[HIGH COURT OF AUSTRALIA.]

CARLTON BREWERY LIMITED . . . . APPELLANT;

AND

FEDERAL COMMISSIONER OF TAXATION . RESPONDENT.

H. C. OF A. 1947.

MELBOURNE, *March* 14;

SYDNEY, *May* 5.

Latham C.J., Rich, Dixon, McTiernan and Williams JJ.

Income Tax (Cth.)—Super-tax—Rebate—Company—Payment of dividend out of amount in respect of which rebate allowed—Liability of recipient to super-tax—"Paid or . . . payable"—Income Tax Act 1943 (*No.* 11 *of* 1943), *s.* 6—*Income Tax Assessment Act* 1936-1943 (*No.* 27 *of* 1936—*No.* 10 *of* 1943), *s.* 46 (2A).

Super-tax is not "paid or . . . payable," within the meaning of s. 46 (2A) of the *Income Tax Assessment Act* 1936-1943, unless in fact it is paid or must be paid in order to discharge the liability; where the prima-facie liability to pay is off-set by the allowance of a rebate, nothing is either "paid" or "payable."

So *held* by *Dixon*, *McTiernan* and *Williams* JJ. (*Latham* C.J. and *Rich* J. dissenting).

CASE STATED.

On an appeal by the Carlton Brewery Ltd. to the High Court from an assessment to super-tax *Latham* C.J. stated for the consideration of the Full Court a case which was substantially as follows:—

1. The appellant is a company incorporated and carrying on business in the State of Victoria.

2. The appellant and the Victoria Brewery Pty. Ltd. (hereafter called the Victoria Company) hold large parcels of shares in the Carlton & United Breweries Ltd. (hereafter called the United Company).

3. The appellant holds 5994 shares of the 6,000 shares issued in the Victoria Company.

4. At all times material to this appeal the appellant the Victoria Company and the United Company were companies to which the

provisions of s. 6 of the *Income Tax Act* 1943 and of s. 46 (2A) of the *Income Tax Assessment Act* 1936-1943 relating to super-tax applied.

5. In the income year ended 30th June 1943 the United Company paid out of income on which super-tax was paid by it dividends amounting to £30,824 to the Victoria Company and £73,609 to the appellant.

6. The Victoria Company out of the income derived by it in the year ended 30th June 1943 (including the dividend of £30,824 received by it from the United Company) paid during that year to the appellant a dividend amounting to £34,350.

7. In its assessment for income tax for the financial year 1943-1944 upon its income for the year ended 30th June 1943 the Victoria Company was allowed a rebate under sub-ss. (2A) and (3) of s. 46 of the *Income Tax Assessment Act* 1936-1943 on the basis that the dividend of £30,824 received by it from the United Company was paid out of income on which super-tax had been paid or was payable by the United Company, the rebate being allowed on an amount of £26,715. In the assessment the taxable income of the Victoria Company for the year was assessed at £37,511, and after deducting therefrom :—

(*a*) an amount of £5,000 in accordance with s. 6 of the *Income Tax Act* 1943, and

(*b*) the amount of £26,715 on which the rebate was allowed, super-tax was assessed upon £5,796 only of the income of the Victoria Company.

8. In his assessment of the appellant for income tax for the financial year 1943-1944 the respondent assessed the appellant for super-tax upon its income for the year ended 30th June 1943 and allowed a rebate under sub-ss. (2A) and (3) of s. 46 on the basis that, of the dividend of £34,350 received by it as aforesaid from the Victoria Company, an amount of £5,805 (which should have been £5796, the difference of £9 having arisen out of the inadequacy of a percentage calculation employed in office procedure) and no more was a dividend or part of a dividend paid out of income on which super-tax had been paid or was payable by the Victoria Company.

9. The appellant contends that such portion of the dividend of £34,350 received by it from the Victoria Company as was paid out of the dividend received by the Victoria Company from the United Company was paid out of income on which super-tax had been paid or was payable by the Victoria Company, within the meaning of sub-s. (2A) of s. 46, and accordingly that it is entitled to a full rebate under the *Income Tax Assessment Act* 1936-1943 in respect of such

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portion of its income calculated in accordance with sub-ss. (2A) and (3) of s. 46.

10. The respondent on the other hand contends that super-tax had been paid or was payable by the Victoria Company, within the meaning of sub-s. (2A) of s. 46, on the amount of £5,796 only, and, accordingly, that the rebate to which the appellant was entitled under sub-s. (2A) should be calculated on the footing that £5,796 and no more was a dividend or part of a dividend paid out of income on which super-tax had been paid or was payable by the Victoria Company.

The questions for the consideration of the Full Court were as follows :—

(1) Was the respondent correct in allowing the appellant a rebate under sub-s. (2A) of s. 46 of the *Income Tax Assessment Act* 1936-1943 calculated on the footing that the amount of £5,796 and no more was a dividend or part of a dividend paid out of income on which super-tax had been paid or was payable by the Victoria Company ? or

(2) Is the appellant entitled to a rebate, calculated in accordance with sub-ss. (2A) and (3) of the said s. 46, on the footing that such part of the dividend received by it from the Victoria Company as was paid out of the excess of the taxable income of the Victoria Company over £5,000 was a dividend or part of a dividend paid out of income on which super-tax had been paid or was payable by the Victoria Company ?

Coppel K.C. (with him *Adam*), for the appellant. Super-tax was " payable," within the meaning of s. 46 (2A) of the *Income Tax Assessment Act*, by the Victoria Company on the amount of the dividend it received from the United Company notwithstanding that it was allowed a rebate. The *Income Tax Act* imposed a liability on the Victoria Company to pay super-tax on the amount of the dividend, which was part of its assessable income ; after its income had been assessed, the liability to super-tax was discharged by the allowance of a rebate. The word " payable " is apt to describe such a liability as well as one which can only be discharged by actual payment. The construction for which the Commissioner contends would produce absurd results in the incidence of the tax ; in a chain of companies, companies 1, 3 and so on would be allowed a rebate, whereas companies 2, 4 and so on would have to pay tax. Super-tax should be regarded as a liability imposed once only, that is, on the initial dividend-producing company.

Tait, K.C. (with him *Barber*), for the respondent. If s. 46 (2A) had intended what the appellant contends, it need not have said "has been paid or is payable"; the expression "is payable" would have been sufficient to cover all cases. The words should be given their ordinary meaning, which is "has been actually paid so that the liability is discharged or is an amount which must be paid as a matter of obligation." The same words are used in s. 159 (3) (*a*), where they clearly have this meaning. Both limbs of the phrase refer to the ultimate liability and do not apply to a case in which in the ultimate result there is no obligation to make a payment: Cf. *D. & W. Murray Ltd.* v. *Federal Commissioner of Taxation* (1). The legislation does not contemplate the making of a series of rebates in the case of a chain of companies as suggested by the appellant. [He referred to *W. & A. McArthur Ltd.* v. *Federal Commissioner of Taxation* (2).]

Coppel K.C., in reply.

Cur. adv. vult

May 5.

The following written judgments were delivered:—

LATHAM C.J. The *Income Tax Act* 1943, s. 6, contains the following provision:—"In addition to any income tax payable under the preceding provisions of this Act, there shall be payable upon the taxable income in excess of Five thousand pounds derived by a company a super-tax at the rate of twelve pence for every pound of that excess."

The *Income Tax Assessment Act* 1936-1943, s. 46 (2A) is as follows:—"Where a company . . . is liable to pay super-tax upon the excess of its taxable income over Five thousand pounds, and that taxable income includes a dividend or part of a dividend paid out of income on which super-tax has been paid or is payable by the company which paid the dividend, the first mentioned company shall be entitled to a rebate of an amount" ascertained in accordance with the provisions of the section.

Three companies, the Carlton and United Breweries Ltd. (which I call the United Company), the Victoria Brewery Pty. Ltd. (the Victoria Company) and Carlton Brewery Ltd. (the appellant company) were, in respect of the income year ended 30th June 1943, all companies which were liable to pay super-tax upon the excess of their taxable income over £5000.

The United Company paid super-tax upon its income. That company declared a dividend and paid the dividend to the Victoria

(1) (1927) 40 C.L.R. 148: See particularly p. 152. (2) (1930) 45 C.L.R. 1.

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Company. As the United Company had paid super-tax, the Victoria Company was allowed a rebate in accordance with s. 46 (2A) in respect of the dividend received from the United Company. The Victoria Company actually paid super-tax on a sum of £5796 in respect of which no rebate was claimable.

The appellant company held 5,994 shares out of the 6000 shares issued in the Victoria Company. The Victoria Company declared a dividend and paid it (out of the dividend received from the United Company) to the appellant company. The respondent Commissioner has allowed a rebate upon the sum of £5,796 upon which super-tax was actually paid by the Victoria Company but has declined to allow any rebate in respect of the balance of the dividend received from the Victoria Company on the ground that that company did not actually pay and was not liable actually to pay any super-tax in respect of that balance. The Commissioner contends that a rebate is allowable under the section only when a sum by way of super-tax has been actually paid or is actually payable by the company which has paid the dividend in respect of which a rebate is claimed by the recipient of the dividend. The appellant company, on the other hand, contends that a rebate should be allowed, not only where a sum by way of super-tax is actually paid or is actually payable, but also where there is what is claimed to be a liability to pay super-tax on the part of the dividend-paying company, which liability is adjusted or satisfied by the allowance of a rebate under the section.

The words "paid or . . . payable by the company" in s. 46 (2A) are, in my opinion, capable of either of the suggested meanings. That for which the Commissioner contends is the more simple of the two possible interpretations, but the adoption of this interpretation would produce strange results. I illustrate these results by considering the effect of the legislation (upon this interpretation) if the appellant company itself declared a dividend and paid it out of the income which the Commissioner contends is subject to super-tax, the recipient of the dividend being a company which itself was liable to pay super-tax. The position upon the Commissioner's interpretation of the words in question would then be as follows: — The United Company would pay super-tax on its income. The Victoria Company, receiving a dividend out of that income, would be entitled to a rebate in respect of that dividend and would not pay super-tax on the amount so received. But the appellant company, upon receiving a dividend out of the income of the Victoria Company in respect of which a rebate had been allowed, would (according to the contention of the Commissioner) be bound to pay super-tax,

receiving no rebate. If, however, the appellant company were to pay, out of the dividend received from the Victoria Company, a dividend to another company which was liable to pay super-tax, that company *would* receive a rebate. Thus, in a chain of companies, each alternate company would pay full super-tax and the other companies in the chain would not pay super-tax, but would receive rebates. There is no reason whatever in such a result.

These considerations suggest that the alternative interpretation should be accepted unless there are convincing considerations leading to an opposite conclusion.

Super-tax is imposed upon the income of the year in question by the 1943 Act, s. 6, which has already been quoted. This section provides that, in addition to any income tax payable under the preceding provisions of the Act, "there shall be payable upon the taxable income in excess of Five thousand pounds derived by a company a super-tax" at a rate specified. These words clearly provide that super-tax shall be payable upon a certain taxable income. When the conditions of the section are satisfied, this statute makes the tax *payable*. Another statute, the *Income Tax Assessment Act*, in s. 46 (2A), then comes into operation in relation to the tax which has been made payable by the *Income Tax Act*. This other statute provides that in the cases to which the section applies a company receiving a dividend shall be entitled to "a rebate of an amount." The concession is not described in words which create an exemption from tax, or even (as in s. 46 (1)) as a "rebate in its assessment." The assessment to super-tax under the *Income Tax Act* remains as an assessment even though s. 46 (2A) is applied. But the liability directly resulting from the assessment made in pursuance of the *Income Tax Act* is satisfied by rebate to the extent allowed in s. 46 (2A). Upon this view the whole amount of super-tax assessed against the Victoria Company was either actually "paid" (as to an amount of £5796) or was "payable" (in respect of the balance of the relevant income). The liability in respect of the balance was met by the allowance of a rebate. Thus the whole amount of super-tax assessable under the *Income Tax Act* 1943 in the case of the Victoria Company was either paid or payable by that company in the sense stated. This construction of s. 46 (2A) avoids the strange result which is the consequence of the opposing interpretation. It is open on the words of the section and, in my opinion, should be preferred to that for which the Commissioner contends.

Accordingly, in my opinion, the questions asked in the special case should be answered :—(1) No. (2) Yes.

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RICH J. This is an appeal by Carlton Brewery Ltd., to which I shall now refer as the Carlton Company, against a refusal by the Commissioner to allow it a rebate of super-tax in respect of certain dividends received by it from another company. The rebate is claimed by virtue of s. 46 (2A) of the *Income Tax Assessment Act* 1936-1943, which is in the following terms :—" Where a company, other than a company to which Division 8 of this Part applies, is liable to pay super-tax upon the excess of its taxable income over Five thousand pounds, and that taxable income includes a dividend or part of a dividend paid out of income on which super-tax has been paid or is payable by the company which paid the dividend, the first mentioned company shall be entitled to a rebate of an amount ascertained by applying the rate of super-tax payable by companies for the year of tax to an amount which bears the same proportion to the excess of the taxable income over Five thousand pounds as the dividend or part bears to the total taxable income."

There is a hierarchy of limited liability companies—in descending order, the United Company, the Victoria Company, and the Carlton Company. The Victoria Company holds shares in the United Company, and the Carlton Company holds shares (practically all the shares) in the Victoria Company. The United Company's income exceeded £5,000, and it paid super-tax on the excess. It paid a dividend to the Victoria Company out of the excess income on which it had paid super-tax. The Victoria Company's income in excess of £5,000 included this dividend and also a sum of £5,796. In respect of the dividend, the Victoria Company was allowed a rebate in accordance with s. 46 (2A) in the computation of the tax payable by it. But it had to pay super-tax on the £5,796, and no rebate was allowable in respect of this sum. The Victoria Company then proceeded to declare and pay a dividend, which went almost wholly to the Carlton Company, this dividend consisting in part of what the Victoria Company had received by way of dividend from the United Company and in part of the £5,796. The Commissioner, in assessing the Carlton Company, allowed a rebate in respect of the £5,796 on which the Victoria Company had paid super-tax, but refused to allow any rebate in respect of so much of the Carlton Company's income as consisted of dividends received by it from the Victoria Company out of dividends received by that company from the United Company, upon which the United Company had paid super-tax, and in respect of which the Victoria Company had received a rebate.

The question is whether the Carlton Company is entitled to a rebate in respect of the dividends derived from the moneys received by the Victoria Company from the United Company.

The Act provides for the payment by a taxpayer of income tax on his assessable income. But, in determining what income is assessable to tax, account must be taken of the facts that certain forms of income are exempt from income tax, and that, in determining what is taxable, certain deductions are allowable from the assessable income. Further, in determining how much tax is assessable, it is necessary to take into account also the fact that in respect of certain classes of income and outgoings, reductions called rebates are allowed when assessing the amount of the total tax which would otherwise be payable. The subject of rebates generally is dealt with in ss. 159 to 160 AM in a jungle of verbiage intelligible to the initiate. It is an overflow of this subject contained in s. 46 which has given rise to the present controversy.

The solution of the question raised by the appeal involves no great difficulty if regard is had to the meaning and operation of a provision for the allowance of a rebate in respect of a particular part of a person's income. Such a provision does not mean that the taxpayer is exempted from liability to be assessed for income tax on that part or to pay income tax on it. The part must be lumped in with the rest of his income, and income tax is assessed and payable on the whole including the part. The operation of the provision for a rebate is simply this, that because of the nature of the part a deduction, called a rebate, calculated on a prescribed basis, is made from the general tax payable on the whole income including the part. In the result, the amount of the tax payable on every part, including the part in respect of which the rebate is allowed, is somewhat reduced, but the tax continues to be payable on every part, though in a reduced amount.

In the present case, the Victoria Company had received, as part of its income in excess of £5,000, a dividend from the United Company, and in respect of this it was allowed a rebate of super-tax. The Victoria Company had further income in excess of £5,000 amounting to £5,796 in respect of which it was not entitled to rebate and on which it paid super-tax. The Carlton Company received from the Victoria Company a dividend paid by it out of the dividend received by it from the United Company and in respect of which the Victoria Company had been allowed a rebate, and it also received a dividend out of the £5,796. There is no dispute that the Carlton Company is entitled to a rebate of super-tax in respect of the £5,796 dividend. It is contended, however, that it is not entitled to a rebate in respect of what it received out of the dividend, because this represented money in respect of which the Victoria Company had itself received

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a rebate of super-tax. But this contention overlooks the fact that the allowance to the Victoria Company of this rebate did not exempt that company from liability to pay super-tax on the dividend received from the United Company. It left it liable to pay super-tax on that dividend just as on the rest of its income in excess of £5,000, although the super-tax payable on the whole of its income was somewhat reduced in amount.

For these reasons, I am of opinion that the questions should be answered favourably to the appellant.

DIXON J. The more material parts of sub-s. (2A) of s. 46 of the *Income Tax Assessment Act* provide that, where a company is liable to pay super-tax upon the excess of its taxable income over £5,000 and that taxable income includes a dividend or part of a dividend paid out of income on which super-tax has been paid or is payable by the company which paid the dividend, the first mentioned company shall be entitled to a rebate of an amount ascertained by applying the rate of super-tax to a given proportion of the excess of taxable income.

The appellant company fell within the condition expressed in the sub-section by the words "is liable to pay super-tax upon the excess of its taxable income over £5,000."

The next words in the sub-section were also satisfied, viz, "and that taxable income includes a dividend or part of a dividend." The company which paid the dividend is the Victoria Brewery Pty. Ltd., nearly all the shares in which are held by the appellant company. The income out of which the Victoria Brewery Pty. Ltd. paid the dividend was income on which, prima facie, that company was liable to pay super-tax. Such income consisted of or included dividends from the Carlton and United Breweries Ltd., in which the Victoria Brewery Pty. Ltd. is a shareholder, and the Carlton and United Breweries Ltd. had paid super-tax upon or in reference to the income out of which it paid the dividends. Accordingly to the extent of the proportion specified in sub-s. (2A) the prima facie liability of the Victoria Brewery Pty. Ltd. to super-tax was met by a rebate of an amount ascertained as prescribed by that sub-section.

Can it be correctly said that within the meaning of sub-s. (2A) this income out of which Victoria Brewery Pty. Ltd. paid the dividend it declared was "income on which super-tax has been paid or is payable by the company which paid the dividend"? If so, the appellant company in its turn is entitled to a rebate. The question in the case is whether it is so entitled.

A perusal of sub-s. (1) of s. 46 suggests that in the case of ordinary tax the legislature advisedly adopted the principle that, once profits had borne tax in the hands of a company, successive holding companies should each be entitled to a rebate if afterwards the profit in the guise of dividends passed into or through their coffers or accounts so that, but for the rebate, they would be liable to pay tax upon the dividends. It might be thought that the same policy would be applicable to super-tax. But sub-s. (2A) is cast in a form very different from that of sub-s. (1). The terms in which sub-s. (2A) are expressed appear to me incapable of a construction which would produce the same result. The words " on which super-tax has been paid or is payable by the company which paid the dividend " must refer to an alternative consisting, on the one hand, in a payment that has in fact been made in discharge of a liability or supposed liability for super-tax or, on the other hand, in the existence of a liability for super-tax which must be discharged by payment. It cannot refer to a merely prima facie presumptive or notional liability to super-tax, reduced, diminished or nullified by a rebate so that it never arises as an actual liability or indebtedness to the Crown. The operation of sub-s. (2A) is to bring into the calculation of super-tax a rebate which reduces, diminishes or nullifies what otherwise would be a liability to super-tax. The preliminary ascertainment of the super-tax which otherwise would be payable is only a step in the calculation of the ultimate liability. It creates no liability. It finds the prima-facie presumptive or notional liability which would arise, were there no rebate, but it does not impose that liability. A rebate is not a means of payment discharging a liability. It is an integer in the calculation of the liability reducing its amount or conceivably preventing its arising. It is true that in the initial words of sub-s. (2A) describing the situation in which a company needs a rebate, the expression used is " where a company is liable to pay super-tax." But it is apparent that no more is meant than " where, but for this sub-section, a company is liable to pay super-tax." The form of expression cannot carry the implication that a liability is actually brought into existence which is paid by means of the rebate or which may be properly described as super-tax payable though, because of the rebate, it need never be paid.

In my opinion the dividend paid by the Victoria Brewery Pty. Ltd. to the appellant company cannot be described as " paid out of income on which super-tax has been paid or is payable by the company which paid the dividend."

I think that the questions in the case stated should be answered :— (1) Yes. (2) No.

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McTIERNAN J. In my opinion the questions in the case stated should be answered :—(1) Yes. (2) No.

I agree with the construction which my brother *Dixon* has placed upon the words " income on which super-tax has been paid or is payable by the company which paid the dividend."

WILLIAMS J. Section 6 of the *Income Tax Act* 1943 provides that there shall be payable upon the taxable income in excess of £5,000 derived by a company, a super-tax at the rate of twelve pence for every pound of that excess. The Carlton and United Breweries Ltd. (hereafter called the United Company) is a company which became liable to pay super-tax under this section in respect of its taxable income derived during the year ended 30th June 1943. Two substantial shareholders in the United Company are the appellant (hereafter called the Carlton Company) and the Victoria Brewery Pty. Ltd. (hereafter called the Victoria Company). The Carlton Company holds 5,994 shares of the 6,000 shares issued in the Victoria Company. In the year of income ended 30th June 1943, the United Company paid out of income on which it paid super-tax dividends of £73,609 to the Carlton Company and £30,824 to the Victoria Company. During the same year the Victoria Company paid out of its income, including the dividend of £30,824, a dividend of £34,350 to the appellant.

The taxable income of the Victoria Company for the year of tax 1943-1944 based on income derived during the year ended 30th June 1943 was £37,511. Under s. 6 of the *Income Tax Act* this company became liable to pay super-tax on an income of £32,511. The taxable income of the Carlton Company for the same year of tax based on income derived during the year ended 30th June 1943 was £132,214. Under s. 6 of the *Income Tax Act* this company became liable to pay super-tax on an income of £127,214.

Section 46 (2A) of the *Income Tax Assessment Act* 1936-1943, so far as material, is in the following terms :—" Where a company . . . is liable to pay super-tax upon the excess of its taxable income over Five thousand pounds, and that taxable income includes a dividend or part of a dividend paid out of income on which super-tax has been paid or is payable by the company which paid the dividend, the first mentioned company shall be entitled to a rebate of an amount ascertained by applying the rate of super-tax) payable by companies for the year of tax to an amount which bears the same proportion to the excess of the taxable income over Five thousand pounds as the dividend or part bears to the total taxable income."

The respondent allowed the Victoria Company and the Carlton Company the rebate provided by this sub-section in respect of the dividends paid to them by the United Company. The dispute relates to the amount of rebate which the Commissioner should have allowed the Carlton Company upon that portion of the dividend paid to the Victoria Company by the United Company which formed part of the dividend paid to the Carlton Company by the Victoria Company. In the case of the Victoria Company s. 6 of the *Income Tax Act* imposed a super-tax at the rate of one shilling in the pound on the sum of £32,511, that is, £1,625 11s. But the dividend of £30,824 received from the United Company formed $30824 \times \frac{32511}{37511}$ of the £32,511, that is, £26,715. The respondent therefore allowed a rebate of one shilling in the pound on £26,715, that is, £1,335 15s. The super-tax payable by the Victoria Company was therefore the difference between the sums of £1,625 11s. and £1,335 15s., that is £289 16s. The £289 16s. represented super-tax at the rate of one shilling in the pound on £6,687, the balance of the taxable income of the Victoria Company multiplied by $\frac{32511,}{37511}$ that is the sum of £5,796. The respondent allowed the Carlton Company a rebate of one shilling in the pound under s. 46 (2A) on the portion of this sum of £5,796, that is $5796 \times \frac{127214}{132214}$ included in the excess of its taxable income over £5,000, but refused to allow the Carlton Company any rebate on the balance of the dividend of £34,350.

The crucial question is whether the Victoria Company paid or was liable to pay super-tax on that part of its taxable income in excess of £5,000 represented by the sum of £26,715. To obtain the benefit of s. 46 (2A) the income of the company liable to pay super-tax, in this case the Carlton Company, must include a dividend paid out of income on which super-tax has been paid or is payable by the company which paid the dividend, in this case the Victoria Company. It appears to me that the words "has been paid or is payable" were inserted in the sub-section so that the company which received the dividend would be entitled to the rebate whether the company which paid the dividend had at the time of payment been assessed for and paid super-tax, or had not been assessed but was liable to be assessed and to pay super-tax. The section provides that the rebate is to be an amount ascertained by applying the rate of super-tax payable by companies for the year of tax to an amount which bears the same proportion to the excess of the taxable income over £5,000

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Williams J.

as the dividend bears to the total taxable income. The year of tax means the financial year for which the tax is levied. The company which paid or was liable to pay the super-tax might not declare the dividend in the same year as the year of income in respect of which it was liable for the tax. It might declare the dividend in a subsequent year. The rate of super-tax in respect of income derived during the subsequent year might be more or less than the previous rate of super-tax. But the company which received the dividend would be entitled to a rebate at the same rate of super-tax as it was liable to pay in respect of the income derived during the subsequent year. The rebate is calculated upon a specific portion of the taxable income included in the excess of the taxable income over £5,000, and is at the same rate as the rate of super-tax on this excess in the year of tax. The effect of the rebate is therefore to cancel the super-tax on this specific portion of the excess taxable income so that the taxpayer does not pay and never becomes liable to pay super-tax on this portion. The Victoria Company was in this position with respect to the sum of £26,715. A condition precedent to the Carlton Company claiming a rebate on the portion of this sum, that is £26,715 x $\frac{127214}{132214}$, included in its taxable income in excess of £5,000 subject to super-tax, was not fulfilled, and it cannot therefore claim a rebate on this portion.

For these reasons I would answer the questions asked in the case stated :—(1) Yes. (2) No.

Questions in case answered :—(1) *Yes.* (2) *No.*
Appellant to pay respondent's costs of case.
Case remitted to Chief Justice.

Solicitors for the appellant : *Blake & Riggall.*

Solicitor for the respondent : *H. F. E. Whitlam,* Crown Solicitor for the Commonwealth.

E. F. H.