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May 23.

SARDUL SINGH CAVEESHAR

v.

THE STATE OF BOMBAY

(and connected appeals)

(JAGANNADHADAS, B. P. SINHA and GAJENDRAGADKAR JJ.)

Evidence—Conspiracy—Criminal breach of trust—Proof of bogus character of transactions—Intention of accused—Evidence of criminal acts outside the period of conspiracy—Admissibility—Indian Evidence Act (I of 1872), ss. 10, 14.

A conspiracy to commit criminal breach of trust in respect of the funds of a company by utilising the same to purchase the controlling block of shares of the company itself for the benefit of the appellants was alleged to have been entered into between December 1, 1948, and January 31, 1949. It was the prosecution case that the *modus operandi* was to screen the ultilisation of these funds by showing them as having been advanced for legitimate purposes and invested on proper security but in fact utilising the same for payment to the appellants. One of the main issues was whether the loans by way of advance of the funds of the company on January 20, 1949, were genuine transactions or bogus or make-believe, and the question was whether the evidence relating to the further transactions entered into outside the period of the conspiracy in 1949 and 1950 with a view to the screening of the original transactions, was admissible in law.

Held : (1) In relation to the main purpose of the prosecution viz., proof of the bogus character of the transactions of January, 1949, the transactions of 1949 and 1950 entered into outside the period of conspiracy must, having regard to the ramifications, be taken to be integrally connected and relevant to make out their bogus character, though such evidence may necessitate reference to and narration of the acts of the conspirators beyond the period of conspiracy.

(2) The conduct of each individual co-conspirator including his acts, writings and statements irrespective of the time to which it relates can be relied on by the prosecution to show the criminality of the intention of the individual accused with reference to his proved participation in the alleged conspiracy to rebut a probable defence that the participation, though proved, was innocent. Such evidence is admissible under s. 14 of the Indian Evidence Act.

Makin v. *The Attorney General for New South Wales* L.R. (1894) A.C. 57, relied on.

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Per Jagannadhadas J.—Under s. 10 of the Indian Evidence Act the evidence of acts, statements or writings of a co-conspirator either under trial or not on trial but outside the period of conspiracy would not be admissible against the other conspirators in proof of the specific issue of the existence of the conspiracy on the authority of *Mirza Akbar* v. *The King Emperor*, (1940) L.R. 67 I.A. 336.

CRIMINAL APPELLATE JURISDICTION: Criminal Appeals Nos. 53 to 56 of 1957.

Appeals by special leave from the judgement and order dated November 21, 1956, of the Bombay High Court in Criminal Appeals Nos. 861-864 of 1956 arising out of the judgement and order dated June 1, 1956, of the Court of the Additional Sessions Judge for Greater Bombay at Bombay in Sessions Case No. 27/III Sessions 1955.

A. S. R. Chari and *M. S. K. Sastri*, for the appellants.

K. J. Khandalawala, Porus A. Mehta and *R. H. Dhebar*, for the respondent.

1957. May 23. The Judgement of the Court was delivered by

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JAGANNADHADAS J.—These are appeals by special leave by four persons, who along with one Ramniklal Keshavlal Jhaveri (since acquitted) were committed for trial in the Court of the Sessions Judge of Greater Bombay, on charges of conspiracy to commit criminal breach of trust of the funds of the Jupiter General Insurance Co. Ltd. (hereinafter referred to as the Jupiter) and in pursuance of the said conspiracy of having committed criminal breach of trust some of them being directors and agents of the said company. They were alternatively charged for commission of the offence of criminal breach of trust by some of them as directors and the others for abetting the commission of the criminal breach of trust committed by the directors. The trial before the Sessions Judge was with the aid of a jury. All of them except Jhaveri were found guilty, appellants in Criminal Appeals Nos. 53 and 54, Sardul Singh Caveeshar and Parmeshwar Nath Kaul, by a majority verdict and appellants in Criminal Appeals

Nos. 55 and 56, Vallabhdas Phulchand Mehta and Charucharan Guha, by an unanimous verdict. The verdicts of the jury were accepted by the Sessions Judge who sentenced the appellants as follows:

Appellant Sardul Singh Caveeshar to rigorous imprisonment for three years and a fine of Rs. 2,500.

Appellant Parmeshwar Nath Kaul to rigorous imprisonment for five years and a fine of Rs. 5,000.

Appellant Vallabhdas Phulchand Mehta to rigorous imprisonment for five years and a fine of Rs. 5,000.

Appellant Charucharan Guha to rigorous imprisonment for three years and a fine of Rs. 2,500.

The charge of conspiracy related to the period from December 1, 1948, to January 31, 1949, and comprised in all eight persons of whom two Lala Shankarlal Hiralal Bansal (hereinafter referred to as Lala Shankarlal) and Saubhagyachand Umedchand Doshi (hereinafter referred to as Doshi) died before the commencement of the trial. One Lala Ram Sharandas alias Ramsharan Lala Haricharan Mahajan (hereinafter referred to as Mahajan) was also a party to the conspiracy. But for some reason or other, the trial against him was separated. The persons who were on trial in the present case are the following.

1. Parmeshwar Nath Kaul, accused No. 1 and appellant in Criminal Appeal No. 54 of 1957 (hereinafter referred to as Kaul).

2. Vallabhdas Phulchand Mehta, accused No. 2 and appellant in Criminal Appeal No. 55 of 1957 (hereinafter referred to as Mehta).

3. Ramniklal Keshvlal Jhaveri, accused No. 3 and since acquitted by the Sessions Judge (hereinafter referred to as Jhaveri).

4. Charucharan Guha, accused No. 4 and appellant in Criminal Appeal No. 56 of 1957 (hereinafter referred to as Guha).

5. Sardul Singh Caveeshar, accused No. 5 and appellant in Criminal Appeal No. 53 of 1957 (hereinafter referred to as Caveeshar).

Lala Shankarlal, who was residing at No. 16, Bara Khamba Road, New Delhi, was the managing director

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of the Tropical Insurance Co. Ltd., New Delhi (hereinafter referred to as the Tropical). He was also a director of the Punjab Central Bank. He had also floated and was controlling a company called the Delhi Swadesi Co-operative Stores (hereinafter referred to as the Delhi Stores). He was also a leader of the Forward Bloc in the year 1948.

Accused No. 1, Kaul, is a barrister and was in Lahore till the partition of the country. In December, 1948, he was in Delhi.

Accused No. 2 Mehta, at all material times was the manager of the Bombay Office (General) of the Tropical.

Mahajan, at all material times was the secretary of the Tropical. He was also a director-in-charge of the Delhi Stores.

Accused No. 3, Jhaveri, was a Bombay solicitor and at all material times was carrying on his profession as a solicitor in Bombay.

Doshi was till his death, a solicitor in Bombay and was carrying on his profession as such.

Accused No. 4, Guha, was in December, 1948, an accountant of the Tropical.

Accused No. 5, Caveeshar, was the managing director of the Peoples Insurance Co. He was also the managing director of the New Hindustan Bank. He was for some time a member of the All India Congress Committee. He was also a leading member of the Forward Bloc.

The case for the prosecution is that Lala Shankarlal who was the brain behind the conspiracy and who at the time was the managing director and had the control of the Tropical, which by then was financially in a tottering condition, planned along with his confederates to obtain the control of the Jupiter, which at the time was in a sound financial position, by acquiring the controlling block of shares of the Jupiter and utilising the funds of the Jupiter itself for the acquisition of such shares.

By the date of the conspiracy the Jupiter had investments of the face value of Rs. two crores. It had

issued 1,24,966 ordinary shares of Rs. 100 each of which Rs. 15 per share was called up. It had also issued cumulative preference shares. Rai Bahadur Girdharilal Bajaj (hereinafter referred to as Bajaj) and Tulsiprasad Khaitan (hereinafter referred to as Khaitan) were at the time *i.e.*, in 1948, in control of the Jupiter. These persons owned through the New Prahlad Mills Ltd., the controlling block of shares of the Jupiter *i.e.*, about 63,000 shares of the Jupiter between themselves and their nominees. After negotiations, conducted first through certain persons called Mayadas and Chopra and then, through one Naurangrai, a bargain was settled with Khaitan for the purchase of this controlling block of shares at Rs. 53 per share for a sum of Rs. 33,39,000. Out of this amount a sum of Rs. 5,39,000 was to be paid over to Bajaj and Khaitan directly in cash and only Rs. 28,00,000 would be shown as the price for the purchase of the shares. The arrangement was that on receipt of the cash of Rs. 5,39,000 the management of the Jupiter was to be handed over to Lala Shankarlal and his group and that the balance of the money due of Rs. 28 lakhs was to be paid over to Khaitan on or before January 20, 1949. In default of such payment within the prescribed time, Lala Shankarlal, representing the Tropical, should pay to Khaitan a sum of Rs. 5 lakhs as damages for breach. In pursuance of this agreement Rs. 4,85,000 were paid over to Bajaj on or about December 29,1948, and a formal agreement dated December 29, 1948, was entered into, incorporating the above terms. On that very day Bajaj and other directors of Khaitan group held a meeting and allotted 1,250 shares straightaway to Lala Shankarlal and four of his nominees *viz.*, Kaul, Mehta, Jhaveri and Doshi, each 250 shares, as qualifying shares for each. They confirmed the transfer of these shares by a resolution and co-opted Lala Shankarlal, Kaul, Mehta, Jhaveri and Doshi as directors and themselves resigned their respective offices as directors. Thereafter Khaitan resigned his position as managing director of the Jupiter and at the same meeting, Lala Shankarlal was appointed in his place as the managing director of the Jupiter.

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The transfer of 61,750 shares for the sum of Rs. 28,15,000 to be paid to Bajaj and Khaitan before January 20, 1949, was brought about in the following way. At the meeting of some of the new directors of the Jupiter dated January 11, 1949, it was decided to sell the Jupiter's securities of the face value of Rs. 15 lakhs at the market rate and to obtain an overdraft accommodation for Rs. 14 lakhs with the Punjab National Bank on the pledge of the Government securities of the Jupiter. At the same meeting a loan of Rs. 25,15,000 purported to have been granted to Caveeshar by way of an equitable mortgage on an alleged application by him dated January 4, 1949, relating to his properties at Delhi sought to be given as security on the basis of an alleged valuation report of a firm of surveyors. There was another alleged resolution authorising the director for purchase of plots of Delhi Stores for Rs. 2,60,000. It may be mentioned that this Delhi Stores was under the control of Lala Shankarlal and, according to the prosecution, was a defunct organisation at the time. The plan envisaged by these resolutions was that cash was to be taken out from the Jupiter partly by sale of securities and partly by pledge of securities and that money was to be shown as having been a loan to Caveeshar on the security of his Delhi properties and a further amount as having been invested for the purchase of plots of the Delhi Stores. Lala Shankarlal was to receive these amounts on behalf of Caveeshar and the Delhi Stores, and pay over the cash that would thus come into his hands to Bajaj and Khaitan as per the agreement. This appears—according to the prosecution case—to have been actually done in the following way. The safe custody account of the entire holdings of the securities of the Jupiter with the Bank of India was closed by a resolution of the new directors of the Jupiter dated January 11, 1949, and these securities were taken over into the personal custody of Mehta. Thereafter securities of the value of Rs. 30 lakhs were offered for sale through a broker who ultimately could sell only shares of the value of Rs. 15 lakhs. For the remaining Rs. 15 lakhs an overdraft was raised with the Punjab

National Bank on the application of Lala Shankarlal and on the pledge of some of the Government securities of the Jupiter. The sale of securities realised Rs. 13,99,768 and on the pledge of securities a sum of Rs. 14,21,812 was obtained, making up a total of Rs. 28,21,580. Rs. 28,15,000 out of it was shown as having been received by the Bank of India and cridited in the cash-credit account of the New Prahlad Mills Ltd. It is thus that Khaitan received the balance of the money due under the agreement of December 29, 1948.

To prove this case a considerable body of prosecution evidence was given consisting of quite a large number of details. It is necessary to set out the salient features thereof in broad outline as alleged and sought to be proved by the prosecution. This may be dealt with conveniently with reference to three periods, the first comprising the period of conspiracy as mentioned in the charge *i.e.*, December 1, 1948, to January 31, 1949, the second, relating to the period from February 1, 1949, to the end of December, 1949, and the third, the period covering the year 1950.

First period : December 1, 1948 *to January* 31 1949.

The negotiations for the purchase of the controlling block of shares of the Jupiter were carried on from about December 10, 1948. From 10th to 20th the negotiations were through one Mayadas, introduced to Lala Shankarlal by one Chopra. Mayadas was given a letter of authority on December 15, 1948, by Lala Shankarlal, as the managing director of the Tropical, authorising him to buy for the Tropical the controlling block of shares of the Jupiter at the maximum rate of Rs. 49 per share with the promise of brokerage of Rs. 40,000 on completion of the transaction. Chopra also was acting with Mayadas as broker. These persons were dropped and the further negotiations from the 20th onwards were carried on through one Naurangrai known to Lala Shankarlal for about 40 years. Through him the purchase of the controlling block of shares numbering 63,000 was agreed to be purchased at Rs. 53 per share. The total purchase value was Rs. 33,39,000. Khaitan asked for advance payment of Rs. 5,39,000 in

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cash and intimated that agreement would be made mentioning only Rs. 28 lakhs as the purchase price. Naurangrai was placed in possession of funds of Rs. 5,39,000 on his executing a pro-note dated December 23, 1948, (Ex. Z-4) for the said amount in favour of the Tropical by two cheques signed by Lala Shankarlal, one for Rs. one lakh on December 22, 1948 (Ex. Z-1) and another for Rs. 4,39,000, dated December 23, 1948, (Ex. Z-3). These amounts were deposited by Naurangrai in his bank account with the Bikanir Bank at Delhi. On December 26, Lala Shankarlal and Naurangrai and Khaitan met at Bombay and further details were discussed on the 26th and 27th. Khaitan insisted on previous payment of Rs. 5,39,000. Lala Shankarlal asked for the list of securities and shares, the valuation report and the balance sheet of the Jupiter. Naurangrai returned back to Delhi, drew Rs. 5 lakhs by way of cash from his bank account and paid therefrom a sum of Rs. 4,85,000 to Bajaj at Ghaziabad. He came back to Bombay and informed Khaitan of the same. Thereupon the agreement, Ex. Z-171, was executed on December 29, 1948. The agreement was to the following effect. The Tropical was to pay the balance of Rs. 28,54,000 on or before January 20, 1949, and on such payment the Jupiter's shares numbering 63,000 were to be delivered over. The shareholder directors belonging to the Khaitan group should resign and nominees of the Tropical should be appointed as directors in their place. If the Tropical failed to pay within the stipulated time, a sum of Rs. 5 lakhs by way of damages was to be paid to Khaitan group and if the Khaitan group failed to carry out their obligations damages of Rs. 2 lakhs were to be paid. Subsequent to this agreement it was ascertained that Khaitan had agreed to pay Naurangrai a commission of Rs. 39,000. Lala Shankarlal undertook to pay the same and to that extent the amount payable by January 20; was understood to be reduced. Therefore, the sum payable under the agreement with the above adjustment was Rs. 28,15,000. The agreement was signed both by Khaitan on behalf of the New Prahlad Mills Ltd., which owned the controlling block

of shares of the Jupiter and Lala Shankarlal on behalf of the Tropical. On the very same date a meeting of the then Board of directors of the Jupiter was called. At this meeting 1,250 shares were transferred in the names of Lala Shankarlal, Kaul, Mehta, Jhaveri and Doshi, 250 shares for each, in order to qualify them for becoming directors. Transfer of these shares was confirmed by resolution. It is the prosecution case that for these transfers no money was paid by the transferees concerned. At that meeting the various persons who constituted the previous directors tendered their resignations in successive stages. At each stage the resignations were accepted by the rest of the pre-existing directors and new directors of Lala Shankerlal's group were co-opted. In the net result the entire Khaitan group of directors made way for the new Lala Shankarlal group of directors and Lala Shankarlal became the managing director. Thereafter there was the first meeting of the new directorate of the Jupiter on January 4, 1949. On that date Kaul was appointed director-in-charge. A new Life sub-committee consisting of Mehta, Jhaveri and Doshi was appointed as also a new finance sub-committee consisting of Lala Shankarlal, Kaul and Mehta, to review the investment position of the company and to invest the company's moneys upon such securities, shares and stocks, in such manner as the committee thought fit. A power of attorney was granted to Lala Shankarlal as the managing director. Kaul and Mehta were authorised individually to operate upon all the banking accounts in the name of the company with all the banks. Three policy-holder directors as also the general manager, Joel, resigned and their resignations were accepted. This was followed by another meeting of the new directorate on January 11. At that meeting the Board passed a number of resolutions about some of which there is considerable controversy and with reference to which there is the evidence of one Subramaniam for the prosecution. One of the undisputed resolutions of that meeting was to withdraw a letter written by the previous general-manager, Joel, dated January 3, 1949. By that letter (Ex. Z-30), Joel had written to the Bank

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of India, Safe Custody Department, instructing the bank that till further advice, they should not transfer any of the securities held by the bank on behalf of the company. On January 11, 1949, a copy of this resolution was sent to the bank under the signature of Mehta for their information. By another letter of the same date sent by the sub-manager, one Baxi, (Ex.Z-32) the bank was instructed to close the safe custody account and to hand over the entire holdings of the securities of the Jupiter to Mehta. Accordingly all the securities were brought into the office of the Jupiter and kept in a steel cupboard. Two of the disputed resolutions of January 11, were resolutions Nos. 7 and 8, one for sale of securities of the Jupiter of the face value of Rs. 15 lakhs at the market rate, and the other for an overdraft account of Rs. 14 lakhs with the Punjab National Bank on pledge of the Government securities of the Jupiter. After the entire shares and securities were withdrawn from the safe custody of the bank, Kaul contacted one Jagirdar, a sub-broker working in the firm of Messers. Harkisondas Laxmidas, share brokers, and authorised them by letter (Ex. Z-36) dated January 13, 1949, to sell three per cent conversion loan 1946 of the face value of Rs. 30 lakhs at the best market rate. The brokers sold on the 13th and 14th securities of the face value of Rs. 15 lakhs and told Kaul that the market was dropping and that further sale of those securities was not feasible. The sale of securities of the face value of Rs. 15 lakhs realised a sum of Rs. 13,99,788. Kaul, on behalf of the Jupiter, opened a current account on January 13, in the Punjab National Bank, Bombay. On the 15th, Kaul, on behalf of the Jupiter, sent two letters, one to the Punjab National Bank and another to the Bank of India, stating that they were forwarding per bearer Government securities of the face value of Rs. 14 lakhs and Rs. 1 lakh respectively and instructed those banks to deliver them to Messers. Harkisondas Laxmidas against payment and the proceeds to be credited to the account of the company. The above sale proceeds were accordingly paid into the respective banks and the securiti were deliver ed overto the respective parties on January 17

It is the prosecution case that meanwhile Lala Shankarlal approached the Punjab National Bank, Kashmere Gate Branch, Delhi, on January 17, 1949, for the purpose of raising a loan on Government promissory notes. He opened a cash-credit account on the pledge of securities of the face value of Rs. 15 lakhs and passed a promissory note in favour of the bank for the said amount. A loan of Rs. 14 lakhs was then granted and a demand draft dated January 17, for that amount in favour of the Jupiter on the Punjab National Bank, Currimjee House Branch, Bombay, was issued. A list of securities pledged with the bank for the purpose has been put in evidence. The demand draft was brought to Bombay and credited into the account of the Jupiter in the Currimjee House Branch of the Punjab National Bank at Bombay on January 18. Thus by the sale and the pledge of the Jupiter's own securities, a sum of Rs. 27,99,768 was raised and kept available for use. On January 19, Mehta wrote to the Punjab National Bank, Currimjee House Branch, Bombay, to pay a sum of Rs. 28,15,000 to the Bank of India where the New Prahlad Mills Ltd., (Khaitan) had got 61,394 Jupiter's shares lying in cash-credit account and to take delivery of those shares on behalf of the Tropical and to debit Rs. 28,15,000 from the Tropical account with them. On the same date, Mehta, wrote also to the Bank of India, requesting it to deliver 61,394 shares of the Jupiter to the Punjab National Bank, Currimjee House Branch, Bombay, with relevant transfer deed against payment of Rs. 28,15,000 with reference to Khaitan's earlier instructions to the Bank by his letter dated January 3, 1949 (Ex.Z-44). On the 19th, Mehta issued a cheque for Rs. 75,000 on the Indian Bank, Tropical account and deposited the same in the Punjab National Bank, Currimjee House Branch, Bombay, Jupiter account. This cheque was credited into that account on the 20th. On the same day, i.e. 19th, Mehta wrote a letter to the Punjab National Bank, Illaco House Branch, Bombay, in which the Jupiter had its account to transfer the account into the Punjab National Bank, Currimjee House Branch, where, on the 13th, Kaul

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opened a current account for the Jupiter. Now with this deposit the money to the credit of the Jupiter in the Punjab National Bank, Currimjee House Branch was Rs. 28,74,768. According to the prosecution it was in reality out of this amount that Khaitan was ultimately paid on January 20, by a cheque for Rs. 28,15,000 as against the transfer of the stipulated number of shares. It is the prosecution case that this payment was camouflaged by certain apparent intermediate transactions. The prosecution case relating to this may now be stated.

From January 18 to 20, 1949, five cheques were issued on the Jupiter account in the Punjab National Bank which were all deposited into the account of the Tropical in the Punjab National Bank as follows:

1. A cheque for Rs. 2,55,050, dated January 18, 1949, signed by Kaul on behalf of the Jupiter in favour of the Delhi Stores and endorsed in favour of the Tropical by Guha, purporting to the director of the Delhi Stores, which according to the prosecution, he was not. This was again endorsed by Mehta on behalf of the Tropical in order to put it into the Tropical account.

2. Two cheques dated January 19, 1949, for Rs. 14,36,000 and Rs. 1,42,450, on the Jupiter account of the Punjab National Bank in favour of the Tropical or order. These cheques are alleged to be written by Guha and signed by Kaul on behalf of the Jupiter, and endorsed on the reverse by Mehta on behalf of the Tropical for deposit in the Tropical account of the Punjab National Bank.

3. Two cheques dated January 20, 1949, for Rs. 8,96,000 and Rs, 36,000, on the Jupiter account of the Punjab National Bank in favour of the Tropical or bearer. Both the cheques were written by Guha and signed by Kaul on behalf of the Jupiter.

All these five cheques were deposited into the Tropical account of the Punjab National Bank by a pay-in-slip dated January 20, 1949, alleged to be in the handwriting of Guha and signed by him on the 19th. The total of these cheques comes to Rs. 27,65,700. As a result of

the previous instructions given on January 19, by Mehta, to the Punjab National Bank, the Bank paid on January 20, a sum of Rs. 28,15,000, from the Tropical account to the Bank of India and took delivery of 61,394 shares of the Jupiter from the Bank of India and the Punjab National Bank then held those shares for the Tropical in the Tropical account and Khaitan was paid on the last date stipulated. It would appear that including the 1,250 qualifying shares previously transferred, the shares transferred by Khaitan fell short of the 63,000 shares, by 356 shares, but the deficit appears to have been made up very shortly thereafter.

Now, according to the prosecution, this payment of the Jupiter's money for the purchase of the Jupiter's shares was by means of *ex facie* payment from funds of the Tropical in the Punjab National Bank which were brought up to the requisite level by the deposit of five cheques as specified above in relation to a scheme of camouflaged payment to be gathered from certain resolutions of the new directorate of the Jupiter as they now appear from its resolutions of January 11 and 20, 1949 and later confirmed on January 22. By resolution No. 5, as it now appears, a loan of Rs. 25,15,000 was granted to Caveeshar on his application dated January 4, and the valuation report of N. C. Kothari of Messers. Master Sathe and Bhuta, surveyors. This loan was on the equitable mortgage of Caveeshar's properties in Delhi, the conditions being, a marketable tile, period of loan three years, and other usual clauses in mortgage deeds. The resolution authorised Kaul to advance the above loan on the said terms and get all necessary documents executed and registered at Delhi during the course of next eleven months. Resolution No. 6 authorised the purchase of certain plots in Delhi said to belong to Delhi Stores for a sum of Rs. 2,60,000. On January 20, there was another meeting of the new directorate of the Jupiter at which the minutes of the meeting of January, 11, were read and adopted. Resolution No. 10 thereof confirmed the payment of Rs. 25,10,650 to Caveeshar on equitable

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mortgage of his properties as per the previous resolution No. 5 of January 11. Resolution No. 11 thereof confirmed the purchase of plots from the Delhi Stores and the payment of Rs. 2,55,050 therefor. Resolution No. 9 confirmed the sale of the Jupiter's securities of the face value of Rs. 15 lakhs and resolution No. 12 confirmed the pledge of the Jupitor's securities of the face value of Rs. 15 lakhs for cash credit account with the Punjab National Bank for Rs. 14 lakhs.

Now, on January 22, 1949, there purported to be, according to the prosecution case, a meeting of the Board of directors of the Tropical including Lala Shankarlal. Resolution No. 11 thereof confirmed the purchase of 63,000 shares of the Jupiter on behalf of the Tropical for Rs. 28,15,000. Resolution No. 12 thereof confirmed the transfer of 48,399 shares out of the above 63,000 shares to the Delhi Stores as agreed to by then. By resolution No. 13, sale of the head-office building of the Tropical and certain plots of land belonging to the Tropical to Caveeshar at Rs. 23,50,000 and Rs. 6,50,000 respectively as per agreement with Caveeshar by the managing director, Lala Shankarlal, on December 23, 1948, was confirmed. By resolution No. 14, plots of land and building in Chandni Chowk Delhi, sold by the managing director, Lala Shankarlal, at a cost of Rs. 2,60,000 to the Delhi Stores, was approved and confirmed. It is alleged that the resolutions of the Jupiter at the meetings dated 11th and 20th above noticed and of the Tropical dated the 22nd disclosed the scheme of camouflaging which has been resorted to, to screen the fact that the payment for the purchase of the Jupiter's shares was directly out of the Jupiter's amount.

This, according to the prosecution, indicates in its broad outline the manipulations resorted to for the above purposes. There is also evidence let in on behalf of the prosecution of a number of relevant details such as the presence or absence of the requisite entries and papers in the various books of account and other records of the concerned organisations, the Jupiter, the Tropical and the Delhi Stores. Evidence has also been given to show which of the accused was directly a

party to which of the various steps. Direct evidence of some of the ex-employees of the Jupiter, in particular of one Subramaniam and of another Rege, has, according to the prosecution, considerable bearing on the events that happened during this period, which would, if accepted, go to indicate the devious and dishonest basis of the above alleged manipulations. In addition to the above it would appear that some of the shareholders who came to know about these transactions sent notices through solicitors to the new directorate of the Jupiter and to some of the accused persons, in particular Lala Shankarlal and Kaul, individually warning them against the illegal and improper dealings with the funds of the company. It is also in evidence that two of the solicitors, Sethia and Joshi, filed a suit against the new directors on January 19, 1949, for an injunction restraining the directors from disposing of the Jupiter's securities so as to enable the Tropical to have the finances for the purchase of the controlling block of the Jupiter's shares. It is the suggestion of the defence that these notices were followed up by institution of a suit at the instance of Khaitan himself and that ultimately after the money was paid on the 20th within the time, they were dropped. Evidence has also been given for the prosecution about the financial condition and property holdings of the Tropical, of the Delhi Stores, as also of Caveeshar to show that none of them were in any such position as to justify the various transactions put through in their names. In particular, evidence has been given that Caveeshar had no such property as could possibly justify a loan of about Rs. 25 lakhs on his security and that the alleged valuation report was non-existent or bogus. Evidence was also given that the Delhi Stores was a defunct company whose only assets were (1) 39,750 shares of the Tropical of the book value of Rs. 10 per share which had no market quotation, (2) other shares of book value of Rs. 16,879, and (3) cash in the bank of Rs. 133-14-6, and (4) book debts of Rs. 93,40,414. As against these debts it is said that the Delhi Stores had liability to sundry creditors to the extent of Rs. 1,40,259-3-8. The above,

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in broad outline, is the nature of the evidence relating to the first period.

Second period: February 1, 1949, *to the end of December*, 1949.

Now, we may take up the evidence relating to the second period commencing from February, 1949, to the end of December, 1949. The background relating to this period, according to the prosecution is, that Lala Shankarlal and his other co-conspirators were fully aware of the necessity of showing the transactions of January, 1949, as no longer outstanding as early as possible, so as to escape direct scrutiny thereinto by the end of the calendar year and it is said that therefore they made some further manipulations with a view to show the moneys advanced to Caveeshar and the Delhi Stores as having been returned before the end of the year. The events which led up to this may now be noticed. On May 25, 1949, there was a meeting of the new directorate of the Jupiter at which Lala Shankarlal informed the directors that Caveeshar was repaying his loan of Rs. 25 lakhs and odd and out of that amount a sum of Rs. 14 lakhs might be invested in purchasing 40,000 shares of the Tropical and Rs. 11 lakhs on the equitable mortgage of the Tropical's head-office building. Ultimately, however, this contemplated loan of Rs. 11 lakhs to the Tropical on the equitable mortgage of its head-office building did not materialise for one reason or other. Thereafter, according to the prosecution, there were brought into existence, five transactions, from May 25 to December 31, 1949, which have been referred to in the evidence as follows:

	Rs.
1. Raghavji loan (5-11-1949) which resulted in repayment of	4,00,000
2. Fresh Caveeshar loan (5-11-1949) which resulted in repayment of	5,30,000
3. Misri Devi loan (20-12-1949) which resulted in repayment of	1,00,000
4. Purchase of 54,000 Tropical shares (25-5-1949 to 20-12-1949) which resulted in repayment of	14,00,000

5. Transfer of Caveeshar from the Tropical to Jupiter account of balance (31-12-1949) which resulted in repayment of	80,650
Total ..	25,10,650

In order to appreciate these transactions, it is necessary to set out a few more details. Raghavji's son, Chandrakant, was a member of the Forward Bloc, of which Lala Shankarlal was one of the leaders. Chandrakant had close political associations with Lala Shankarlal. Raghavji was a gentleman about 80 years old and a resident of Cutch and had a few properties at that place. According to the prosecution, Chandrakant was persuaded to permit his father's name to be used for the purpose of advancing some moneys on the footing of an equitable mortgage by deposit of title deeds of his father's property in Cutch. At a meeting of the Jupiter's directorate dated November 5, 1949, a loan for Rs. 5 lakhs on the equitable mortgage of Raghavji's properties was sanctioned subject to valuation report and certain terms and conditions specified therein. Notwithstanding that the loan was to be advanced on proper valuation report and other terms, it is the prosecution case and evidence, that this sum of Rs. 5 lakhs was disbursed as follows: Rs. 3 lakhs in cash from the Jupiter's funds and Rs. 2 lakhs as having been received back from Caveeshar and paid over in cash to Raghavji. The payment of these Rs. 2 lakhs was really by book adjustment showing Rs. 2 lakhs as having been paid by the Tropical to Caveeshar out of the moneys of Caveeshar with the Tropical and this amount as having been paid into the Jupiter's account by Caveeshar and paid again out of it to Raghavji. Out of the other Rs. 3 lakhs taken in cash from the Jupiter, Rs. 2 lakhs it is said was not paid to Chandrakant but was shown as having been paid by Caveeshar into the Jupiter's account in reduction of the debt owing from him to the Jupiter. The net result of these adjustments was that Rs. 4 lakhs out of the Caveeshar loan with the Jupiter was shown as reduced. What

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became of the other Rs. one lakh is not quite clear. The next transaction is Caveeshar's fresh loan. At the same meeting of the Board of directors of the Jupiter dated November 5, 1949, where as Raghavji's loan for Rs.5 lakhs was sanctioned, a further loan of Rs.5,30,000 was authorised to be advanced to Caveeshar against pledge of shares of the People's Insurance Co., the period of repayment being mentioned as two years. This transaction merely meant a book adjustment reducing the loan outstanding against Caveeshar and a fresh loan to that extent on a different security. This transaction further reduced the original indebtedness of Caveeshar to the Jupiter by this amount. The third item is the Misri Devi loan. At a meeting of the Board of directors of the Jupiter dated December 20, 1949, an application for loan of Rs. 5 lakhs from Misri Devi shown as the daughter of Lala Dwarka Das (though she was also the wife of Lala Shankarlal) was said to have been considered and a loan in her favour for Rs. 5 lakhs on the security of her property in New Delhi was sanctioned subject to marketable title, period of three years, and other usual clauses. In anticipation of having to advance this loan a sum of Rs. 2 lakhs appears to have been sent on November 22, 1949, by Kaul, from the Jupiter's account in the Punjab National Bank, Bombay, to its account at Delhi. Again on December 27, 1949, Kaul appears to have sent a further sum of Rs. 2 lakhs from the Jupiter's account in the Punjab National Bank, Bombay, to its account at Delhi, by telegraphic transfer. Towards this loan a cheque on the Jupiter's account with the Punjab National Bank at Delhi for Rs. 4 lakhs payable to self or bearer was given and a sum of Rs. one lakh was shown as having been received by the Jupiter from Caveeshar through his Tropical account and shown as paid to Misri Devi. This reduced the Caveeshar loan due to the Jupiter by another Rs. one lakh. At the same meeting of December 20, a resolution was placed on record showing that at the instance of Lala Shankarlal, a bargain was arranged on behalf of the Jupiter for purchase of 54,000 shares of the Tropical instead of 40,000 shares as previously contemplated in the resolution of the

directors dated May 25, 1949, for the sum of Rs. 14 lakhs and purchase on this footing was confirmed. The payment of Rs. 14 lakhs by the Jupiter to the Tropical was adjusted by showing the Tropical as having paid Rs. 14 lakhs to Caveeshar and Caveeshar as having paid back to the Jupiter a sum of Rs. 14 lakhs out of the original loan of Rs. 25 lakhs and odd. Thus in all, by these four transactions the original Caveeshar's loan on the security of the alleged properties of Caveeshar was reduced by Rs. 24,30,000 leaving a balance of Rs. 80,650. This amount was adjusted by book entries on December 31, showing a transfer of the said amount from his Tropical account towards credit of the Jupiter account. Thus, by December 31, 1949, the entire amount of Rs. 25 lakhs and odd advanced to Caveeshar in January, 1949, on the security of his properties in Delhi was shown as having been wiped out leaving a fresh loan against him on November 5, 1949, for a sum of Rs. 5,30,000 on the security of the shares of the Peoples Insurance Co.

It may be recalled here that for the payment of Rs. 28,15,000 to Khaitan on January 20, 1949, the original source of cash, according to the prosecution case, was the sum of Rs. 25,15,000 granted by way of loan to Caveeshar and Rs. 2,60,000 paid to the Delhi Stores for purchase of plots of the Delhi Stores. Out of this the original Caveeshar loan was, by the end of 1949, shown as having been completely wiped out as above stated. So far as the purchase of plots of the Delhi Stores is concerned, it would appear that though in fact the Delhi Stores had no such plots to sell, this transaction was shown as put through in the following way. The resolution of the Board of directors of the Tropical dated January 22, 1949, showed certain plots of land and the building in Chandni Chowk, Delhi, belonging to the Tropical, as having been sold to the Delhi Stores for the price of Rs. 2,60,000. Putting these two resolutions together, it would appear that the drawing out of Rs. 2,60,000 from the Jupiter's funds by virtue of the relevent resolution dated January 11, 1949, was substantially the payment

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of Rs. 2,60,000 by the Jupiter for the alleged purchase of plots of land and building in Chandni Chowk which belonged to the Tropical. It does not appear that in its ultimate effect this transaction invited serious scrutiny and comment and there is nothing on the record to show that any further attempt was made to camouflage this transaction by fresh transactions.

Now in addition to these transactions during this second period there is the evidence given by the prosecution of a number of other details during this period. Of these the most important is that which relates to a notice sent on May 13, 1949, by an ex-employee of the Jupiter, Rege, through solicitors to Lala Shankarlal and Kaul, alleging fraud in respect of purchase of 63,000 Jupiter's shares from Khaitan. This was followed up by him by a misfeasance petition dated August 10, 1949, in the High Court of Bombay against all the directors of the Jupiter, and this in its turn led, according to the prosecution, to certain intimidating actions against Rege said to have been taken by Lala Shankarlal, Kaul and Mehta, as a result of which Rege, it is said, was coerced into withdrawing his petition followed by the ultimate dismissal of that petition by order dated September 15, 1949. During this period there were also acute differences between the directors on one side and the brokers, Chopra and Mayadas, on the other for the brokerage of Rs. 40,000 to which, according to them, they were entitled for the original negotiations carried out through them with the Khaitan group for purchase of the controlling block of the Jupiter's shares. It is also said that during this period various ante-dated entries, vouchers and other documents were brought into existence in order to show an appearance of regularity with reference to the transactions during the period of conspiracy in December, 1948, and January, 1949. There are also certain letters of this period found or seized from the office of the Tropical of the dates of August 10, December 21 and 22, 1949, purporting to have been written, the first by Kaul to Lala Shankarlal and the second and third by Guha to Lala Shankarlal. These letters, if true,

are revealing, but are of course evidence only against themselves. It is of some importance for the prosecution case against Caveeshar to notice that there are also two letters of this period alleged to be from Caveeshar to Chopra dated March 17 and 30, 1949, the first authorising Chopra to arrange for negotiations to purchase the controlling block of shares of the Empire of India Life Assurance Co. Ltd. and the second offering to bring about a settlement in connection with the claim by Chopra and Mayadas for commission relating to the purchase of the Jupiter's shares.

Third period : During the year 1950.

The events of the third period as alleged by the prosecution and in respect of which the prosecution has given evidence may now be stated. The main argument on behalf of the appellants before us relates to the admissibility of the evidence relating to this period. The background for the events of this period was—according to the prosecution—the situation that arose from the strong attitude taken by the auditors in the course of their audit of the affairs of the Jupiter for the year 1949, which was taken up at the commencement of 1950. The transactions of the Jupiter during the year 1949 which came under their scrutiny are said to have aroused their concern and this led them to probe into the circumstances relating to the original Caveeshar loan in January, 1949, to the tune of Rs. 25,10,650. On January 6, 1950, the auditors sent a letter to the Jupiter demanding inspection of the documents relating to the said loan of Caveeshar. This was followed up by a further letter dated February 6, from the auditors requesting for production of the copy of the mortgage deed, valuation report and all other documents and papers relating to this Caveeshar loan as also for the inspection of papers and documents relating to (1) Raghavji loan, (2) Fresh Caveeshar loan, (3) Misri Devi loan, and (4) purchase of 54,000 Tropical shares for Rs. 14 lakhs. In that letter of February 6, the auditors stated as follows :

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"We consider the above transactions mostly unconscionable and we fail to understand how any responsible management could sell Government securities and invest the proceeds in a huge lot of shares in Tropical Insurance Co. Ltd. and large advances on shares of Peoples Insurance Co. Ltd., loans on properties in Cutch etc. We do not see the basis on which nearly Rs. 26 per share of Rs. 10 was paid for purchase of Tropical Insurance Company's shares. We consider the position extremely serious and shall therefore thank you to immediately send a copy of this report to the Superintendent of Insurance and also appraise the shareholders of the contents of this report forthwith."

No reply thereto having been received, the auditors sent a copy of their letter of February 6, to each of the directors of the Jupiter individually with a forwarding letter on February 14, 1950. The next five months were taken up—according to the prosecution —in the attempt of the directors of the Jupiter to put off or to evade the auditors by involving them in a good deal of correspondence, oral explanations, personal meetings, and so forth but without the production of the various documents called for excepting only a few. This resulted in a letter from the auditors to the Jupiter dated July 24, 1950, enclosing their draft report to the shareholders setting out their criticisms of the transactions of the directors for the year 1949, and stating that only a cancelled pronote of Caveeshar and a receipt by him were shown to them in respect of the mortgage loan of Rs. 25,10,650 to Caveeshar. This, according to the prosecution, was followed up by feverish activities of the directors to bring about the screening by repayment, of the transactions from May to December, 1949, *viz.*, (1) Caveeshar fresh loan, (2) Raghavji loan, (3) Misri Devi loan and (4) purchase of the Tropical shares.

Repayment of Caveeshar fresh loan of Rs. 5,30,000 to the Jupiter, was done by raising money by sale of the Tropical securities and paying that money to the Jupiter in discharge of Caveeshar's fresh loan. It appears that the Tropical securities of the face value of

Rs. 6 lakhs were pledged with the Grindlays Bank, New Delhi, for an overdraft account of the Tropical. It is said that these Tropical securities were got released from the Grindlays Bank by substituting for them the Jupiter's securities of the face value of Rs. 5,30,000. The prosecution case is that Kaul, lifted these Jupiter's securities and gave them to Mehta and that Mehta flew to Delhi, handed over these securities to the Grindlays Bank (presumably as belonging to the Tropical) and got released the previously pledged Tropical securities. The Tropical securities so released appear to have been sold on September 12, 1950, and to have realised Rs. 5,01,592-1-2. That amount is said to have been deposited in the Tropical account with the Indian Bank. On September 14, Mehta is said to have drawn a cheque for Rs. 5,30,000 on the Indian Bank in favour of the Jupiter and sent it with a covering letter to the Jupiter stating that it was repayment by Caveeshar of his loan of Rs. 5,30,000 which had been given to him by the Jupiter as per the Jupiter's resolution dated November 5, 1949. The necessary book entries are said to have been made, and a receipt for Rs. 5,30,000 is said to have been sent to Caveeshar. On October 27, 1950, Mehta is said to have brought a sum of Rs. 17,158-12-0 in cash to the room of Kaul in the Jupiter's office and to have paid in cash to the accountant of the Jupiter in the presence of Kaul and Guha. This amount was credited on that date in the Jupiter's account as payment of interest due on the two loans to the Jupiter by Caveeshar. Thus the further Caveeshar's loan was shown to have been completely repaid with interest by entries in the Jupiter's books dated September 14 and October 27, 1950. This was followed up by the inclusion of narration in the report of the Jupiter for the year 1949 that the loans advanced to Caveeshar with interest thereon were fully paid back to the Jupiter and that all documents pertaining to the said loans were returned to Caveeshar.

The further adjustments for repayment of Raghavji loan and Misri Devi loan and in respect of the purchase of 54,000 Tropical shares by the Jupiter in December, 1949, are said to be connected with the attempts

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of the accused to acquire the controlling block of shares of the Empire of India Life Assurance Co., Ltd. (hereinafter referred to as the Empire of India) in order to utilise the funds thereof for these adjustments. The details of how the controlling block of shares of that Company were negotiated for and acquired are not necessary to be gone into in detail for the purposes of this case and the same may be mentioned in broad outline.

It is part of the prosecution case that anticipating the trouble that was likely to arise from the transactions of 1948 and 1949 with the auditors, Lala Shankarlal and other directors conceived an idea as early as in March and May, 1949, to purchase the controlling block of shares of the Empire of India from one Ramratan Gupta. There appear to have been some unfruitful negotiations in this behalf for nearly a year, But finally by October 5, 1950, an agreement was executed under which a sum of Rs. 10 lakhs was to be paid in advance to Ramratan Gupta and another sum of Rs. 33 lakhs and odd within thirty days thereafter and the controlling block of shares of the Empire of India of 2,618 were to be handed over to one Damodar Swarup Seth, a nominee of Lala Shankarlal. The amount of Rs. 43 lakhs and odd is said to have been paid up by means of a number of cheques as follows:

	Rs.
I. On October 5, 1950—	
(*i*) Cheque by Damodar Swarup Seth (Ex. Z-10) for	8,00,000
(*ii*) Cheque by Bhudev Sanghi in favour of Damodar Swarup Seth (Ex. Z-II) for	2,00,000
Total of I ..	10,00,000

II. On October 16, 1950, six cheques by Damodar Swarup Seth in favour of—

	Rs.
(*i*) Reyer Mills Ltd. for	10,55,844
(*ii*) Laxmi Ratan Cotton Mills for	8,06,895

(*iii*) Premkumar Gupta for	6,71,787
(*iv*) Stores India Ltd. for	36,799
(*v*) Gulabachand Jain for	97,500
(*vi*) Biharilal Ramcharan for	5,04,072
III. On October 27, 1950—	
(*i*) Cheque by Damodar Swarup Seth (Ex. Z-13) for	2,08,650
Total of II & III ..	33,81,547

The total of the first two cheques is Rs. 10 lakhs which was paid as advance. The total of the remaining seven cheques comes to Rs. 33,81,547 which was shown as consideration for the purchase of 2,618 shares of the Empire of India. Thus, on the payment of Rs. 31,72,897 on October 16, 1950, by means of the six cheques above mentioned, the controlling block of 2,618 shares of the Empire of India was handed over to Damodar Swarup Seth. It is the case of the prosecution that Damodar Swarup Seth was able to draw these various cheques of the total value of over Rs. 43½ lakhs because certain securities of the Jupiter set out in Ex. Z-47 of the face value of Rs. 48,75,000 were withdrawn from the Jupiter in pursuance of letters written by Kaul and Guha and lifted away and handed over without due authority to Damodar Swarup Seth who opened a cash credit account with the Punjab National Bank on the strength of those securities.

Having thus secured the controlling block of shares of the Empire of India in October, 1950, it is the prosecution case that hurried steps were taken to show, that the Raghavji loan and Misri Devi loan advanced by the Jupiter towards the end of 1949 were paid back with interest to the Jupiter in cash, and that the Tropical shares which were shown as having been purchased by the Jupiter in 1949 were sold away and realised the cash for which they were purchased. On October 17, 1950, the day next after the purchase of the controlling block of shares of the Empire of India, one Roshanlal Kohli, a broker, is said to have offered to the Empire of India to sell from the

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Jupiter its securities of the face value of Rs. 20 lakhs. On October 19, 1950, Roshanlal Kohli, purporting to act for the Jupiter wrote to the Empire of India that for the purchase an advance payment of Rs. 20 lakhs is to be made. This was followed by a reply from the Empire of India agreeing to the same and an actual payment of the amount by two bearer cheques issued, by the Empire of India, one for Rs. 15 lakhs dated October 26, 1950, and the other for Rs. 5 lakhs dated October 27, 1950. No entry is said to have been made in the Jupiter's records as to the receipt of this amount though an entry of such payment was made in the records of the Empire of India. But it is said that this amount of Rs. 20 lakhs was utilised for adjusting the Raghavji loan as well as the purchase of the Tropical shares by the Jupiter. It is the prosecution evidence that Rs. 14 lakhs out of Rs. 15 lakhs obtained on the bearer cheque of October 26 was paid in cash into the Jupiter account with the Punjab National Bank, Bombay, on October 26 itself showing the same as the sale proceeds of 54,000 Tropical shares which the auditors had objected to as being an unconscionable investment. The actual payment was made into the Jupiter account of the Punjab National Bank, Bombay, by one Bhagwan Swarup and another Bhudev Sanghi. A letter was obtained, signed by Bhudev Sanghi (a nephew of Lala Shankarlal) (Ex. Z-152) that 54,000 Tropical shares belonging to the Jupiter were sold by him as a broker, and that the sale proceeds thereof were credited that day into the account of the Jupiter in the Punjab National Bank at Bombay and the corresponding entries were made in the investment register of the Jupiter. It is said that notwithstanding this transaction the Tropical shares remained in the safe custody account of the Jupiter in the Bank of India right up to January 2, 1951, when on receipt of a letter dated January 2, 1951 (Ex. Z-293) by Kaul to the Bank of India, they delivered all his shares. These Tropical shares appear to have been delivered over to a clerk of the Jupiter and handed over by him to Guha. It is said that these shares are now no longer traceable. The other

bearer cheque for Rs. 5 lakhs drawn from the funds of the Empire of Iudia, it is said, came into the Jupiter account as follows and purported to be repayment of Raghavji loan. A sum of Rs. 5,18,388-14-3 was put in cash on October 27, 1950, into the Comilla Bank purporting to show it as sent by Raghavji in repayment of the mortgage loan taken by him from the Jupiter with interest thereon. There is a receipt issued by Kaul to Chandrakant, son of Raghavji, showing that Rs. 5,18,388-14-3 was received in full repayment of the mortgage loan. An entry was also made in the Jupiter's cash book that interest was paid up-to-date.

With regard to the repayment of Misri Devi loan in the books of the Jupiter there is an entry dated October 7, 1950, showing a sum of Rs. 1,25,000 as withdrawn from the Imperial Bank. On the same date there is another entry showing a sum of Rs. 4,25,000 as withdrawn from the Bank of India, Bombay. On that very day, i.e., October 7, two cheques totalling Rs. 5,50,000 were deposited with the Punjab National Bank, Bombay. Kaul purported to send a letter to Lala Shankarlal informing him that the amount of Rs. 5,50,000 was being sent for the purchase of land and building belonging to Sir Sobha Singh. The Punjab National Bank, Bombay, was instructed to transfer the above mentioned sum to their branch at Tropical Building at Delhi to the credit of the account of the Jupiter. All this was done between October 7 and 10. On October 10, a memo was received from the Punjab National Bank, Tropical Building, Delhi, informing that the sum of Rs. 5,50,000 had been received by them. The next day, i.e., on October 11, a cheque for Rs. 5,50,000 was drawn on that Bank by Lala Shankarlal in his capacity as the managing director of the Jupiter. On the reverse of this cheque an endorsement was made by Lala Shankarlal. It is the suggestion of the prosecution that cash was obtained on it and that a demand draft for the said amount was obtained from the Grindlays Bank in favour of the Jupiter on behalf of Misri Devi (wife of Lala Shankarlal) on October 12. This draft was signed on the reverse by Kaul. It was

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received in Bombay and was deposited in the Jupiter's account in the Bank of India. Misri Devi loan was for Rs. 5 lakhs and a sum of Rs. 18,062-8-0 was by then due as interest thereupon. On October 16, entries were made in the cash book of the Jupiter showing that the loan of Misri Devi for Rs. 5 lakhs with interest was recovered. The excess payment of Rs. 31,937-8-0 was shown in the first instance as credited to suspense account and thereafter as having been refunded to Misri Devi on October 18. Thus the Misri Devi loan was shown in the books as having been also completely repaid.

Thus by these various adjustments and manipulations, the four transactions, *viz.*, (1) Caveeshar fresh loan on the security of the People's Insurance Company's securities, (2) Raghavji's loan on the security of his properties in Cutch, (3) Misri Devi's loan on the security of her building in New Delhi, and (4) purchase of 54,000 Tropical shares by the Jupiter, which were all strongly objected to along with the original Caveeshar loan of Rs. 25 lakhs and odd, were shown as realised back in actual cash by October 27, 1950. A letter was then written by the solicitors of the Jupiter under instructions of Kaul to the auditors to attend on October 28, 1950, at the office of the Jupiter and to verify the accounts and moneys received from the repayments of the loans and from the sale of the Tropical shares. On October 29, the auditors went to the office of the Jupiter and verified the same and were satisfied that the moneys were received. The repayment of these various loans and the sale of the Tropical shares shown as having been realised in actual cash would of course also clear up the objections which the auditors raised as regards the original Caveeshar loan on account of the requisite papers relating thereto not being forthcoming. The auditors, having thus been satisfied, signed the audit certificate and the report of the Jupiter for the year ending 1949, and appended a note that they had objected to certain loans and purchases and that these loans had been recovered and that the shares had been sold and the moneys received.

On October 23, 1950, a general body meeting of the shareholders of the Jupiter was held at which Lala Shankarlal, Kaul, Mehta, Guha and Caveeshar, were present and the final report of the auditors and the reply of the directors to the original objections of the auditors were read. The directors asserted at the meeting that imaginary mistakes and nervous suspicion was all that the auditors had found in respect of their management for the year and that the events of the last 12 months were a complete refutation of the fear, suspicion and bias of the auditors.

It is now necessary to trace the distribution of the lot of 63,000 shares of the Jupiter which were purchased by Lala Shankarlal and his group from Khaitan. It may be recalled that on January 20, 1949, only 61,061 shares which stood in the name of the New Prahlad Mills were handed over. The remaining 1,939 shares which stood in the names of others (presumably also belonging to the group of Khaitan) were transferred partly before and partly after, making up 63,000 shares. Out of these, 250 shares each were transferred at the outset as qualifying shares, in the names of Lala Shankarlal, Kaul, Mehta, Jhaveri and Doshi, totalling 1,250. These transfers were confirmed by the resolution of the directors of the Jupiter dated December 29, 1948. Another 250 shares were transferred in the name of Sarat Chandra Bose on January 20, 1949, but it would appear that he did not accept the same then and intimated his non-acceptance some time much later. On August 31, 1949, 37,949 shares were transferred to the name of Delhi Stores and 14,601 shares were transferred in the name of the Tropical and two further lots of 4,475 each were transferred in the names of Lala Shankarlal and Caveeshar. On September 13, 1950, out of the lot of 37,949 shares standing in the name of the Delhi Stores, 4,000 shares were kept standing in the name of the Delhi Stores and the balance of 33,949 were distributed as follows:

3025 shares in the name of Lala Shankarlal
3025 shares in the name of Caveeshar
50 shares in the name of Kaul
7075 shares in the name of Mehta

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7500 shares in the name of Chandulal Ratanchand Shah, an employee of the Tropical
7500 shares in the name of Himatlal F. Parikh, an employee of the Tropical
5774 shares in the name of Himatlal Harilal Shah.

Out of the lot of 14,601 shares kept in the name of the Tropical 7,500 shares were transferred to the name of one Baburam and 7,101 shares were transferred to the name of Kaul. Out of another lot of 409 shares which were purchased, 339 shares were transferred to the name of Kaul. Thus the position of the distribution of the purchased Jupiter's shares as on September 13, 1950, was as follows :

7750 shares in the name of Lala Shankarlal
7740 shares in the name of Kaul
7325 shares in the name of Mehta
7500 shares in the name of Caveeshar
4000 shares in the name of the Delhi Stores
7500 shares in the name of Chandulal Ratanchand
7500 shares in the name of Himatlal F. Parikh
5774 shares in the name of Himatlal Harilal Shah
7500 shares in the name of Baburam
250 shares in the name of Jhaveri
250 shares in the name of Doshi
250 shares in the name of Sarat Chandra Bose
70 shares in the name of the Tropical.

63,409 Total.

This makes a total of 63,409 shares comprising 63,000 shares of the controlling block which were originally purchased from Khaitan group and 409 shares subsequently purchased which has nothing to do with the present case. It may be noticed that no shares were transferred in the name of Guha and that very substantial number of shares were transferred in the names of the various other accused. It may also be noticed that three persons who are not accused in the case, *viz.*, Chandulal Ratanchand, Himatlal F. Parikh, Himatlal Harilal Shah, had also very substantial number of shares transferred to them.

The case of the prosecution is that for the transfer of all these shares in the names of the various accused no money was paid by them and that it was the distribution amongst themselves of the major portion of the original acquisition of 63,000 shares which, according to the prosecution case, were in fact purchased by utilising the very funds of the Jupiter over which they obtained the control. This, according to the prosecution, completes the chain of misappropriation by the various accused.

Since the appeals before the High Court and before us are against the convictions and sentences based on the acceptance of the verdict of the jury against each of the accused, scope for interference on appeal either by the High Court or by this Court is very limited. Hence Mr. Chari for the appellant has pressed before us only some legal contentions. His main argument relates to the admissibility of certain portions of the evidence given for the prosecution. Mr. Chari has taken strong exception to the prosecution having led evidence relating to the acquisition of the controlling block of shares of the Empire of India followed up by the various steps said to have been taken by the several alleged conspirators or by Lala Shankarlal in 1950 to screen the transactions of the later part of 1949. Mr. Chari contends that on the substantive charge of conspiracy all these steps or actings are not admissible in law.

Now the conspiracy as charged is in substance a conspiracy to commit criminal breach of trust in respect of the funds of the Jupiter by utilising the same to purchase the controlling block of shares of the Jupiter itself for the benefit of the Tropical (or for the benefit of the conspirators). This conspiracy is alleged to have been entered into between the dates December 1, 1948, and January 31, 1949. Mr. Chari says that primarily it is only the events of that period comprising the acts, writings and statements of the various conspirators of that period which would be admissible as against each other under s. 10 of the Indian Evidence Act, 1872 (I of 1872). According to the prosecution case the *modus operandi* was to screen

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the utilisation of these funds by showing them as having been advanced for legitimate purposes and invested on proper security, but in fact utilising the same for payment to the owners of the controlling block of shares of the Jupiter. Mr Chari says that strictly speaking, though for this purpose, only the acts, writings and statements of the conspirators during the period December, 1948, to January, 1949, would be admissible, he conceded that the evidence relating to the steps taken and the acts, writings and statements of the conspirators beyond January 31, 1949, and during the year 1949, *i.e.*, towards the later part thereof, by way of creating further transactions (*viz.*, Raghavji loan, Caveeshar fresh loan, Misri Devi loan and purchase of shares from the Tropical) in order to screen the transactions of January, 1949, may be admissible, as being directly connected, and that he does not object to the same. But his point is that the transactions of the year 1950 and the steps taken then are only for the purpose of screening the second set of transactions of the later part of 1949 and not the first set of transactions of January, 1949. He contends that evidence relating thereto, which falls wholly outside the conspiracy period, is not admissible under s. 10 of the Evidence Act being too remote and having no direct bearing on the original transactions which are the subject matter of the conspiracy. He points out that the alleged criminal breach of trust was committed on January 20, 1949, when the Jupiter's moneys were paid to Khaitan, and that the object of the conspiracy must be taken to have been achieved when the camouflage through the first Caveeshar loan and the advance said to have been made to the Delhi Stores for purchase of plots was effectuated. He points out that this is a case with numerous details even as regards the events, statements and actings from December 1, 1948, to end of December, 1949. He urges that the events of the year 1950 are equally, if not more, voluminous and have overburdened the legitimate material in the case. This, he urges, has operated to create confusion and prejudice in the minds of the jury. We have been told that on account

of this large volume of, what is contended to be, inadmissible evidence the trial has got unduly prolonged extending over a year. It is pointed out that the very narration of the outline of the prosecution case and of the evidence let in on behalf of the prosecution has taken about 100 pages of typed matter in the charge to the jury by the learned trial Judge and in the judgment of the High Court on appeal. There can be no doubt that in a case of this kind, having regard to the nature thereof and to the ramifications of the various transactions on which the prosecution relies to make out its case, and having regard to the fact that this was a jury trial, every attempt should have been made to exclude material which is strictly not admissible in law. Otherwise it would have the effect of confusing the jury and prejudicing its mind. But if the evidence is clearly admissible in law, the Court would not be justified in declining to receive it. All that can be said is that it would have to take every care in charging the jury to place fairly before it the effect and implications of such items of evidence in an adequate measure.

The limits of the admissibility of evidence in conspiracy cases under s. 10 of the Evidence Act have been authoritatively laid down by the Privy Council in *Mirza Akbar* v. *The King-Emperior* (1). In that case their Lordships of the Privy Council held that s. 10 of the Evidence Act must be construed in accordance with the principle that the thing done, written, or spoken, was something done in carrying out the conspiracy and was receivable as a step in the proof of the conspiracy. They notice that evidence receivable under s. 10 of the Evidence Act of "anything said, done, or written, by any one of such persons" (*i.e.* conspirators) must be "in reference to their common intention". But their Lordships held that in the context (notwithstanding the amplitude of the above phrase) the words therein are not capable of being widely construed having regard to the well-known principle above enunciated. It would seem to follow that where, as in this case, the charge specifies the period

(1) (1940) L.R. 67 I.A. 336.

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of conspiracy, evidence of acts of co-conspirators outside the period is not receivable in evidence. Indeed, this position is fairly conceded by Mr. Khandalawala for the prosecution. But his contention is that the evidence objected to, *viz.*, the acts and events of the year 1950, would be relevant under the other sections of the Evidence Act such as ss. 6, 8, 9, 11 and 14. This would no doubt be so. But it has to be remembered that some of these sections are widely worded and must receive a somewhat limited construction as pointed out by West J. in his judgment reported in *Reg.* v. *Prabhudas* (1) when considering the scope of s. 11 of the Evidence Act.

Now, there can be no doubt that one of the main relevant issues in the case is whether the loan of Rs. 25 lakhs and odd advanced on January 20, 1949, to Caveeshar, as also the moneys said to have been paid to the Delhi Stores by way of advance for purchase of certain plots said to belong to it, were genuine transactions or bogus and make-believe. If they were genuine transactions, by virtue of which money did pass to them on the basis of good security, showing these amounts to be genuine business investments, then it would be difficult to make out that there was any criminal breach of trust. Hence all evidence which would go to show that these transactions are bogus, is certainly admissible. That would be so notwithstanding that such evidence may necessitate reference to and narration of the acts of the conspirators beyond the period of conspiracy but within reasonable limits. While it may be true that the manipulations by way of the four fresh transactions from May to December, 1949 (apart from other features of these transactions of which evidence has been given) would be cogent evidence to show that the original transcations were bogus, the evidence relating to the further transactions to screen these transactions of the second half of 1949 by utilising the money of the Empire of India after obtaining the control thereof, and by wrongfully utilising the Jupiter's securities, would also be relevant to make out and emphasise the bogus character of the

(1) (1874) 11 Bom. H.C.R. 90.

original debts. It cannot be said to be too remote because it is to be remembered, as has been pointed out by Mr. Khandalawala, that the urgent necessity for acquiring the control of the Empire of India in 1950, and for utilising it for showing the alleged investments of the second half of 1949 as having been realised back in cash in 1950, arose on account of the firm attitude of the auditors who suspected the *bona fides* of the original Caveeshar loan and of the connected transactions of the second half of 1949 when they scrutinised in 1950 the affairs of the Jupiter for the year 1949. The 1950 transactions appear clearly to have been brought about not merely to screen the transactions of the second half of 1949, but equally, if not mainly, to dispel any suspicion, and to obviate the scrutiny, in respect of the earlier transactions of January, 1949, which related to the period of conspiracy. Thus in relation to the main purpose of the prosecution, *viz.*, proof of the bogus character of these transactions of January, 1949, the transactions of the second half of 1949 and of 1950 must, in the circumstances of this case and having regard to the ramifications, be taken to be integrally connected and relevant to make out their bogus character. We are, therefore, unable to agree with the general objection put forward that the entire evidence relating to the 1950 transactions was inadmissible in evidence.

It is also reasonably clear that the conduct in general of each individual co-conspirator including his acts, writings and statements is evidence against himself. There can be no doubt that such conduct irrespective of the time to which it relates can be relied on by the prosecution to show the criminality of the intention of the individual accused with reference to his proved participation in the alleged conspiracy, that is, to rebut a probable defence which may normally arise in such a case, *viz.*, that the participation, though proved, was innocent. It has been pointed out to us that in this case each one of the accused has put forward in his defence that he was an unconscious tool in the hands of a towering personality and a master-mind like Lala Shankarlal about whose criminal intentions he was

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not aware. It was therefore, quite legitimate for the prosecution to anticipate such defence and to give rebutting evidence. Such evidence would come under s. 14 of the Evidence Act. It is well-settled that the evidence in rebuttal of a very likely and probable defence on the question of intention can be led by the prosecution as part of its case. This is laid down by the Privy Council in *Makin* v. *The Attorney-General for New South Wales*(1). To anticipate a likely defence in such a case and to give evidence in rebuttal of such defence is in substance nothing more than the letting in of evidence by the prosecution of the requisite criminal intention beyond reasonable doubt.

Now Mr. Khandalawala for the prosecution urges that the entire evidence for the prosecution relating to the year 1950 falls within these two categories of admissible evidence, *viz.*, (1) evidence to make out the bogus character of the original transactions of January, 1949, which is an essential issue in the case relating to all the conspirators, and (2) evidence of the criminal intention of each of the accused which is admissible as against himself. Mr. Chari for the appellants contests this assumption and urges that the evidence that has been admitted of the year 1950 is much wider than what is covered by the above two and that it was in fact and in substance evidence of the acts, writings and statements of individual conspirators of a period outside the period of conspiracy, and treated as admissible against other co-conspirators, on the central issues in the case, *viz.*, whether a conspiracy has been made out and whether the individual accused were participants in that conspiracy. Mr. Chari very strenuously contends that such evidence was inadmissible and that its admission has seriously prejudiced the case of the appellants and has rendered any fair and rational consideration of the case by the jury extremely difficult, if not impossible. In particular his strong objection was to the evidence relating to the acts, writings and statements of Lala Shankarlal of the year 1950, more particularly because he died before the trial and was not before the Court on

(1) L.R. (1894) A.C. 57, 65.

trial as a conspirator. His contention raises for consideration two questions, *viz.*,

(1) whether such evidence is admissible in proof of the conspiracy and in proof of the participation of individual accused in the conspiracy, and

(2) whether in fact at the trial such evidence was admitted and made use of on these issues.

Now it would be convenient to take up the latter question for consideration in the first instance.

To substantiate his contention that the evidence of conduct of individual conspirators of the year 1950 has been admitted and used against the other co-conspirators in proof of the two main issues, Mr. Chari, in his argument before the High Court relied on the following paragraphs of the learned trial Judge's charge to the jury, *viz.*, paras 11, 55, 65, 73, 74, 75, 94, 101, 102, 136, 146, 388, 453, 541, 557, 588, 602, 657, 676, 678 and 689. We have carefully gone through these paragraphs. It appears to us reasonably clear that what have been referred to by the learned trial Judge in these paragraphs are various items of evidence in the prosecution case whose primary object is to make out the bogus character of the transactions in question though they necessarily bring in either the deceased Lala Shankarlal or some other co-conspirator as being a party to these various acts. Such evidence, as already stated, is obviously admissible for that purpose as being links in the chain of evidence relating to the bogus character of the original transactions and not as being in themselves relevant to prove the conspiracy. That the learned trial Judge was alive to this distinction and would not have admitted such evidence in proof of the issue of conspiracy is quite clear from his ruling (interlocutory judgment No. 6) dated August 22, 1955, relating to the admissibility of the document which was marked as Ex. Z-71 in the committal court. The learned Judge in that order has categorically ruled out the admissibility of that document with the following conclusion after a good deal of discussion of the legal point :

"I come to the conclusion that the statements and actions of any one of the persons mentioned in the

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charge are not admissible beyond the period of conspiracy unless they are authorised by any of the accused persons; in that event they are really the actions and statements of that accused persons himself who has authorised the same. I, therefore, do not admit the document (Ex. Z-71) in evidence."

We have not got before us the document (Ex. Z-71) itself to enable us to see for ourselves what it relates to, since it was exhibited only in the committal court and ruled out at the trial. But there is no difficulty in appreciating what the learned trial Judge actually held. That the learned trial Judge acted on this view is reasonably clear also from the fact that in quite a number of places in his charge to the jury he has repeatedly emphasised that subsequent conduct of a conspirator would not be admissible against any body else but himself. (See paras 453, 541, 557, 588, 602, 657, 676, 685 and 689 of the learned trial Judge's charge to the jury). No doubt in some of the paragraphs previously noticed as having been objected to by Mr. Chari, the very reference to acts and conduct of Lala Shankarlal during the year 1950 which is beyond the period of conspiracy, may conceivably be capable of being wrongly relied on by the jury in respect of issues on which they are not admissible and might be capable of producing some prejudice. But this is a possibility inherent in such cases as has been pointed out by the Privy Council in *Walli Muhammad* v. *King*(1). Therein their Lordships pointed out the difficulty in all cases where two persons are accused of a crime and where the evidence against one is inadmissible against the other. Their Lordships recognised that however carefully assessors or a jury are directed and however firmly a Judge may steel his mind against being influenced against one by the evidence admissible only against the other, nevertheless the mind may inadvertently be affected by the disclosures made by one of the accused to the detriment of the other. Undoubtedly this weighty caution has to be always kept in mind when Judges and juries have to deal with such complicated cases. But that by itself without showing that serious

(1) (1948) 53 C.W.N. 318, 321.

prejudice would, in all likelihood, have occurred in the particular case, would not be enough to vitiate the convictions. In this case that there has in fact been any such prejudice has not been shown to our satisfaction. Indeed the fact that accused No. 3, Jhaveri, has been acquitted by the unanimous verdict of the jury appears to indicate that the jury has shown itself capable of observing the caution given to them and making careful discrimination.

In this view probably the larger question raised by counsel on both sides as to the admissibility of the conduct of a co-conspirator outside the period of conspiracy and especially of deceased co-conspirators like Lala Shankarlal and Doshi and a living conspirator like Mahajan who is not on trial before the Court, in proof of the two main issues in such a case (*viz.*, the existence of the conspiracy and the participation of the individual accused in that conspiracy) may not require to be dealt with. But as will appear presently the learned Judges of the High Court have held such evidence admissible and have over-ruled, on that ground also, the contention of Mr. Chari as to the prejudice likely to have been caused because of their view as to its admissibility. Hence it is only fair that the question should be considered and a conclusion arrived at. Besides, counsel on both sides have argued the matter very elaborately and have pressed us to express our opinion thereupon. It is to be noticed that the learned trial Judge and the High Court appear to have taken differing views on this matter. The learned Judges of the High Court after elaborate discussion have definitely held that such evidence is admissible, as shown by their conclusion on this part of the case in the following terms :

"In this manner, all the observations which the learned Judge made in paragraphs 11, 73, 74, 75, 94, 101 and 388, to which Mr. Chari has objected on the ground of inadmissibility, would be relevant to show that there was a conspiracy in this case and that Lala Shankarlal was a party to it."

That the learned trial Judge appears to have taken the opposite view is reasonably clear from his ruling

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(interlocutory judgment No. 6) dated August 22, 1955, already referred to, relating to the admissibility of the document, Ex. Z. 71, in the committal court. In that order he sets out the arguments of both sides as follows :

"It is common ground that the action of any of the accused person subsequent to the period of conspiracy is admissible in evidence against that particular accused person only. Mr. Khandalawala, therefore, argues that the actions of Lala Shankarlal, of Doshi and of Mahajan subsequent to the period of conspiracy are admissible in evidence to prove that they were party to the conspiracy alleged in the case and to prove their guilt individually along with the accused persons.....He further submits that s. 10 of the Indian Evidence Act is permissive and not an exception as contended by Mr. Chari.....He says that he does not want to lead any evidence of the statements and actions of Lala Shankarlal against these accused persons, but he wants them in order that he may prove before the jury that Lala Shankarlal was also one of the conspirators with the accused persons .....Mr. Chari's submission is that no evidence in this case could be admitted which is not admissible against the accused persons.....He submits that the question whether Shankarlal (or Doshi or Mahajan) was guilty of the offence of conspiracy or not cannot arise in this trial. Proof of conspiracy, apart from the accused persons, is irrelevant. He submits that whatever Shankarlal did during the period of conspiracy is binding on these accused persons and the Court has to determine (with reference to that evidence) whether anyone of these accused persons was a conspirator with Shankarlal or with Mahajan or with Doshi. All the evidence that could be led in a trial must be against accused persons and no one else. He, therefore, submits that the evidence that is sought to be led by the prosecution is inadmissible in evidence."

Having thus set out the arguments of both sides, the learned trial Judge stated his conclusion as follows :

"I think that the evidence in a criminal trial that could be led must be admissible against the accused

(1) (1948) 53 C.W.N. 318, 321.

persons only and, therefore, the evidence of actions and statements of another person, apart from the question of it being of the agent of the accused, is not admissible. Section 10 (of the Evidence Act) as explained by the Privy Council in *Mirza Akbar* v. *The King-Emperor*(1), clearly lays down that the statements and actions of the co-conspirator would only be evidence against the accused persons, provided they are within the period of conspiracy.....I do not think therefore, that Lala Shankarlal or Mahajan or Doshi are accused persons before me and, therefore, the subsequent conduct of these persons beyond the period of conspiracy unconnected by any authority from the accused persons is not admissible."

It is necessary, therefore, to appreciate clearly what exactly the Privy Council in *Mirza Akbar's case*(1) has decided and whether the learned trial Judge was right in coming to the conclusion he did on the authority of that decision. In the said case their Lordships of the Privy Council elucidated the principle of admissibility of evidence in cases of conspiracy by reference to the English leading case of *The Queen* v. *Blake*(2). That was a case in which two persons, T. and B., were charged for conspiracy to cause certain imported goods to be carried away from the port of London and delivered to the owners without payment of the full customs duty payable thereon. T. did not appear and defend. B. pleaded not guilty. At the trial it was proved that T. was agent for the importer of the goods, B. was a landing waiter at the Custom House. It was T.'s duty to make an entry describing the quantity etc. of goods. A copy of such entry was delivered to B. who was to compare this copy with the goods, and if they corresponded, to write 'correct' on T.'s entry, whereupon T. would receive the goods on payment of the duty according to his entry. It was proved that T.'s entry was marked 'correct' by B. and corresponded with B.'s copy and that payment was made according to the quantity there described, and that the goods were delivered to T. Evidence was then offered of an

(1) (1940) L.R. 67 I.A. 336. (2) (1844) 6 Q.B. 126; 115 E.R. 49.

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entry by T. in his day book, of the charge made by him on the importer, showing that T. charged as for duty paid on a larger quantity than appeared by the entry and copy before mentioned. It was held that all this evidence was admissible against B. But the question arose as to the admissibility of a further item of evidence. It was proved that B. received the proceeds of a cheque drawn by T. after the goods were passed. The counterfoil of this cheque was offered in evidence, on which an account was written by T. showing, as was suggested, that the cheque was drawn for half the aggregate proceeds of several transactions, one of which corresponded in amount with the difference between the duty paid and the duty really due on the above goods. It was ruled that that item was not evidence against B. Referring to this case their Lordships of the Privy Council stated as follows in *Mirza Akbar's case*(1) :

"The English rule on this matter (*i.e.*, as to the admissibility of evidence relating to a charge of conspiracy) is, in general, well settled. *It is a common law rule not based on, or limited by, express statutory words.* The leading case of *R.* v. *Blake*(2) illustrates the two aspects of it, because that authority *shows both what is admissible and what is inadmissible.* What, in that case, was held to be admissible against the conspirator was the evidence of entries made by his fellow conspirator contained in various documents actually used for carrying out the fraud. But a document not created in the course of carrying out the transaction, but made by one of the conspirators after the fraud was completed, was held to be inadmissible against the other.....It had nothing to do with carrying the conspiracy into effect."

Their Lordships in that case also referred with approval to two cases of the Indian High Courts, *viz.*, *Emperor* v. *Abani Bhushan Chuckerbutty*(3) and *Emperor* v. *G. V. Vaishampayana*(4). In the case in *Emperor* v. *Abani Bhushan Chuckerbutty* (3), one of the documents sought to be put in evidence is a statement

(1) (1640) L.R. 67 I.A. 336.
(2) (1844) 6 Q.B. 126; 115 E.R. 49.
(3) (1910) I.L.R. 38 Cal. 169.
(4) (1931) I.L.R. 55 Bom. 839

of one of the co-conspirators, Abani, before a Magistrate after he was arrested. In that statement he implicated himself and a large number of persons in the conspiracy. The question that arose was how far it could be used as evidence of the conspiracy and of the fact that the others were co-conspirators. Their Lordships held as follows :

"We have come to the conclusion that the statement of Abani cannot properly be treated as evidence under section 10 of the Evidence Act. That section, in our view, is intended to make evidence communication between different conspirators, while the conspiracy is going on with reference to the carrying out of the conspiracy."

It may be added that this statement was merely treated as a confessional statement falling within the scope of s. 30 of the Evidence Act and usable only as such against the co-accused. The case in *Emperor* v. *G. V. Vaishampayana*(1) was also a case of conspiracy in which an approver as co-conspirator gave evidence. He gave evidence of statements, made to him by another co-conspirator by name Swamirao who was not an accused before the Court, which had reference to the alleged attack on the Lamington Road police station which was the object of the conspiracy. These statements were alleged to have been made after the return of the attacking party to the approver at his residence. Objection was taken to the admissibility of such statements made after the completion of the attack as evidence under s. 10 of the Evidence Act. This objection was upheld on the ground that such statements made after the completion of the attack could not be said to have been made "in reference to their common intention". It was pointed out that the word 'intention' implies that the act intended is in the future. It is noteworthy that in this case the statements under consideration were made by a co-conspirator who was not an accused at the trial and it was not suggested that his evidence would be admissible on the ground that such statement would be admissible against himself to show that he was a

(1) (1931) I.L.R. 55. Bom. 839.

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co-conspirator with the accused on trial and that it would become relevant on that basis, an argument of the kind which appears to have found favour with the learned Judges of the High Court in this case, as will be presently seen. In *Mirza Akbar's case*(1) itself the question at issue was about the admissibility on the charge of conspiracy of a statement made by one of the co-conspirators before a Magistrate after arrest. That was held to be not admissible.

The point to be noticed in all these cases is that the statements which have been ruled out as inadmissible under section 10 of the Evidence Act were not sought to be made admissible under some other section of the Evidence Act. It is further to be noticed that in the leading case of *The Queen* v. *Blake*(2), the question of admissibility was dealt with as being one under the general law and yet the only criterion of admissibility was that which was special to the cases of conspiracy. There was no suggestion that such evidence could be brought in under any other category of admissibility of evidence. It was ruled in that case that the statement in question was totally inadmissible to prove conspiracy. It appears, therefore, that *Mirza Akbar's case*(1) is a clear authority for the position that in criminal trials, on a charge of conspiracy evidence not admissible under s. 10 of the Evidence Act as proof of the two issues to which it relates, *viz.*, of the existence of conspiracy and of the fact of any particular person being a party to that conspiracy, is not admissible at all. But it is necessary to appreciate clearly that what is sought to be admitted in such a case is, something said, or done, or written by any one of the co-conspirators behind the backs of the others as being in law attributable to the others and what is sought to be proved by such evidence taken by itself is the existence of the conspiracy as between the alleged conspirators and the fact that a particular person was a party to the conspiracy. It is such evidence that is inadmissible otherwise than under s. 10 of the Evidence Act. Quite clearly, in the normal class of cases, such evidence is admissible as against himself and not against others,

(1) (1940) L.R. 67 I.A. 336. (2) (1844) 6 Q.B. 126; 115 E.R. 49.

excepting where there is relationship of agency or representative character or joint interest. (See s. 18 of the Evidence Act). In civil cases it is well settled that a principal is bound by the acts of his agent if the latter has an express or implied authority from the former and the acts are within the scope of his authority. Therefore acts of an agent are admissible in evidence as against the principal. An analogous principle is recognised in criminal matters in so far as it can be brought in under s. 10 of the Evidence Act. It is recognised on well established authority that the principle underlying the reception of evidence under s. 10 of the Evidence Act of the statements, acts and writings of one co-conspirator as against the other is on the theory of agency. This is recognised in *Emperor* v. *Shafi Ahmed*(1) and also in *Emperor* v. *G. V. Vaishampayana*(2), the case already mentioned above and referred to with approval by the Privy Council in *Mirza Akbar's case*(3). In Roscoe's Criminal Evidence (16th Edition), at p. 482 bottom, when dealing with the evidence relating to criminal conspiracy, it is stated as follows :

"An overt act committed by any one of the conspirators is sufficient, on the general principles of agency, to make it the act of all."

Now both the English rule as recognised in *The Queen* v. *Blake*(4) as well as the rule in s. 10 of the Evidence Act, confine that principle of agency in criminal matters to the acts of the co-conspirator within the period during which it can be said that the acts were "in reference to their common intention" that is to say, as held by the Privy Council in *Mirza Akbar's case*(3) "things said, done or written, while the conspiracy was on foot" and "in carrying out the conspiracy." The Privy Council has explained the basic principle in the following terms :

"Where the evidence is admissible it is, in their Lordships' judgment, on the principle that the thing done, written or spoken, was something done in

(1) (1925) 31 Bom. L.R. 515, 519.
(2) (1931) I.L.R. 55 Bom. 839.
(3) (1940) L.R. 67 I.A. 336.
(4) (1844) 6 Q.B. 126; 115 E.R. 49.

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carrying out the conspiracy and was receivable as a step in the proof of the conspiracy."

It appears, therefore, that the learned trial Judge was right in his view that the admissibility of evidence of the kind which is now under consideration is ruled out on the authority of *Mirza Akbar's case*(1). The argument that such evidence even if it is of the conduct of a deceased conspirator, is admissible under s. 8 of the Evidence Act as being evidence of conduct on a relevant issue, would appear to be untenable on the very terms of s. 8, apart from the authority of *Mirza Akbar's case*(1). Secton 8 in terms says as follows :

"The conduct of any person, *an offence against whom is the subject of any proceeding*, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact."

This appears clearly to rule out the conduct of Lala Shankarlal, Doshi, and Mahajan behind the backs of others, as inadmissible. Such conduct would be admissible only to the extent that it is permissible under s. 10 of the Evidence Act, if it is the conduct of a co-conspirator whether he is alive or dead and whether on trial before the court or not. Mr. Khandalawala in his arguments against this view has suggested some hypothetical cases to show the difficulties that may arise on such a view. But a close consideration of these suggested hypothetical cases does not show that they raise any serious difficulties. It is unnecessary to notice them at any length.

The learned Judges of the High Court (in reliance on certain English decisions which, with respect, do not appear to have any direct bearing on the question at issue) were of the opinion that since a person's conduct is admissible against himself without the limitations of s. 10 of the Evidence Act, the conduct of Lala Shankarlal would be admissible to show that there was a conspiracy and that he was a conspirator in it. It appears, with great respect, that this reasoning is fallacious. The admission of such evidence, in proof of conspiracy or of the fact that he was a co-conspirator, is, in its essence,

(1) (1940) L.R. 67 I.A. 336.

admission not as against himself but as against the others who are on trial. To the extent that such an issue, *i.e.*, of there being a conspiracy and of his being a co-conspirator, is relevant at the trial, it must be proved only by evidence under s. 10 of the Evidence Act, which is an exceptional section limited in its application to conspiracies to commit an offence or to commit an actionable wrong. The learned Judges have also failed to notice that the evidence of conduct admissible under s. 8 of the Evidence Act is of conduct of a person who is a party to the action. It is thus reasonably clear that evidence of acts, statements or writings of a co-conspirator either under trial or not on trial but outside the period of conspiracy, would not be admissible in proof of the specific issue of the existence of the conspiracy. It is necessary to add that my learned brothers prefer to reserve their opinion on this legal question on the ground that it does not call for decision in this case.

In any case and as already explained above, in the earlier portion of this judgment, it may happen with reference to the facts of a particular case, that evidence would be admissible of various facts outside the period of conspiracy, if they are relevant on any substantial issue in the case. as for instance (in this case) the bogus character of the loans and the criminal intention of each individual accused. In respect of such issues, the statement, act and writing of an individual co-conspirator outside the period of conpiracy may be nothing more than a link in the chain of evidence relating to such matters or prefatory or explanatory matter within reasonable limits. It would then be admissible in that context but not as affecting the other co-conspirators by its being treated as their act or statement on the theory of agency (though behind their back). It has also been seen above that in the present case evidence, if any, of the acts, statements and writings of Lala Shankarlal and other co-conspirators was admitted by the learned trial Judge only on that footing. Therefore the contention of Mr. Chari for the appellants that a good deal of inadmissible evidence has been let in, cannot be sustained.

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The next point that is urged is that a number of documents put in evidence which are said to be in the handwriting of one or other of the accused were sent to a handwriting expert for his opinion and that the expert was not called as a witness on the prosecution side, nor was his report exhibited, but the jury was asked to compare the handwritings in the disputed documents with the admitted handwritings and to form their own conclusions. It is urged that this was not fair and that the prosecution was bound to examine the handwriting expert and exhibit his report. It is well settled, however, that the Court cannot normally compel the prosecution to examine a witness which it does not chose to and that the duty of a fair prosecutor extends only to examine such of the witnesses who are necessary for the purpose of unfolding the prosecution story in its essentials. [See *Habeeb Mohamed* v. *The State of Hyderabad* (1)]. Mr. Khandalawala appearing for the prosecution states that the examination of the handwriting expert was not in any sense necessary in this case for unfolding the prosecution case and we are inclined to agree with him. Even if a different view is to be taken as to the duty of the prosecution, to examine such a witness, all that can be said normally in such a case is that the defence is entitled to comment upon it and to ask the jury to draw an adverse inference in respect of that portion of the case to which the evidence of the handwriting expert relates. Mr. Khandalawala for the prosecution points out that in fact this has been done by Mr. Chari when addressing the jury for the defence. He states also that he himself in his address told the jury that it was open to them to do so. Mr. Chari's grievance however is that the Court has not in terms, directed the jury to this effect in its charge to the jury. That no doubt appears to be so. But in a case like this dealing with so many details, we see no reason to think that this omission of the learned trial Judge, was likely in this case, to have caused any serious prejudice in the circumstances above stated.

(1) (1954) S.C.R. 475, 489, 490.

There is next a similar point sought to be made out in respect of the non-examination of three persons, viz., Chandulal Ratanchand Shah, Himatlal F. Parikh, and Himatlal Harilal Shah. It is pointed out that shares were distributed to these three persons also along with the distribution of shares to the various conspirators. It is suggested that if they were examined as witnesses they would have been able to show the circumstances in which the distribution of the shares had been made and this would have enabled the accused to show that such distribution was innocent and not by way of dishonest gain. The same considerations as with reference to the non-examination of the handwriting expert apply also to the non-examination of these three persons. It has also been pointed out to us that these transfers of shares to these three persons took place before the amendment of s. 6A of the Insurance Act, 1938 (IV of 1938), and that consequently their non-examination would not have resulted in any serious prejudice. However that may be, we are unable to find any adequate reason to think that the trial is in any way vitiated by the non-examination of these witnesses or of the handwriting expert.

The next argument advanced by Mr. Chari for the appellants is that the prosecution was enabled to ask the jury to convict the accused on a consideration of prosecution evidence tending to prove alternative sets of facts in relation to one of the important questions in the case and that this is not permissible in law. This argument has a bearing both on the general case against all the accused and also on the case against appellant Caveeshar. It has reference to the following portion of the prosecution case. It is to be recalled that the original loan of Rs. 25 lakhs and odd from the funds of the Jupitor to Caveeshar on the alleged security of his supposed properties in Delhi was, according to the prosecution case, sought to be supported by the conspirators by certain appearances, *viz.*, an application for such a loan, a valuation statement of the alleged properties and other necessary papers and also by certain resolutions Nos. 5, 6, 7 and 8 of the

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directorate of the Jupiter at its meeting dated January 11, 1949, sanctioning such loan on the basis of such papers. The prosecution case appears to be that as a fact these papers were non-existent and the resolutions Nos. 5, 6, 7 and 8 were not in fact passed, on the date when, according to the peresent appearances in the minutes book, the matter was taken up for consideration by the Board of directors at its meeting of January 11, 1949. For this purpose they rely amongst other things on the evidence of one Subramaniam, the secretary of the directorate, whose duty generally was to attend all meetings and to keep a note of the minutes of the business done at each meeting. The prosecution evidence appears also to be that the necessary papers and resolutions were brought into existence on a later date and ante-dated and interpolated. With reference to this case of the prosecution the learned trial Judge in para. 545 of his charge to the jury stated as follows:

"The question whether the resolutions Nos. 5, 6, 7 and 8 were passed or not (on January 11, 1949) is an important question to consider so far as the criminal intention alleged on the part of the accused Nos. 1, 2, 3 and 4 are concerned. In this case what you have to consider is whether you are prepared to believe the evidence of Subramaniam or not that no such resolutions were passed at the said meeting. If you disbelieve his evidence on this point, then consider whether apart from his evidence, there is sufficient evidence on record to lead you to the conclusion that no such resolutions were passed. If you come to the conclusion that there is no other convincing evidence to show that the resolutions were not passed, then you will come to the conclusion that they were passed in the said meeting as it was in the minutes. In that case the resolutions having been passed, you have to consider whether the accused *bona fide* believed that they were authorised to deal with the funds of the company and pay the amount of Tropical Insurance Co. on behalf of Caveeshar."

We do not see anything in this portion of the charge to the jury to justify the contention that the prosecution

was permitted to rely on alternative sets of facts. It was certainly open to the prosecution to rely in a matter of this kind, both on direct evidence and on circumstantial evidence and to maintain that even if the direct evidence of Subramaniam is not acceptable, the circumstantial evidence is enough for the proof of its version. The alternatives which the learned trial Judge in his charge to the jury as extracted above referred to were, in the first instance, alternatives which arose on the reliance of the prosecution both on the direct and on the circumstantial evicence, and then the alternatives which arose for consideration *in favour of the accused* if both the direct and cirsumstantial evidence of the prosecution in this behalf are not acceptable. The alternatives presented for the prosecution are not in any sense the presentation of any inconsistent cases. Doubtless the prosecution cannot be permitted to lead evidence relating to inconsistent cases. But so far as we have been able to apprehend that is not what has been done in this case. We are, therefore, unable to see any substance in this contention. It may be noticed in this context that none of the documents connected with this Caveeshar transaction are now available. Indeed that was the position also even by the time when the auditors wanted to see those documents in the year 1950 the explanation of the directors at the time being that since that loan to Caveeshar was discharged by him by complete payment all the relevant documents had been returned to him. Of course, the case of Caveeshar himself is that he was not a party to the alleged loan and that he was not aware of any such documents and that the manipulations, if any, were behind his back.

Mr. Chari next complains about what he says is a serious mis-direction to the jury inasmuch as the learned Judge asked the jury to ignore the fact that by the time the complaint was filed in 1951, the money allegedly taken out of the Jupiter by means of the two impugned transactions of January 20, 1949, had been put back in cash and that the auditors themselves were ultimately satisfied about it and that the shareholders at their general meeting in 1950 also accepted

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Lala Shankarlal's explanation in respect thereof. But we do not think that, in view of the evidence given for the prosecution in the case to the effect that this situation was hurriedly brought about in the month of October, 1950, by utilising the securities of the Jupiter itself, for purchasing the controlling block of shares of the Empire of India and by getting money out of the Empire of India, it would have been fair to the prosecution to direct the jury to take the apparent return back of the moneys of the Jupiter shown as given on the various investments, as a true indication of the alleged misappropriation having been proved to be merely an unwarranted suspicion. In the circumstances, the learned Judge appears to have been right in directing the jury to ignore that portion of the case either for or against the accused.

The next argument which requires notice is about what are said to be certain irrational features of the prosecution case. It would appear that in the arguments addressed by the defence counsel to the jury in the trial court a number of circumstances relating to the various alleged manipulations have been pointed out which, on the assumption that the accused were parties to the conspiracy as charged, could only be characterised as irrational conduct of the various accused concerned and which circumstances, it was urged, must therefore be taken to be *prima facie* in their favour as supporting their defence, *viz.*, that they had no knowledge of the criminality of the transactions which might have actuated the mind of Lala Shankarlal, but that so far as they were concerned they acted in perfect good faith. The complaint of Mr. Chari for the defence, both in the High Court and here is that the learned trial Judge has not adequately dealt with them in his charge to the jury and that the appellants have been prejudiced thereby. The learned trial Judge has dealt with this aspect of the case in para 556 of his charge to the jury and the learned Judges of the High Court have somewhat more elaborately dealt with this at pp. 159 to 162 of the typed paper-book containing the judgment of the High court. Mr. Khandalawala appearing for the prosecution points out to us that these

alleged irrational features have been dealt with by the learned trial judge in his charge to the jury then and there with reference to each particular item of evidence when it had to be referred to in the context of the general narrative or the narrative as against each individual accused. All that can be said is that the learned trial Judge has not once again repeated the same when drawing the attention of the jury to this specific argument of Mr. Chari, who appears to have stressed them in a general sweep by clubbing these together as being thirty irrational features. We agree with the High Court that there is no reason to think that the somewhat summary way in which the learned trial Judge dealt with this in para 556 of his charge to the jury can be taken exception to in the circumstances of the case as being any material non-direction.

A special argument has been advanced on behalf of the appellant Caveeshar that he was not a director of the jupiter and was not present at any of the meetings of the conspirators as directors of the Jupiter and that the evidence against him was more or less on the same footing as that against Jhaveri, accused 3, who has been acquitted, at least in so far as it relates to the period of conspiracy and that his case has been affected by the prejudice which may have been engendered in the minds of the jury by the evidence relating to the acts of Lala Shankarlal beyond the period of conspiracy. On behalf of the prosecution we have been shown by Mr. Khandalawala enough admissible evidence against him which, if the jury choose to accept, could reasonably be the basis for conviction.

Having given our best consideration to all the arguments addressed on both the sides, we have come to the conclusion that there is no sufficient reason for interference in special leave with the convictions, based on the acceptance by the trial Judge of the verdict of the jury. All the appeals are accordingly dismissed.

Appeals dismissed.