

**Platt Vs. Jerome**

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**SooperKanoon Citation :** [sooperkanoon.com/80697](http://sooperkanoon.com/80697)

**Court :** US Supreme Court

**Decided On :** 1856

**Appeal No. :** 60 U.S. 384

**Appellant :** Platt

**Respondent :** Jerome

**Advocate for Pet/Ap. :** Mr. Collamer

**Judgement :**

Platt v. Jerome - 60 U.S. 384 (1856)

U.S. Supreme Court Platt v. Jerome, 60 U.S. 19 How. 384 384 (1856)

**Platt v. Jerome**

**60 U.S. (19 How.) 384**

*ERROR TO THE CIRCUIT COURT OF THE UNITED*

*STATES FOR THE SOUTHERN DISTRICT OF NEW YORK*

**SYLLABUS**

The competent parties to agree that a case shall be settled, and the writ of error dismissed are usually the parties upon the record. If either of them has assigned his interest, and it be made known to the court, the interest of such assignee would be protected.

But where there was a judgment for costs in the court below, and the attorney claimed to have a lien upon such judgment for his fees, it is not a sufficient reason for this Court to prevent the parties from agreeing to dismiss the case.

Mr. Collamer, counsel for the plaintiff in error, moved that the writ of error be dismissed, and in support thereof filed the following paper, *viz.*:

"This cause, which is now pending on writ of error from the United States Circuit Court of New York, is hereby settled and discontinued by mutual consent, each party to pay their own cost, and satisfaction is hereby acknowledged of all claims and demands between the parties hereto."

"Dated Waterbury, December 20, 1856."

"CHAUNCEY JEROME."

"O. H. PLATT"

On the 24th of December, it was dismissed.

On the 9th of January, 1857, Mr. Foster counsel for Jerome, moved to set aside the order of dismissal and reinstate the case upon the docket upon the ground that the agreement to dismiss was made by the party himself when he was represented by counsel in court, and that Jerome had become insolvent, whereby all his interest, which was only for costs, had passed to this assignee. By dismissing the writ of error, the lien of defendant's counsel for fees, in this Court and in the court below, would be lost.

MR. JUSTICE NELSON delivered the opinion of the Court.

This is a motion, on behalf of the attorney for the defendant in error to restore the cause on the docket which has been dismissed upon a stipulation of a settlement between the parties. The judgment was for the defendant, Jerome, in the court below, for costs of suit, upon which the plaintiff took out

Page 60 U. S. 385

a writ of error. The attorney claims that he had a lien on the judgment for his costs.

It is quite clear that he can have no lien for any costs in this Court, as none have been recovered against the plaintiff in error. The suit is still pending, and as to the question of the dismissal of the writ, the Court looks no further than to see that the application for the dismissal is made by the competent parties, which are usually the parties to the record. No doubt, if either party had assigned his interest to a third person, by which such third person had become possessed of the beneficial interest and the party to the record merely nominal, the Court would protect such interest and give him the control of the suit. As in the present case, if the application had been made by the insolvent assignee of Jerome, and he had shown that he had succeeded to the interest of the insolvent, the Court might protect his rights.

The attorney, however, even if he has a lien on the judgment, according to the course of proceedings in the court where it was recovered, stands in a different situation. He is not a party to the suit, nor does he stand in the place of the party in interest. He is in no way responsible for the costs of the proceedings, and to permit him to control them would, in effect, be compelling the client to carry on the litigation at his own expense simply for the contingent benefit of the attorney.

We think, therefore, that this cause has been dismissed from the docket by the competent parties, for aught that appears before us, and that the motion to restore it should be

*Denied.*

