

SMITH v. MADDEN.

(Circuit Court, N. D. Ohio, E. D. January 22, 1896.)

GUARDIANS—SUITS IN FEDERAL COURTS.

A guardian appointed by the courts of one state cannot sue, as such, in a federal court sitting in another state.

Bane & Iams and Jones & Anderson, for plaintiff.

J. M. Jones and Kline, Carr, Tolles & Goff, for defendant.

RICKS, District Judge. This is a suit brought by the plaintiff, W. G. Smith, as guardian for Nancy Smith, to recover from the defendant damages for an assault made upon the person of the ward within the state of Pennsylvania. The petition alleges that said Smith has been duly appointed as guardian of the estate of Nancy Smith by the orphans' court of Washington county, in the state of Pennsylvania, and that he and his ward are both citizens of the state of Pennsylvania; and, after setting forth the grievances in the petition, the plaintiff prays judgment against the defendant in the sum of \$25,000. A demurrer has been interposed to the petition, on the following grounds: "First, that the plaintiff has not the legal capacity to sue; second, that it appears upon the face of the petition that the alleged cause of action therein set forth is barred by the statute of limitations; third, that the petition does not state facts constituting a cause of action against the defendant." As a general proposition, it is well settled that an administrator or guardian appointed in one state cannot sue in the courts of another state without authority from the latter. Sections 6279 and 6290 of the Revised Statutes of Ohio provide in what way a guardian may bring suit in this state to recover money or property belonging to his ward. Section 6315 provides how a foreign guardian may dispose of property belonging to his ward in this state. But I fail to find any statute which authorized a foreign guardian to bring a suit of the character set forth in this petition. Counsel for the plaintiff have failed to call my attention to any such statute, and I do not think any exists. But counsel for plaintiff cite the case of *Dennick v. Railroad Co.*, 103 U. S. 17, as supporting this right of a foreign guardian to bring a suit in Ohio for wrongs and injuries received in the state of Pennsylvania, where the guardian was appointed. That was a case in which a new York administrator brought a suit in the New York court to enforce a liability created by a New Jersey statute where the New Jersey statute expressly authorized the personal representative to bring the suit, and where a New York statute had a similar provision. The court, on page 19, say:

"Let it be remembered that this is not a case of an administrator appointed in one state suing in that capacity in the courts of another state, without any authority from the latter. It is the general rule that this cannot be done."

Counsel for plaintiff further rely upon section 4998 of the Revised Statutes of Ohio as supporting his right to maintain this action. That section of the statutes simply provides that "the action

of an insane person must be brought by his guardian," and does not apply to a foreign guardian. The case of *Johnson v. Powers*, 139 U. S. 156, 11 Sup. Ct. 525, states the general doctrine thus: "An administrator appointed in one state cannot, as such, maintain any suit in another state." I fail to find, therefore, any authority for the plaintiff, as a foreign guardian, to bring this action in this court against a citizen of this state.

Counsel for the plaintiff insist that it would be a hardship to deprive the plaintiff of the right to recover in a suit of this kind. This is a question for the legislature of Ohio, and not for the court. No authority exists, by the statute, to maintain this action, and the court must so hold. The first cause of demurrer is therefore sustained, and the action will be dismissed.

MCNEIL v. MCNEIL.

(Circuit Court, N. D. California. January 11, 1897.)

1. JURISDICTION TO ANNUL STATE JUDGMENTS FOR FRAUD—JUDGMENTS OF DIVORCE.

The federal tribunals have jurisdiction of suits to relieve against judgments of state courts obtained by imposition and fraud; and this jurisdiction extends to judgments of divorce.

2. SAME—LIMITATION.

Code Civ. Proc. Cal. § 473, limiting to six months the right of a party to proceed for relief from a judgment taken against him "through his mistake, inadvertence, surprise or excusable neglect," does not apply to relief for fraud.

LACHES IN PROCEEDING TO ANNUL JUDGMENT OF DIVORCE.

A delay of 18 months is such laches as precludes an independent suit to set aside a judgment of divorce upon the ground that it was obtained by fraud.

VOID JUDGMENT.

It not being apparent on the record that the plaintiff in a divorce suit had not been a resident of the state for a sufficient length of time to give the court jurisdiction, the judgment is not void on its face; and, even if it were, it might be attacked by motion in the court which rendered it, and resort to a suit in equity would not be necessary.

Sullivan & Sullivan, for complainant.

Henry C. McPike, for defendant.

McKENNA, Circuit Judge (orally). This is a bill in equity to declare void, and to restrain the enforcement of, a judgment of divorce, and for an injunction to restrain the disposition of property. Demurrer by defendant. The ground of the suit is such fraud on the part of the plaintiff in the judgment as prevented notice to defendant, complainant in the suit at bar. Preliminarily, there are these questions presented by the demurrer: First. May a federal tribunal entertain such a suit? Second. If yes, has the plaintiff lost her rights by laches?

1. It is an established power of a court of equity to entertain suits to relieve against judgments obtained by imposition and fraud (*Freem. Judgm.* § 489, and cases cited); and the power extends to judgments of divorce (*Id.*). But it is claimed that the federal tribunals have no jurisdiction to grant a divorce; hence no jurisdiction to annul one.