With these remarks we accept the appeal and remand the suit to the Senior Subordinate Judge under O. 41, R. 23, with the direction that the plaintiffs be accorded a reasonable opportunity of amending their plaint and re-valuing their relief. We purposely say nothing on the question of the jurisdictional value of the suit.

Having regard to the circumstances, we direct that costs be costs in the case.

R.M./R.K.

Appeal accepted; Case remanded.

A. I. R. 1916 Lahore 22 (1)

BROADWAY, J.

Raja Ram and *another*—Accused—Petitoners.

v.

Emperor—Opposite Party.

Criminal Revn. No. 1004 of 1916, decided on 21st July, 1916, reported by the Sessns. Judge, Ambala with his No. 837 G. of 23rd May, 1916.

Criminal P.C. (5 of 1898), S. 195—Sanction to prosecute after filing of complaint is bad in law.

A sanction to prosecute obtained after filing a complaint for an offence specified in S. 195, Criminal Procedure Code, is bad in law, and a conviction based on such a complaint cannot be maintained. [P. 22, C. 2.]

Nehal Chand Mehra—for Accused.

Sangam Lal—for the Crown.

Facts.—In 1911, the Assistant Commissioner, Rupar, ordered Raja Ram, accused to remove a slight obstruction on path to well. This was apparently done on 30th April, 1915. Puran Singh filed a complaint against Raja Ram and Chanchel, alleging that they had again obstructed the path. The Tahsildar was asked to make a report and he said there had been an obstruction.

The Magistrate went to the spot and could find no obstruction. But he held that there had been one which was subsequently removed and he fined each of the accused Rs. 20.

The accused, on conviction by Khan Bahadur Sayad Bashir Hussain, Honorary Extra Assistant Commissioner, exercising the powers of a Magistrate of the first class in the Ambala District, were sentenced by order dated 17th April, 1916, under S. 188 of the Indian Penal Code, to pay Rs. 20 fine or in default to suffer 15 days simple imprisonment each.

Grounds.—If the original order be perused, it will be seen that it was Raja Ram who was ordered to remove the obstruction. So Chanchel could not be guilty of an offence under S. 188, Indian Penal Code. But the conviction is manifestly bad, as there was no sanction or complaint from the Assistant Commissioner, Rupar, who passed the original order.

If Puran Singh thinks he is aggrieved, he should bring the matter to the notice of the Assistant Commissioner, Rupar, and ask him to take action or else bring suit for an injunction restraining the accused from blocking the path. Puran Singh, as things stand at present, is utilising the Criminal Courts to rectify a civil tort. For these reasons I recommend that the conviction be set aside.

Order.—(1) The learned Sessions Judge is wrong in thinking that Chanchel was not ordered to remove the obstruction; reference to the order, dated 8th October, 1911, passed by Mr. P. J. Rust, shows that the order under S. 133, Criminal Procedure Code, was confirmed as against him as well.

(2) The sanction, however, in this case is bad in law, inasmuch as no sanction was accorded under S. 195, Criminal Procedure Code, until after the complaint, on which this trial was had, had been filed. S. 195, Criminal Procedure Code, lays down that no Court can take cognizance of an offence under S. 188, Criminal Procedure Code, without the *previous sanction, &c.*

(3) In these circumstances the trial was bad for want of sanction and I accordingly set the conviction and sentence aside. S. 476, Criminal Procedure Code, was referred to by Puran Singh's Counsel, but obviously has no application.

R. M./R. K.

Petition allowed.

A. I. R. 1916 Lahore 22 (2)

SHADI LAL AND LEROSSIGNOL, JJ.

Taj Muhammad—Plaintiff—Appellant.

v.

Sayad Muhammad and *others*—Defendants—Respondents.

Second Appeal No. 590 of 1913, decided on 8th May, 1916, from the Decree of

Divnl. Judge, Jullundur, dated 6th January, 1913.

(a) Custom (Punjab) — Will—Power of alienation *inter vivos* and by will go together—Where one is governed by custom other is.

The power of alienation *inter vivos* and the power of testation go together, and if in a particular case the former is proved to be governed by custom, the latter is presumed to follow the same rule. [P. 23, C. 2.]

(b) Custom (Punjab) — Applicability—Arains of Jullundur are governed by custom.

The Arains of the Jullundur City are governed in matters of testamentary and intestate succession by the ordinary Customary Law of the Province. [P. 23, C. 2.]

(c) Custom (Punjab)—Proof—Burden—In case of individual onus is on him—But in case of agricultural tribe applicability is presumed.

As a rule, the onus lies on the person asserting that he is ruled in regard to a particular matter by custom to prove that he is so governed; but the onus shifts on to the opposite party in the case of a tribe which is one of the dominant agricultural tribes in the Province and to which the ordinary agricultural custom is generally applicable. 110 P.R. 1906 (F. B.), ref. to. [P. 24, C. 1.]

Sheo Narain—for Appellant.

Muhammad Iqbal—for Respondents.

Judgment.—One Mubarik Ali of the Jullundur City executed a will, by which he gave his entire estate to the defendant Sayad Muhammad, a stranger to the family, subject to a life-interest in half of it in favour of his widow. The plaintiff, who is an heir *ab intestato* of the deceased Mubarik Ali, claims his share in the estate, alleging that under the Muhammadan Law, by which the latter was governed, the testament executed by him is invalid, except to the extent of one-third of the estate. The Courts below have held that the family, to which the testator belonged, is of the Arain tribe, that it is governed by ordinary agricultural custom of the Punjab, and that the will is valid, so far as the self-acquired property is concerned. Upon these findings the learned Divisional Judge has decreed the suit with respect to a share in one house, holding the same to be ancestral, and has dismissed it as regards the remaining property, which he has found to be self-acquired *qua* the plaintiff.

Against this decision the plaintiff has filed a second appeal, and upon the certificate granted by the learned Divisional Judge the only point for decision is whether custom as opposed to Muhammadan Law supplies the rule of decision. Now, the Courts below have, after a careful survey of the entire evidence on the record, reached the conclusion that the testator was an Arain, and that the original home of the family was Vairowal in the Amritsar District, from which they migrated to Jullundur. This is a finding of fact, and cannot be impeached on second appeal. The Arains being an agricultural tribe in the Province, we start with the initial presumption that the members of this family, like other agricultural tribes, are governed in matters of testamentary and intestate succession by the ordinary Customary Law; and this presumption is not rebutted, though its force is weakened, by the fact that Hidayat Ullah, the ancestor of the family, and his descendants, instead of adopting agriculture as their profession, became employees of sorts in the Kapurthala State and other places. The learned Judge of the lower Appellate Court is right in thinking that the members of the family at some remote time probably cultivated land, and that custom, rather than the Personal Law, was applicable to them at that time at any rate.

Further, it is sufficiently clear that the family does not follow Muhammadan Law as regards intestate succession. In fact, we have instances showing that the widows in the family get only life-estates, that the daughters are excluded by the sons, and that the rule of representation is observed in practice. These instances have not been seriously contested by the learned Advocate for the appellant. In respect of alienation, the same remark cannot be made with equal certainty; but we are disposed to agree with the lower Courts that the oral and documentary evidence points to the conclusion that an alienation of ancestral property is liable to be controlled by a collateral of the alienator, descending from the common ancestor who originally owned it. If ancestral property cannot be disposed of by an alienation *inter vivos*, it follows that it cannot be transferred by a will. Similarly, if self-acquired property can be validly alienated by a transaction to take effect in the alienor's lifetime, there is no valid reason why a different rule should apply, if the owner proceeds to give it away by will. It is a well-recognized principle of law that the power of alienation *inter vivos* and the power of testation

go together and we think that if in a particular case the former is proved to be governed by custom, the latter is presumed to follow the same rule.

We are fully aware of the abstract proposition of law laid down in *Daya Ram* v. *Sohel Singh* (1) that, apart from the particular facts of a case, the onus lies upon the person asserting that he is ruled in regard to a particular matter by custom, to prove that he is so governed, and not by Personal Law, and that it is not sufficient to show that in regard to certain other matters he is governed by custom. But the onus shifts at once, when we deal with a tribe, which is one of the dominant agricultural tribes in the Province, and to which the ordinary agricultural custom is generally applicable: more especially when we find that all the instances are in accordance with custom, and that in the matter of alienation *inter vivos*, which is so closely connected with the power of testation, the principle of Customary Law have been followed. In the conclusion reached by us we are fortified by the fact that there is not a single instance in the family showing that Muhammadan Law has ever been observed in any matter, whether succession or alienation.

For these reasons we are of opinion that the decision of the lower Courts on the only point in controversy in this second appeal must be accepted. We accordingly confirm the decree and dismiss the appeal with costs. The cross-objections have been expressly abandoned by the learned Counsel for the respondents, and are consequently rejected with costs.

R.M./R.K.

Appeal dismissed; *Cross-objections rejected.*

(1) (1906) 110 P. R. 1906 (F. B.).

A. I. R. 1916 Lahore 24

CHEVIS AND LE ROSSIGNOL, JJ.

Milawa Ram—Defendant—Petitioner.

v.

People's Bank of India—Plaintiffs—Opposite Parties.

Civil Revn. Petn. No. 1678 of 1912, decided on 11th November, 1915, from the Decree of Divnl. Judge, Gujranwala, dated 27th August, 1912.

(a) Companies Act (6 of 1882), S. 136—Object of—Object is to prevent all litigation against company except with permission of District Judge.

The object of S. 136, Companies Act, is to prevent all litigation against a Company which is being wound up, except with the consent of the District Judge, and all proceedings in which the Company is either a defendant or a respondent are proceedings against the Company. [P. 25, C. 1.]

(b) Companies Act (6 of 1882), S. 136—Company, plaintiff—Order for winding up made—Revision against company is not competent without leave of District Judge.

A revision against a Company, in a case in which it is the plaintiff, cannot be proceeded with against the Company, after an order has been made for its winding up, without the leave of the District Judge. [P. 25, C. 1.]

Kanwar Narain—for Petitioner.

Herbert and *Madan Gopal*—for Opposite Parties.

Judgment.—Two points were referred to this Bench by the Single Bench.

Of these, that bearing on the necessity for the Official Liquidator to obtain the leave of the District Judge to defend the present revision is decided by the production of the necessary permission.

The remaining point is whether this revision cannot proceed unless and until the petitioner obtains the sanction of the District Judge, whether in fact this revision is a proceeding against the Company in liquidation within the meaning of S. 136 of Act VI of 1882.

For the petitioner it is contended that a revision is a mere continuation of suit, that the suit was brought not against the Company but by the Company against petitioner, and, therefore, S. 136 of the Act does not apply.

We are unable to accept this contention; the present proceeding is a revision, but a revision is no essential or inevitable portion of a suit, and we can find no authority for holding that a suit and a revision are synonymous terms.

In this case the suit was by the Company; the revision, however, is against the Company and we held that it is a proceeding against the Company within the meaning of the section.

It is a proceeding intended to wrest from the Company the decree obtained by it in the Courts below, a decree which but for the present revision would establish the Company's title in the property in dispute. The present revision is a proceeding against the Company to defeat that title.