loss appropriation account attached to the balance sheet showed a deduction from the net profit for the year of the sum of £38,000 being " amount applied for and towards repayment of government loan ". Of this sum only £22,000 was in fact paid to the Government of Victoria during the year ending 31st October 1947. The balance of £16,000 was paid in September and October 1948.

In its return of income derived during the year ending 31st October 1947, the appellant claimed the sum of £38,000 as a deduction from its assessable income. On 12th April 1948 the respondent assessed the income tax payable by the appellant in respect of its income derived during this year but only allowed as a deduction the £22,000 and disallowed the £16,000.

The first question asked in the case stated is whether the resolution of the board of directors of 25th November 1947 and the proceedings at the subsequent general meeting were sufficient to be an application of the sum of £16,000 within the meaning of s. 120 (1) (*c*) of the Act. This question is obviously based upon the assumption that, to qualify as a deduction, the application of the money forming part of the assessable income must take place within the accounting period, the year of income. This assumption appears to be correct. The provision supposes that the assessable income is drawn upon for the purposes it specifies and for that reason a deduction of the amount so used should be allowed. An application made after the close of the accounting period, if otherwise it qualifies as a deduction, must form a deduction from the assessable income of the accounting period in which it is made. Difficulties may arise under par. (b) as a result of special appropriations of dividends out of accumulated funds, but probably it will be found in most cases that notwithstanding appropriations in accounts it can be reasonably said that the actual moneys distributed came out of assessable income of the current year. The second question asked is whether this sum of £16,000 should be allowed as a deduction for the year ending 31st October 1947. It is contended for the appellant that assessable income is applied for or towards repayment of a loan if the management of the company, usually the board of directors, resolves, as in the present case, that a sum of money shall be set apart and appropriated for this purpose in the books of the company. It is contended that such an appropriation must be sufficient because the application would naturally be made after the close of the financial year when the results of the trading were known, and that it would be sufficient if the appropriation was made and notified to the respondent either in the original return of income or in an amended return

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at any time prior to assessment. The words "for or towards" were relied upon as indicating that an application was intended to include something less than an actual payment or its equivalent.

This construction of s. 120 (1) (*c*) cannot be accepted. "Apply" is a word of many meanings. Its particular meaning in any given case must be derived from the context in which it is used. Here the assessable income has to be applied for or towards repayment of the debt and money could not be applied for or towards repayment of a debt unless the debt was in some way discharged or reduced.

In the present case the resolution of the board of directors of the appellant and the proceedings at the subsequent general meeting had no such operation. The resolution was at most an initial step. It was not even passed in the year of income ending 31st October 1947. If it had been it would not have been an effective application. The resolution did not reduce the amount of the debt. The debt was not reduced by £16,000 until September and October 1948.

Paragraphs (*a*) and (*b*) of sub-s. (1) of s. 120 are concerned with the actual distribution of rebates, bonuses, and dividends. To be allowable deductions in any year of income the rebates &c. must either be paid or become payable to the shareholders in that year. Short of this, it could not be said that there had been a distribution amongst the shareholders. Paragraph (*c*) embodies the same underlying principle. Obviously some other word than "distributed" had to be used. Probably "apply" was chosen because an expression such as "paid for or towards repayment" would have involved an awkward juxtaposition of "pay" and "repay". The words "for or towards" are not apt to make "apply" include any act short of an act which would have the effect of discharging the debt in whole or in part. The amount applied may be sufficient to repay the loan in full or it may only be sufficient to repay it in part. If it is sufficient to repay the loan in full it is applied for repayment. If it is not sufficient to repay the loan in full it is applied towards repayment.

Section 48 of the Act provides that in calculating the taxable income of a taxpayer, the total assessable income derived by him during the year of income shall be taken as a basis, and from it there shall be deducted all allowable deductions. Assessable income means all the amounts which under the provisions of the Act are included in the assessable income. Section 120 (1) does not require that some identifiable portion of the assessable income shall be used to pay the rebates &c. It simply makes the payments allowable deductions from the total assessable income of the year

in which they are made. They can be deducted from this income in calculating the taxable income in the same way as other allowable deductions.

For these reasons both questions asked in the case stated should be answered in the negative.

*Questions (a) and (b) answered "No".*
*Costs of the Case Stated to be dealt with by the judge disposing of the appeal.*

Solicitors for the appellant, *P. V. Feltham*, Shepparton, by *Rodda, Ballard & Vroland.*

Solicitor for the respondent, *D. D. Bell*, Crown Solicitor for the Commonwealth of Australia.

R. D. B.

[HIGH COURT OF AUSTRALIA.]

COOPER ENGINEERING COMPANY PROPRIETARY LIMITED . . . . } APPELLANT.
OPPONENT,

AND

SIGMUND PUMPS LIMITED . . . . RESPONDENT.
APPLICANT.

H. C. OF A. 1952.

MELBOURNE, *March* 7, 17.

Dixon, Williams and Kitto JJ.

*Trade Mark—Registration—Opposition proceedings—Similarity of trade marks in respect of goods of same description—Likelihood of deception—Trade Marks Act* 1905-1948 (*No.* 20 *of* 1905—*No.* 76 *of* 1948), *ss.* 25, 114.

S. applied for registration as the proprietor of a trade mark consisting of the word "Rainmaster" in respect of "water spraying installations for horticultural or agricultural purposes and parts thereof". C., who had been registered for some years as the proprietor of a trade mark consisting of the word "Rain King" in respect of the same type of goods, opposed the application.

*Held* that the word "Rainmaster" did not so resemble the word "Rain King" as to be likely to deceive.

APPEAL from the Registrar of Trade Marks.

On 7th March, 1947, Sigmund Pumps Limited of Gateshead, County Durham, England, applied, pursuant to the *Trade Marks Act* 1905-1936, to register the word "Rainmaster" as a trade mark in Class 7 in respect of "water spraying installations for horticultural or agricultural purposes and parts thereof". The application was opposed by Cooper Engineering Company Proprietary Limited, who were the proprietors of Australian Trade Mark No. 64099 in respect of the word "Rain King" in respect of "spray nozzles, sprinklers and their parts". The opponent contended that the word "Rainmaster" was so similar to the word "Rain King" that it was "likely to deceive" within the meaning of ss. 25 and 114 of the Act.

The Registrar of Trade Marks held that the applicant's specified goods were goods of the same description as those of the opponent