

PLATT v. MATTHEWS.

{13 Reporter, 581.}¹

Circuit Court, S. D. New York. April 22, 1882.

LIS PENDENS—RIGHT TO FILE—LIENS.

The right to file a lis pendens is statutory and cannot be impaired by the court.

Plaintiff filed in the office of the clerk of the city and county of New York a lis pendens upon certain property held by defendant. Defendant moved for an order that the plaintiff release the property to the extent of enabling the defendant to make a mortgage upon it.

W. A. Abbott and E. H. Moreau, for the motion.

F. N. Bangs, contra.

WALLACE, Circuit Justice. The right to file a lis pendens is a statutory right over which a court of equity has no more control than has a court of law. This court cannot impair that right of the complainant by subordinating the lis pendens which he has filed to the liens which the defendant wishes to create upon the property affected by it, even though the court should be of the opinion that the plaintiff's claim of title to the property will ultimately prevail. As an assignee in bankruptcy is an officer of the court which appointed him, it would seem that the district court in the exercise of its control over the proceedings of its officers is competent to direct the complainant to enter into such stipulations as may be necessary to preserve the interests of all concerned in the property in which he claims an interest. Motion denied.

{For hearing upon demurrer to bill in principal cause, see 10 Fed. 280.}

¹ [Reprinted by permission.]

This volume of American Law was transcribed for use
on the Internet

through a contribution from [Google](#). 