

The Plaintiff submitted interrogatories upon *faits et articles*, to the Defendant, of which Nos. 2 and 3 were couched in the following words:—

2. Did you ever acknowledge to owe, and promise to pay, to the Plaintiff any sum of money for his work and labour done and performed on board the “Derry Castle”? Did you ever promise to pay to the said Plaintiff, or to Archibald Campbell, Esq., Notary Public, on his behalf, the amount sought to be recovered by the present action, or any amount on account or in full of the said work and labour done, as in the Plaintiff’s declaration alleged, on board of or to the said ship or vessel called the “Derry Castle”? if so, state what amount you promised to pay.

3. Are you aware that the vessel called “Derry Castle” would have been seized, had it not been for your promise made to, or in presence of, the said Archibald Campbell, to pay the amount of the said Plaintiff’s claim?

To the second question he answered: “Having been advised that I am not legally bound to answer this question, I refuse so to do.” To the third—“the same answer as the last.”

The Plaintiff moved that the *facts* stated in the said second and third questions be taken “*pro confessis*.”

At the hearing before Morin, J., on the 25th November, 1857, it was contended by the Plaintiff, that the promise was not one falling within the provisions of the Statute of Frauds—Because it was made, not to Sponza but to Lee, that he, the Defendant, would discharge Lee’s debt to the Plaintiff.—Hargreaves vs. Parsons, 13 M. & W. 561; Eastwood vs. Kenyon, 11 Ad. & El. 438; Barker vs. Bucklin, 2 DENIO 45.

2. That Sponza had a lien, claim or privilege upon the ship, with a right of seizure, for the amount of his account, which right he abandoned on the faith of the Defendant’s promise to pay him, and that consequently that promise was not within the Statute.—Williams vs. Leper, 3 Burr. 1886; Houlditch vs. Milne, 3 Esp. 86.

He moreover contended, that, even supposing that it did fall within the provisions of the Statute, the memorandum in writing of the 18th June, 1852, could be explained by parol evidence, and that it would be valid though it did not specify amount of the debt or the creditor’s name.—Taylor on Evid. §§ 936, 937, 938, 939, 997, 1052.

That the refusal of the Defendant to answer the questions on *faits et articles*, established conclusively the promise made by him to pay the debt sued for.

On the part of the Defendant, it was contended, that the promise was one falling within the provisions of the Statute of Frauds. That no memorandum in writing having been drawn up by which he had promised to pay the Plaintiff the debt due by Lee, he was not bound. That the memorandum of the 18th June, 1852, was incomplete and insufficient. That he had, moreover, paid £545 5s. under it, which was more than he had agreed to advance (as was fully established by the proof). That the want of the memorandum in writing could not be supplied either by the answers of the Defendant, or by his refusal to answer the questions propounded.