Purchases in the Course of Import or Export.

5. It is convenient to take first the question of the appropriate principles to determine when a sale or purchase takes place in the course of import or export. The formulation of these principles presents the least difficulty.

6. In the *Travancore-Cochin Cases* [(1952) S.C.R. 1112 and (1954) S.C.R. 53] the Supreme Court considered Article 286 (1) (b) and held that the clause covered two classes of cases: (i) sales and purchases which themselves occasioned the import or exoprt, (ii) sales or purchases effected by a transfer of shipping documents when the goods are beyond the customs frontiers of India.

7. The interpretation put by the Supreme Court on the clause was considered by the Taxation Enquiry Commission who stated that the position arising from the interpretation put by the Supreme Court was "prefectly satisfactory so far as foreign trade is concerned". (T.E.C. Report, p. 48, para 7). The Law Commission had also before it the views of the Ministry of Finance on this question. The Ministry was of the view that the decision given by the Supreme Court had been accepted by almost all the States and no difficulties were reported to have arisen as a result of the Supreme Court judgment.

8. Reference may here be made to the view expressed by DAS J. in his dissenting judgment in the second *Travancore-Cochin Case* (1954 S.C.R. 53) that a sale or purchase in the coure of import or export includes the first sale after import except by a retailor and the last purchase preceding the export. This view was based partly on an interpretation which laid stress on the word "course" in the expression "in the ccurse of import or export" used in the Constitution. It also arose from a desire not to impede the import or export trade of the country by subjecting sales or purchases linked with the importing sale or exporting purchase to the burden of the sales-tax. In so far as the latter consideration is concerned the views of the Taxation Enquiry Commission and the Finance Ministry would seem to show that the apprehension that the import or export trade of the country would be impeded if the majority interpretation of the clause were accepted is not welfounded. In so far as the view is based on the interpretation of the word "course", in our opinion that approach, if logically pursued, will not stop with the sale following the import or the purchase preceding the export. The stream of export may legitimately be said to commence even at the stage of the production of raw materials or of the manufacture of finished goods intended for export. In this connection the following observations of **MCKENNA J.** in *Heisler* v. *Thomas Collery Co.* made in dealing with the question of inter-State commerce are pertinent: [(1922) 260 U.S. 245].—

> "If the possibility or, indeed certainty, of exportation of a product or article from a State, determines it to be in inter-State commerce before the commencement of its movement from the State, it would seem to follow that it is in such commerce from the instant of its growth or production: and in the case of coals, as they lie on the ground".

We do not, therefore, see any justification for recommending the adoption of this view.

9. The Ministry of Commerce and Industry has mentioned the desirability of including the last purchase preceding the export as

a transaction in the course of export on the ground that the exemption of such transactions from tax will stimulate exports. It was not, however, suggested that a similar exemption should be granted to the first sale following the import. It appears to us to be somewhat illogical that the last purchase preceding the export should be exempt whereas the first sale following the import should not be exempted. We are, therefore, unable to accept this suggestion.

10. Under this head, we, therefore, recommend the acceptance of the principles laid down by the Supreme Court. We would express them in the following manner:—

> A sale or purchase of goods shall be deemed to take place in the course of export of the goods out of the territory of India, only if the sale or purchase either occasions such export or is effected by a transfer of documents of title to the goods after the goods have crossed the customs frontiers of India.
>
> A sale or purchase of goods shall be deemed to take place in the course of import of the goods into the territory of India, only if the sale or purchase either occasions such import or is effected by a transfer of documents of title to the goods before the goods have crossed the customs frontiers of India.

III. Inter-State Sales or Purchases.

11. In considering the principles for determining when a sale or purchase takes place in the course of inter-State trade or commerce, two important aspects have to be borne in mind. First, such a sale or purchase is not to be exempt from tax as in the case of a sale or purchase in the course of import or export. It is to be taxed by the Union. Secondly, the proceeds of such a tax are under the amended article 269 to be assigned to the States. These sales have to bear the burden of the sales-tax but the burden is to be strictly limited by the Union in the interst of trade and commerce throughout the territory of India which has, according to the policy underlying the Constitution, to be free and unrestricted.

12. No doubt the expression "in the course of inter-State trade or commerce" has a very wide connotation. In India we are, however, not concerned with the regulation of commerce generally among several States as under the commerce clause in the American Constitution. What we have to determine is what is *a sale or purchase* in the course of inter-State trade or commerce. The problem, therefore, is to ascertain what transactions of sale or purchase can fairly be said to arise in the course of inter-State trade or commerce. For this purpose we have to fix upon some characteristics of these transactions which can well be said to stamp them with an inter-State character. In the large mass of American decisions under the commerce clause the one element which is stated to be an indispensable incident of commerce between the States is the movement of the goods which are the subject-matter of the sale or purchase from one State into another. We may refer in

this connection to the definition of "inter-State commerce" given by Rottschafer in his "Constitutional Law" (1939 Ed. p. 299):—

> "The activities of buying and selling constitute inter-State commerce if the contracts therefor contemplate the movement of goods in inter-State commerce".

Later he adds (p. 235):

> "The decisive factor that renders making a contract an act of inter-State commerce is that it contemplates or necessarily involves the movement of goods in inter-State commerce, and this test applies whether it be a contract to buy or one to sell".

13. It will be noticed that in the American view even a contemplated movement of goods which in fact may not have taken place would invest the transaction of sale or purchase with an inter-State character. Such a wide view based on the intention of the parties to the contract may, we think, well lead to uncertainty and difficulties in administration and conflicting legal views. We would, therefore, recommend a simpler and a more certain test to determine whether a transaction of sale or purchase is an inter-State transaction. Only a transaction which has in fact occasioned the movement of goods from one State into another should be regarded as an inter-State transaction. Such a test would be easy to apply by the authorities administering the law as what will have to be ascertained will be the physical movement of the goods from one State into another in consequence of the transaction. Such a test has the added advantage of being similar to and parallel with the test which we have proposed for determining when transactions take place in the course of import into or export out of the territory of India. As a sale or purchase which has occasioned import or export is one in the course of import or export so is a sale which has occasioned movement of the goods from one State into another a sale in the course of inter-State trade or commerce.

14. Such a test will avoid the necessity of entering into the difficult question as to when inter-State trade or commerce begins and when it ends, a subject on which there is a mass of decisions of the American courts.

15. A sale or purchase should itself have occasioned the movement of the goods from one State into another in order that it may have an inter-State character. If a purchaser in State A completes a purchase of goods in that State the transaction will be an intra-State transaction even though he may have the intention after the purchase of sending the goods to State B and does in fact do so. The sale made to him or the purchase made by him has not occasioned the movement of the goods from one State into another. Similarly if a purchaser from State A goes to State B and purchases goods in State B the transaction again will be of an intra-State character though the purchaser may have purchased the goods with a view to send them to State A and does in fact do so. The sale to him or purchase by him has again not occasioned the

movement of the goods from State B into State A. When, however, in consequence of a sale or purchase goods are delivered to a carrier or other bailee for transmission to another State the transaction would clearly be of an inter-State nature.

16. The question whether on the analogy of the principles adopted in connection with sales or purchases in the course of import or export a sale effected by the transfer of documents during the movement of goods from one State to another should be regarded as an inter-State sale or purchase has received our careful consideration. We are of the view that such sales or purchases should be regarded as inter-State transactions. It was suggested that if the rate of inter-State tax happened to be lower than the rate of the tax levied by the State on intra-State transactions the adoption of this principle might lead to attempts by dealers to evade the higher tax of the State by giving intra-State transactions the appearance of inter-State transactions by the creation of fictitious records showing the movement of the goods from one State into another. We are not inclined to attach much importance to this suggestion as in any case the sale or purchase will not escape taxation altogether and it is unlikely that dealers would resort to such attempts in order to save the difference between the inter-State and the intra-State tax. Moreover, if this principle is not applied considerable administrative and other difficulties will arise. We are, therefore, of the view that sales and purchases effected by a transfer of documents during the movement of goods from one State to another should be regarded as inter-State transactions.

17. For the limited purpose of the principle mentioned in the preceding paragraph it will become necessary to provide when the movement of the goods is to be regarded as having commenced and terminated in cases where goods are delivered to a carrier or other bailee for transmission to another State. For this purpose we propose to frame a principle based on the provisions of section 51 of the Sale of Goods Act.

18. The principles for determining when a sale or purchase takes place in the course of inter-State trade or commerce may be framed in the following manner:—

> "A sale or purchase of goods shall be deemed to take place in the course of inter-State trade or commerce, only if the sale or purchase—
>
> (a) occasions the movement of the goods from one State to another, or
>
> (b) is effected by a transfer of documents of title to the goods during their movement from one State to another.
>
> **Explanation.**—Where goods are delivered to a carrier or other bailee for transmission, the movement of the goods shall, for the purposes of sub-clause (b), be deemed to commence at the time of such delivery and terminate at the time when delivery is taken from such carrier or bailee."

IV. Sales or Purchases Outside A State.

19. The laying down of principles for determining when a sale or purchase takes place in the course of inter-State trade or commerce does not relieve us of the necessity of laying down principles for determining when a sale or purchase takes place outside a State. The Taxation Enquiry Commission has pointed out that all transactions of sale or purchase not made in the course of import into or export out of the territory of India should suffer sales-tax which is increasingly becoming one of the main sources of the revenues of States. At the same time provisions have to be framed to prevent the same transaction of sale or purchase being taxed by more than one State. The main purpose of Article 286(1) (a) is to prevent the multiple taxation of a single transaction. A test which can be applied with little difficulty in order to determine whether a transaction of sale or purchase is without or within a State can alone prevent such overlapping taxation.

20. As stated by the Supreme Court, the general law of the sale of goods while it lays down *when* a sale takes place nowhere provides *were* a sale is deemed to take place. The problem of giving a situs to a sale is not free from difficulty. T transaction of sale has several ingredients. The essential ingredients are:

(a) the conclusion of the contract of sale,
(b) the appropriation of the goods to the contract,
(c) the passing of the property in the goods,
(d) the payment of the price, and
(e) the delivery of the goods.

One or more of these ingredients have been used in the 'legislation enacted by the States for fixing the situs of a sale within a particular States. The question for consideration is which out of these ingredients affords a certain and easily workable basis for fixing the situs of a sale.

21. The Explanation to Article 286(1) (a) which is now proposed to be omitted attempted to fix as the situs of a sale the State in which goods were actually delivered for consumption. That attempt led to numerous difficulties. Controversies arose as to what constituted actual delivery and consumption. In effect that provision laid down that the tax should go with consumption and that the exporting State should not be entitled to levy any part of it. As pointed out by the Taxation Enquiry Commission the Constitutional provision as interpreted placed the exporting States and States with a backward economy in a disadvantageous position. (T.E.C. Report, p. 48, para. 8.). In selecting the appropriate ingredient with reference to which the situs of a sale may be determined these considerations will have to be borne in mind.

22. We are of the view that the location of the goods will be a very suitable test to apply in determining the situs of a sale. The physical existence of the goods at a place at a particular time is easily capable of ascertainment and such a test will avoid legal controversies. The difficulty, however, is in fixing the point of time at which the location of the goods should be taken as determining

the situs of the sale. Is it to be the time of the making of the contract or the appropriation of the goods to the contract or the passing of the property in the goods or the delivery of the goods? We have given very careful consideration to the various questions which would arise in the event of one or the other of these points of time being taken with reference to the location of the goods as indicative of the situs of a sale. We have come to the conclusion that in the case of all sales of specific or ascertained goods their location at the time of the making of the contract of sale should determine their situs for the purpose of article 286(1) (a). In regard to unascertained or future goods two views were considered by us. It was suggested that in regard to such sales the location of the goods at the time when the goods first became ascertained should be taken as the situs of the sale. The other suggestion was that the location of the goods at the time of their appropriation to the contract of sale should be regarded as the situs of the sale. We rejected the former view as the ascertainment of goods with reference to contracts for the sale of unascertained or future goods is not a distinct legal concept. Ascertainment is but a part of the process of appropriation which is a well-accepted legal concept and which results, generally speaking, in the passing of property in the goods. We are, therefore, of the view that in the case of sales of unascertained or future goods their location at the time of their appropriation to the contract of sale should be the test for determining the situs of the sale.

23. In some cases of the sale of unascertained or future goods it may happen that the seller or the buyer may make an appropriation of the goods without the assent of the other party and put them into the course of transit. It may in such cases happen that the location of the goods when the assent of the buyer or seller is given to the appropriation may be different from their location at the time when the seller or the buyer made the appropriation. We do not know whether such cases would arise frequently in practice. But in order to provide for them we have in framing the principle used language which makes it clear that the location of the goods at the time of the appropriation by the seller or the buyer irrespective of their location at the time when the assent of the other party is given to the appropriation should be the decisive factor in determining the situs of the sale.

24. We have thought it necessary also to provide for cases where a single contract of sale comprises goods located in different States. In order to obviate difficulties in determining the situs of the sale by reference to the location of the goods in such cases we have suggested that such contracts of sale or purchase should be regarded as separate contracts in respect of the goods situated at different places.

25. Article 286 (1) (a) of the Constitution prohibits a State from taxing a sale outside the State. The principles we have suggested will indicate the State within which the sale has taken place. It will, therefore, have further to be provided that as soon as a sale is deemed to have taken place within a State it shall be deemed to have taken place outside all other States. It will be recalled that the absence of such a provision in Article 286 (1) (a) read with the

Explanation proposed to be deleted caused a great deal of controversy and resulted in varying interpretations being put on that Article read with the Explanation.

26. The principles we enunciate under this head are as follows:—

"1. A sale or purchase of goods shall be deemed to take place where the goods are—

(a) in the case of specific or ascertained goods, at the time the contract of sale is made; and

(b) in the case of unascertained or future goods, at the time of their appropriation to the contract of sale, by the seller or by the buyer whether the assent of the other party is prior or subsequent to such appropriation.

Explanation.—Where there is a single contract of sale or purchase of goods situated at more places than one, the above provision shall apply as if there were separate contracts in respect of the goods at each of such places.

2. When a sale or purchase of goods is determined in accordance with sub-clause (1) to be within a State, such sale or purchase shall be deemed to have taken place outside all other States."

V. Conclusion

27. We may point out that we have not before us the draft of the purchase of goods situated at more places than one, the above provision shall apply as if there were separate contracts in respect of the goods at each of such places.

M. C. SETALVAD

(*Chairman*).

M. C. CHAGLA,
K. N. WANCHOO,
G. N. DAS,
P. SATYANARAYANA RAO,
*N. C. SEN GUPTA,
V. K. T. CHARI,
D. NARSA RAJU,
G. S. PATHAK,
G. N. JOSHI.

(*Members*).

K. SRINIVASAN.
DURGA DAS BASU,
Joint Secretaries.

BOMBAY;
The 21st July, 1956.

*Dr. Sen Gupta has signed the report, subject to the note appended below.

SEPARATE NOTE ON INTER-STATE SALES TAX

I regret that I have to differ from some of the conclusions of the majority of my colleagues. I wish to make it clear also that I do not concur in all their arguments for the other conclusions from which I do not disagree.

The laws regarding sales "in the course of import or export" and "in the course of Inter-State trade" have been sufficiently complicated by the four decisions of the Supreme Court where judgments proceed to discuss a multitude of matters. What is wanted now is a simpler and more clear-cut definition of the principles for deciding the matter. In considering the principles we should not be too much influenced by the fear that some transactions may escape taxation, if a particular view is taken. That may or may not be,—though I should add that so far as export and import are concerned, there are very good reasons for thinking that there would be no case of escaping taxation altogether. Export and import are in most cases subject to another tax, the customs duty; and if by chance the goods exported or imported happen to escape the imposition of sales tax, that would not mean that the goods will necessarily go free of tax altogether. I am mentioning this as the majority report refers to this apprehension in the course of its reasons.

The Chief consideration in laying down the principles of taxation ought to be the interest of the trade and the consumers generally. Every taxation of goods adds to the burden that the consumer has to bear. With the rising prices and the many factors contributing to inflation, it would be far from wrong to desire that the burden should not be unnecessarily increased and that the trader should not be required to submit, not only to the payment of tax but also the harassment inevitable in connection with the assessment of the tax, more than is necessary.

A further and no less important aspect of the question is the bearing of the States' powers of taxation on the larger policy regarding foreign trade. Foreign trade is regulated by the Union, with reference to the current needs of the country as a whole, in part by manipulating the customs duties. There are occasions, due, for instance, to the overstocking of a particular commodity in India, or to the need for earning foreign exchange, when export of a commodity should be promoted by removing or reducing export duties and conversely, import of commodities in short supply may have to be promoted by manipulating import duties. The powers of States to tax sales for such commodities by a too narrow limitation of sales in the course of "export or import" may easily hamper the freedom of the Union to influence prices by necessary manipulation of tariffs and may enable the States to frustrate the Union's policy. The power of States which they still retain after the Constitutional amendment to tax intra-State sales should not be so extended over

commodities of foreign trade as to narrow the power of the Union to regulate prices for export and import from time to time as may happen when States are enabled to frustrate or nullify any act of the Union in the wider interests of the country, *e.g.* for reducing prices, by regulations for internal taxation on sales of the commodities which may wholly out-balance the effect of tariff changes on prices.

What is wanted is a simpler and more perfectly intelligible set of rules which will have regard to the interests not only of the finances of the State but also in a much larger measure to the interests of the trade and the consumers and the interest of the Union in respect of foreign trade. This will have to be specifically considered at the time of legislating under the new powers given to the Parliament by the Constitution. But we should bear in mind these principles in laying down the general principles also.

In the light of these remarks I should have the report modified in the following respects:

I. With regard to the sale in the course of export or import, the decision of the Travancore-Cochin case is purported to be followed with a rider which, in my opinion, makes the rule largely infructuous to prevent State taxation of sales in the course of export or import. I fully endorse the opinion of the Ministry of Commerce and Industry that the last purchase preceding the export should also be considered to be a sale or purchase in the course of export or import, which, incidentally appears to have been the view put forward by the Attorney-General in the first Travancore-Cochin case. His argument is thus summarised in the judgment of the Chief Justice in A.I.R. 1952 S.C. at p. 367:

> "In addition to the sales and purchases of the kind described above, the exemption covers the last purchase by the exporter and the first sale by the importer, if any, so directly and proximately connected with the export sale or import purchase as to form part of the same transaction. This view was sponsored by the Attorney-General."

This interpretation accords more with the commonsense view of the expression "in the course of export or import".

The words "in the course of" must be given a proper meaning and would extend to transactions intimately connected with the export or import. There will be very few cases indeed in which a sale is made by a person who has the goods in stock and forthwith books it for export when alone the sale may be said to have 'occasioned' the export or import in terms of the opinion of the majority. In most of the commercial transactions a contract with a foreign agency for export or import of goods is made and on the strength of that, the exporter purchases goods from others and sells or the importer contracts to sell. Among other parties, the Government of India, some time ago used to export large quantities of jute goods and it is still exporting other commodities without ever having a stock.

When there is an agreement with a foreign State like the U.S.A. or Argentina for the export of that quantity, the Government comes and places the orders with the Jute Mills and they deliver the goods at the Ship's side and look to the Government of India for payment and it does not "occasion" the export, but it is the purchase immediately prior to the export which is made by the Government. The majority report objects that if this is exempted, it will be illogical not to exclude the whole stream of transactions preceding the export and an American judgment is cited in support. But in legislating, the legislature is not bound to be logical. It can put its own limited construction upon the words used and it is no criticism of a legislation that if logical, it ought to extend to other items. If on a consideration of grounds of policy and other matters, the application is limited to less than what might be logically deduced, there will be no harm done. In my opinion, the same principle ought to apply to the first sale after import, if as a matter of fact, the sale was made in pursuance to a contract prior to importation. It seems to me, therefore, that the draft in paragraph 10 of the definition of a sale or purchase in the course of export and import is too narrow. If this definition is given, there will be very few transactions in which the State imposition of sales tax would be excluded.

II. With regard to sales in the course of Inter-State trade or commerce, the meaning of the words, "in the course of Inter-State trade or commerce" appear to me to be unduly restricted. Undoubtedly if a sale is effected, which directly occasions the movement of goods or is effected by a transfer of documents of title during the movement from one State to another, it would be a sale in Inter-State trade. This definition, however, again makes the words "in the course of" practically infructuous. No attempt should be made to limit "the course" of trade to the only two possible alternatives. There are other ways in which a sale may be effected Inter-State. For instance, a trader in Assam sends jute or tea to a warehouse in Calcutta in expectation of prospective Sale. Thereafter the seller enters into a transaction of sale of the goods in Assam when, the goods are located in the Calcutta warehouse and gives a firm delivery order to the purchaser and the purchaser takes delivery from the warehouse in Calcutta. In this case it is undoubtedly a case of Inter-State sale between Bengal and Assam, but it would not come under either of the clauses (a) and (b), as drafted, because the movement has not been occasioned by the sale but has preceded it and the transfer of documents has not taken place during the movement of one State from another but after it. The definition proposed would thus be, in my opinion, too narrow. I would prefer an interpretation as in the passages quoted from Rottschafer in paragraph 12,—with the proviso that the movement of goods should have taken place in pursuance to the contract. That would leave it to the court, with reference to the facts of a particular case to determine whether the sale contemplated and in fact was followed by the movement of goods from one State to another.

III. With regard to the question of the *situs* of sale also I find it difficult to agree fully in the conclusion that a sale should be deemed

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