

N. R. Kapur - - - - - *Appellant*

v.

Murli Dhar Kapur and another - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT LAHORE

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 17TH MAY, 1944

Present at the Hearing :

LORD THANKERTON

LORD WRIGHT

SIR MADAHAVAN NAIR

[*Delivered by* LORD THANKERTON]

Their Lordships are of opinion that this appeal should not be allowed to proceed as not presenting, apart from one possible point which will be mentioned in a moment, proper subject matter for an appeal to His Majesty in Council.

In the first place, the point upon which a different argument might be suggested, is the point with reference to the outstandings, which is contained in reasons 2 and 3 of the appellant's case. In their Lordships' opinion the matter was rightly decided by the High Court, and there is no substance in the argument suggested to the contrary. It is a question of construction of the partnership deed, and the phraseology of article 10 of the partnership deed, in their Lordships' opinion, does not present any such difficulty as would admit a contrary view to the view expressed by the High Court.

The remaining three reasons upon which Mr. Rewcastle addressed their Lordships, were reasons 7, 8 and 9. In the opinion of their Lordships, all three are concerned with ordinary items of accounting in the taking of a partnership account and would fall under the principle laid down in the judgment delivered by Lord Romer in the case of **Lala Hakim Rai**, on the 22nd June, 1942, which is referred to in the practice note in 69 I.A., 172.

In the present appeal, their Lordships are unable to find, apart from the reason already dealt with, any question of principle whatever, and the items concerned in these three reasons are just ordinary items, questions as to the inclusion or exclusion of which are raised, in making up a partnership account on the dissolution of a partnership.

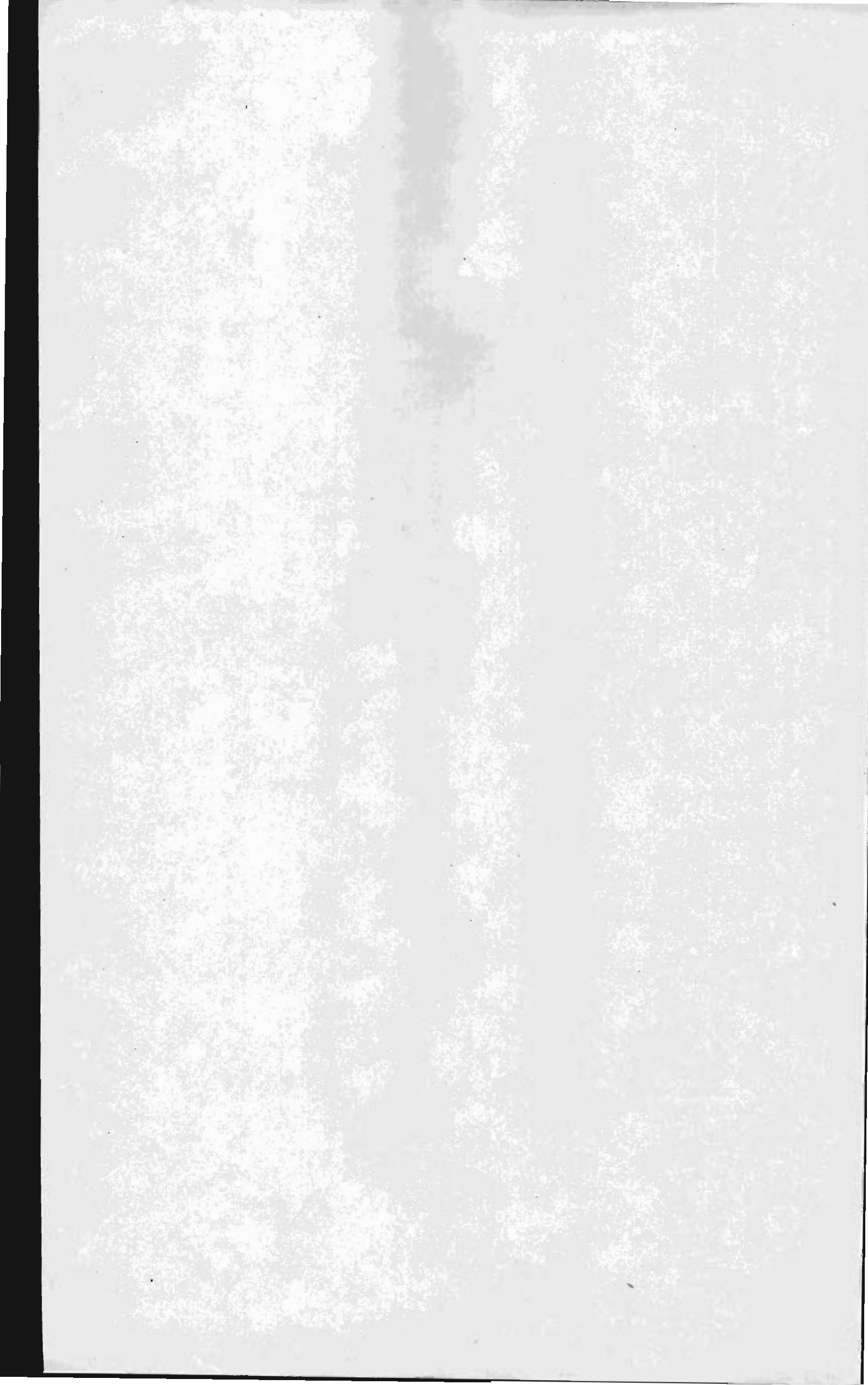
The first reason—reason 7—relates to four payments, made to members of the family of one of the partners, which were disallowed by the Subordinate Judge and were allowed by the High Court. This seems to be a pure question of fact and Mr. Rewcastle was prepared to admit that these were original liabilities of the firm; in any event, the Subordinate Judge's finding is very much vitiated by the fact that he has ignored the accounts of the firm, which was still running, in 1933, in which these are acknowledged as liabilities of the firm. That leaves the question whether in fact they had been discharged and if discharged by whom they had been discharged. There is no trace of any claim being made by the

original creditors on the ground that the debts are alive. In any event, that seems to be a pure question of fact and they are just the kind of items in an accounting, such as are covered by the decision of this Board in 1942.

The next reason is reason 8. That is the liability of one of the partners, other than the appellant, to account for a sum which admittedly he has collected from the debtors, the firm of Aux Elegantes. The amount is alleged to be 2,400 rupees which would benefit the particular appellant to the extent of 800 rupees. It is just a typical item in accounting, vizt., the liability of a partner to account to the firm, and in their Lordships' opinion is clearly covered by that previous decision.

That leaves reason 9, which came to very little, because Mr. Rewcastle agreed that sufficient provision is made in the judgment of the High Court on page 205, at line 20, for his taking credit for this debt in reduction of any sum, execution for which is sought to be enforced against him. In fact, under the decree of the High Court he had a decree pronounced against him for a sum of 22,000 rupees, so that there is ample from which to deduct the amount of this debt. It is clear that if, rather than have execution against him, he is ready to pay up under the decree, he would be entitled to have credit for this amount. Therefore, there seems to be nothing in that point at all.

For these reasons, their Lordships think that these questions are of the type which should not be entertained by their Lordships by way of appeal. Accordingly their Lordships will humbly advise His Majesty that this appeal should be dismissed with costs.



In the Privy Council

N. R. KAPUR

v.

MURLI DHAR KAPUR AND ANOTHER

DELIVERED BY LORD THANKERTON

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