contract was signed, it was stated by the architect who acted in the matter for the defendant Brandham that the barricade was to be a temporary one and that it would be replaced by the carpenters when they came to work on the erection of the building. This was denied by the architect, but the jury apparently have accepted Strath's account of the matter, for they found that it was not the "duty of the defendant Strath to have maintained the barricade until his contract was completed."

It was contended that the evidence of Strath was inadmissible, but the learned Judge admitted it, and we think he was right in doing so. One of the exceptions to the general rule as to the admission of parol evidence is, where a contract, not required by law to be in writing, purports to be contained in a document which the Court infers was not intended to express the whole agreement between the parties, and the evidence is of an omitted term expressly or impliedly agreed upon between them before or at the same time, if it be not inconsistent with the documentary terms: Phipson on Evidence, 5th ed., p. 548.

It was also contended that the learned Judge left to the jury the question of the construction of the provision of the contract as to the barricade, instead of himself construing it. Although the form of the question submitted to the jury which was directed to that part of the case seems to indicate that that was done, reading it in the light of the evidence and the charge it was not so, but what was really left to the jury was the question whether it had been agreed between the defendant Strath and his co-defendant, as the former deposed, that his obligation to maintain the barricade was to be temporary, lasting only until the carpenters came to work on the building; and that was a question proper to be submitted to the jury.

The result is, that the appeals fail, and must be dismissed with costs.