

payable to the parties having claims on the ship, as confirmed by Lee, and signed a memorandum of such agreement, and delivered it to Lee.

On the 16th July, 1852, Lee was indebted to the Plaintiff in the sum of £50 4s. for rigging, masting, &c., the said ship, and then and there confirmed his account, and required the Defendant to pay the same.

On the 3rd of July, 1857, the Defendant promised to pay the Plaintiff his claim against the said ship, to wit, the said sum of £50 4s.,—"which the said Defendant has often acknowledged to owe, and promised to pay."

The Defendant pleaded, by *exception péremptoire*,—

1. That on the 18th June, 1852, he had paid to E. P. Lee a sum of money exceeding ten shillings per ton on measurement of such ship, to wit, £545 5s., which sum was paid by him to parties having claims against the said ship as confirmed by Mr. Lee, and according to his express orders.

2. That long previous to the institution of the action, and previous to the 16th July, 1852, he had paid to Lee the full amount agreed to be paid, under the memorandum of the 18th June, 1852.

3. That no claim of the Plaintiff in respect of the said ship, against, and confirmed by Lee, was ever presented to, or accepted by, Defendant. The fourth and fifth *moyens* of the exception are included in those already given. He also filed a *defense au fonds en fait*.

A. Campbell, Esq., Notary, was examined by the Plaintiff, and deposed that the Defendant, previous to the putting to sea of the ship built by Lee as aforesaid, on the representation made to him by witness, that if Plaintiff's account, amounting to £50 4s., were not paid, the ship would be seized, (Plaintiff having informed witness that his intention was to seize,) Defendant said he would pay it. That witness then turned to Plaintiff, who was in Defendant's office, and in Defendant's presence, said—"Sponza, you are perfectly safe; Mr. Levey will pay you." The Plaintiff thereupon, being satisfied, left, and the ship was not seized by him.

Lee was also examined, and testified to the fact, that Defendant had often expressed himself to him, relative to Plaintiff's account, under the promise in writing, and said that he would pay it;—he also proved its confirmation.

The work done by the Plaintiff was proved to be worth £50 4s.

To the questions put to Campbell and Lee, by which it was sought to prove a promise to pay Plaintiff, objections were made by Defendant, on the ground that it was intended thereby to prove, by parol testimony, a promise by the Defendant to pay the debt of a third person, without the proof of any memorandum in writing, signed by the Defendant, containing such promise; the promise in writing, referred to in the said question, not containing the name of the said Paul Sponza, as creditor of the said E. P. Lee, or as having any claim against the said ship.

The objections so taken were argued at *enquête* sittings, before Bowen, C. J., on the 10th September, 1857, and were over-ruled by him.

On the 2nd October, 1857, the Defendant moved to revise the rulings of the Chief Justice so made. On the 13th October, 1857, the Superior Court (Morin, J., and Chabot, J.) refused to reject the questions so put.