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Previous to 1825 *dearah X* accreted to *mouzah Y*, and some time before 1860 the *malik of Y* executed two conveyances in favor of *A* and *B* respectively. In 1860 *A* sued *B* in the *Munsiff's Court* for possession of a share in *X* which *B* claimed under his conveyance. In that suit *A* succeeded on the ground that *B's* conveyance did not cover the share claimed by him in *X*, but merely covered the share in the *mouzah itself*, whereas by his conveyance *A* had acquired the right to the share in *X* which he claimed. In 1866 the *Collector* refused to recognize *B's* right to *malikana* payable in respect of the share in *X*, which had been the subject of the suit in 1860, or to register his name in respect thereof, but acknowledged *A's* right thereto, relying on the decision of the *Civil Court* in the suit between *A* and *B*. Subsequently *B's* representatives, *C* and *D*, in 1876, sought to have their names registered in respect of the same *malikana*, but they were opposed by *E*, who alleged that *A* had been acting throughout as his *bonamidar*. The *Collector* referred the case under s. 55 of Act VII of 1876 to the *Civil Court*, and the application of *C* and *D* was eventually disallowed. *C* and *D* thereupon, on the 5th November 1880, instituted the present suit against *E*, in the *Court of the Subordinate Judge*, for a declaration of their right to the *malikana*, and for a reversal of the order refusing to allow their names to be registered in respect thereof. *Held*, that, inasmuch as the allegation made by *E*, in the proceedings held in 1876 on the application by *C* and *D* before the *Collector*, and afterwards upon the reference before the *Civil Court*, that *A* had been acting in the matter merely as his *bonamidar*, was uncontradicted by *C* and *D* in their *plaint* in the present suit, there was sufficient evidence upon which to hold that that fact was true. *Held, also*, that the suit was barred as *res-judicata* on the ground that the right to *malikana* was substantially the same question as the proprietary right to the share in the *dearah*, and that this issue had been tried and decided in the suit in 1860 in favour of *A*, who must be taken to be *E*; that the fact that the previous suit had been brought in a *Munsiff's Court*, whereas the present suit was brought before a *Subordinate Judge*, did not affect the question, inasmuch as the property was the same, and it was not shown that the present suit, if brought in 1860, would not have been within the jurisdiction of the *Munsiff*, nor was it alleged that the suit in 1860 was beyond his jurisdiction. *Held, further*, that the suit was barred by limitation, being governed either by Arts. 120, 131, or 144 of the *Limitation Act* (Act XV of 1877), because—(1) there being no allegation of dispossession, if it were contended that the suit was one for possession of an interest in immovable property, Art. 144 would apply; (2) if it were contended that the suit was for the purpose of establishing a periodically recurring right, pure and simple, Art. 131 would apply, and the period must be reckoned from 1866, when the plaintiff was first refused the enjoyment of the right; (3) if, however, it were said to be a suit to establish a periodically recurring right, and something in addition, inasmuch as the right carried with it a right to the property itself, if the parties consented to take a settlement when the time for concluding the next temporary or permanent settlement came, Art. 120 must be held to apply. But that, in any event

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inasmuch as in the year 1866 the Collector refused to recognise <i>B's</i> right to the malikana and adverse possession, so far as possession could be taken of such an interest in immovable property, was then taken by <i>A</i> , or in other words by <i>E</i> , because it must be taken that the Collector since that date had been holding for <i>A</i> , whose right he had then recognised, after refusing to recognise the right claimed by <i>B</i> , the present suit having been instituted in 1880 was equally barred whichever of the above articles was held to apply. <i>Rao Karan Singh v. Raja Bakur Ali Khan</i> , L. R., 9 I. A. 99, referred to and distinguished.	
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SUIT BY CREDITOR ON BEHALF OF ALL OTHER CREDITORS— <i>Administration Suit—Legal personal representative—Refusal to sue—Receiver, Suit by.</i> Persons interested in the estate of a testator, not being the legal personal representatives of the testator, will not be allowed to sue persons possessed of assets belonging to the testator, unless it is satisfactorily made out that there exist assets which might be recovered, and which, but for such suit, would probably be lost to the estate. Such a suit may be supported where the relations between the legal personal representative and the debtor to the estate present a substantial impediment to the prosecution by the legal personal representative of a suit against the debtor to recover the assets of the testator, and where there is a strong probability of the loss of such assets unless such a suit be allowed. But where there is an administration suit already pending, the proper course to pursue is to obtain an order in the administration suit, directing either a suit to be brought in the name of the legal personal representative, or appointing a Receiver to sue; and in this country the Courts might have the power to direct such Receiver to sue in his own name.	718
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