OBADIAH H. PLATT, PLAINTIFF IN ERROR, *v.* CHAUNCEY JEROME.

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.

THIS case was brought up, by writ of error, from the Circuit Court of the United States for the southern district of New York.

*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 his 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.

This motion was argued by *Mr. Foster* in support thereof, and by *Mr. Collamer* in opposition thereto.

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

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.

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THE UNITED STATES, PLAINTIFFS, *v.* THE CITY BANK OF COLUMBUS.

Where a question was certified from the Circuit Court to this court, viz: whether a certain letter, written by the cashier of a bank without the knowledge of the directory, though copied at the time of its date in the letter-book of the bank, was a legal and valid act of authority; and the record afforded no evidence relevant to the acts and authority of the cashier, or to the practice of the bank in ratifying or rejecting similar acts, this court cannot answer the question, and the case must be remanded to the Circuit Court, to be tried in the usual manner.

THIS case came up on a certificate of division in opinion between the judges of the Circuit Court of the United States for the southern district of Ohio.

The case is stated in the opinion of the court.

It was argued by *Mr. Cushing* (Attorney General) for the United States, and by *Mr. Stanberry* for the defendant.