January 12, 2013

An Alternate View of the Parol Evidence Rule; A Rejection of the Restatement (Second) of Contracts; Mitchell v. Lath Revisited

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An Alternative View of the Parol Evidence Rule; A Rejection of the Restatement (Second) of Contracts; Mitchill v. Lath Revisited

By Frank L. Schiavo

As early as 1898, Professor Thayer observed that “Few things are darker than [the parol evidence rule], or fuller of subtle difficulties.” 2 Professor Wigmore: “It is not strange that the so-called parol evidence rule is attended with confusion and obscurity which make it the most discouraging subject in the whole field of evidence.” 3 Professor Sweet described it as a “maze of conflicting tests, subrules, and exceptions.” 4 Professor Murray described it “as a legal concept whose mysteries are familiar to many but fathomed by few.” 5 It is therefore not surprising that the rule confuses students as well as teachers and scholars.

The Restatement (Second) of Contracts does nothing to alleviate the confusion but merely adds to it. Its methodology is too cumbersome while Mitchill v. Lath is easier to understand.

A classic case for law students is Mitchill v. Lath 6 in which

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2 JAMES BRADLEY THAYER, A PRELIMINARY TREATISE ON EVIDENCE AT THE COMMON LAW 390 (1898).

3 John Henry Wigmore, 9 Evidence In Trials At Common Law § 2400 (Chadbourn Revision).


5 JOHN EDWARD MURRAY, JR., MURRAY ON CONTRACTS § 82B (4th ed. 2001) (quoted in Astor v. Boulos Co. 451 A.2d 903 (Me. 1982)).

6 160 N.E. 646 (NY 1928)
Judge Andrews sets forth tests for admission of pre-contractual evidence to add to the terms of a subsequent written contract. While perhaps not a model of clarity, it is certainly more understandable than the Restatement (Second) of Contracts approach.

This article suggests an approach closer to that of Mitchell v. Lath which is simpler but retains the essence of the rule.

THE RULE
First, what is the rule? The Restatement (Second) of Contracts speaks of a “binding agreement” discharging prior agreements to the extent they are inconsistent with it or they are within its scope. It is designed to prevent the addition of terms to a written agreement that may have been agreed to by the parties prior to or contemporaneously with the written agreement but were omitted from their final written agreement. It is clear that the rule will only apply if the second agreement is written, whether or not the first is oral or written.

It must be understood that the parol evidence rule is not applicable until the written agreement is an enforceable one. Thus any evidence would be admissible to show the agreement is unenforceable by reason of fraud, duress, mistake, undue influence, an unsatisfied condition precedent, etc. Furthermore, if none of the terms in the writing are “final” (e.g., letter of intent, memo), the parol evidence rule is not applicable because such a writing is not enforceable.

The parol evidence rule serves two separate functions and answers the question of why the evidence was offered: (1) the first function is determining what terms are part of the contract, i.e., what is the content of the written agreement?; (2) the second is determining what those terms mean, i.e., it has a role in interpretation.

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7 Restatement (Second) of Contracts § 213 (1981).

8 “Where the second agreement is evidenced by a writing, the parol evidence process may become operative whether the prior agreement was oral or written.” Murray, supra note 4, § 82A.

9 This leads to two questions: “first, is the contract integrated and if so, second, is the integration total or partial?” Joseph M. Perillo, Calamari and Perillo on Contracts § 3.2 (6th ed. 2009); see also Restatement (Second) of Contracts § 210.

10 “There is no requirement that the writing be ambiguous in order for the evidence [of the term] to be admitted.” E. Allan Farnsworth, Contracts § 7.3 (4th ed. 2004).
Professor Margaret N. Kniffen relates these two concepts to an Emperor and Empress, each being clothed in different requirements:

Contract interpretation, which can be labeled as the Empress, functions to assign meaning to terms already contained within a contract. In contrast, the parol evidence rule, which can be designated as the Emperor, determines whether a term can be added to (or in rare cases, deleted from or displace terms in) a contract.  

This article will discuss the Emperor concept of the rule - what terms are part of the contract.

Reading the written agreement would seem at first blush to be an easy method of determining what terms are part of the contract. Of course, that is not enough because there may be evidence of terms that have been agreed upon but which have been omitted from the written agreement. It is also not enough because the agreement may consist of more than one document.

DETERMINING OMITTED TERMS

How does the court determine whether these “omitted” terms are part of the contract? The early classic case on the issue is Mitchell v. Lath, in which the issue was paramount.

In that case, it was alleged that the parties, before entering a written contract for the sale of plaintiff’s farm, orally agreed that defendants would remove an icehouse they owned across the road on land they did not own. No separate consideration passed for this parol

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12 For example, a seller who will rent the premises to a buyer of his business would want an agreement for the sale of the business and a separate one for the lease. In the event the seller/landlord would have to foreclose on the lease for the buyer/tenant’s failure to pay rent, there would be no need (nor would the landlord want) to submit the purchase agreement into evidence. Only the lease would be required evidence.

13 160 N.E. 646 (N.Y. 1928).
promise. Relying on this promise, plaintiff entered the written contract to buy the farm. Subsequently, defendants refused to remove the icehouse. Plaintiffs sued for specific performance to have it removed. The lower court’s judgment for the plaintiff was affirmed by the Appellate Division and defendant appealed.

The Court of Appeals of New York reversed both lower courts. Judge Andrews, speaking for the majority, in excluding evidence of the agreement, stated that before a prior oral agreement may vary the written contract, three conditions must exist: (1) the oral agreement must be a collateral one, i.e., distinct from and independent of the written agreement; (2) “it must not contradict express or implied provisions of the written one”; (3) “it must be one that parties would not ordinarily be expected to embody in the writing” i.e., “it must not be so clearly connected with the principal transaction as to be part and parcel of it.

Judge Andrews decided it was this third condition that was not met. He founds a full and complete detailed written agreement. If an agreement were made regarding the ice house, it would be “most natural” that it would be found in the written agreement since it is so closely connected with the subject matter of the written agreement. Since it wasn’t in the written agreement, it couldn’t be proved.

Judge Lehman, dissenting, agreed the contract for the sale of the land was complete. However, he would allow the oral agreement to be admitted because the land contract was not intended to “embody negotiations or agreements, if any, in regard to a matter so loosely bound to the conveyance as the removal of an icehouse from land not conveyed,” i.e., it met Judge Andrews’ third test.

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14 Id. at 647.
15 Id.
16 Id. (emphasis added).
17 And Judge Andrews, disagreeing with cases elsewhere that are seemingly to the contrary, states: “But the fixed form of a deed makes it inappropriate to assert collateral agreements, however closely connected with the sale”. Id. at 648.
18 He could not find an “intention to cover a field so broad as to include prior agreements, if any such were made, to do other acts on other property after the stipulated conveyance was made.”
BROAD QUESTIONS

The Restatement suggests an approach that analyzes the issues with a series of logical questions, narrowing the issues from broad to narrow.\textsuperscript{19}

The first broad question to be asked is whether the contract is “integrated,” and the next question is the extent or completeness of the integration.\textsuperscript{20}

FIRST BROAD QUESTION

As to the first question, that of integration: does it contain one or more terms of an agreement that the parties consider as “final”?\textsuperscript{21} If so, the contract is considered to be integrated\textsuperscript{22} even though the writing may not contain all the terms of the parties’ agreement. In other words, the question is whether the agreement is final as to the terms that it actually contains.\textsuperscript{23}

According to the Restatement (Second) of Contracts \S\ 209(1), a contract is integrated if the agreement constitutes a final expression of one or more terms of the agreement. This is a question to be determined in the first instance by the court.\textsuperscript{24} Where there is a written agreement, it will be taken as integrated if it reasonably appears to be a complete agreement in view of its completeness and specificity.\textsuperscript{25}

\textit{Id.}

\textsuperscript{19} Restatement (Second) of Contracts \S\S 209, 210.

\textsuperscript{20} Restatement (Second) of Contracts \S 209.

\textsuperscript{21} Restatement (Second) of Contracts \S 209(1).

\textsuperscript{22} Id.

\textsuperscript{23} Where an agreement is reduced to writing that appears to be complete, it is taken to be integrated. Restatement (Second) of Contracts \S 209(3).

\textsuperscript{24} Restatement (Second) of Contracts \S 209(2).

\textsuperscript{25} Restatement (Second) of Contracts \S 209(3).
If the court finds the contract is not integrated, the parol evidence rule does not apply and evidence of any prior agreement—consistent or not—is admissible. In this instance, it is the task of the fact finder to determine what terms are part of the agreement.

How does the court decide this first question? Initially, any relevant evidence is admitted to show any of the terms were to be regarded as final. Although this is a question of fact, the question is one for the trial judge.

“The crucial requirement is that the parties have regarded the writing as the final embodiment of their agreement,” i.e., what is the intent of the parties?

The parol evidence rule is best understood in light of its purpose to give legal effect to whatever intention the parties may have had to make their writing at least a final and perhaps also a complete expression of their agreement. If the parties had such an intention the agreement is said to be ‘integrated’, and the parol evidence rule bars evidence of prior negotiations for at least some purposes.

The focus plainly is on the intention of the parties, not the integration practices of reasonable persons acting normally and naturally.

26 For example, no terms in the writing are considered to be final by the parties.

27 Farnsworth, supra note 9, § 7.3.

28 Perillo, supra note 8, § 3.3.

29 Id.

30 Id.

31 Farnsworth, supra note 9, § 7.3.

32 See Interform v. Mitchill, 575 F.2d 1270, 1278 (9th Cir. 1978): “[t]heir intent was to be derived from all the documents employed, the circumstances surrounding their execution, and the subsequent conduct of the parties.”
SECOND BROAD QUESTION

If the court finds the agreement is integrated, the inquiry must go further into whether the agreement is partially or completely (totally) integrated. The completely integrated agreement is one that the parties adopt as not only “final” but also as complete and exclusive. In other words, the agreement is completely integrated if there are no other terms the parties adopted as part of the agreement. If the agreement is not completely integrated, it is considered partially integrated.

As to this second question, how does the court determine the question of “finality” in whole or in part, i.e., total or partial integration? Courts have adopted different tests to answer this issue. In many of them, intent is not the basis of this decision.

The answer to this question is crucial to the final issue of whether the offered term is consistent or inconsistent with the agreement. If inconsistent, the offered term may only be admitted if the agreement is not integrated. If the offered term is consistent, it may only be admitted where the agreement is partially integrated.

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33 Pursuant to Restatement (Second) of Contracts § 211(1), a standardized agreement is considered “integrated” as to the terms of agreements of the same type.

34 Restatement (Second) of Contracts § 210(1).

35 Compare the agreement that is only “final.” While some of the terms are contained in such writings, the parties have also adopted other terms that do not appear in the writing. Restatement (Second) of Contracts § 210, cmt. a.

36 Restatement (Second) of Contracts § 210(2).

37 Perillo, supra note 8, § 3.4.

38 Restatement (Second) of Contracts § 215 establishes the principle that evidence of prior or contemporaneous contradictory terms is not admissible if the agreement is either partially or completely integrated.

39 Restatement (Second) of Contracts § 216(1).
FOUR CORNERS RULE

Under the “four corners” rule, the trial judge determines this question by examining the instrument itself and only the instrument; if it appears to be complete on its face, the instrument is conclusively presumed to be completely (totally) integrated. 40

Professor Murray refers to this as the “appearance” test. 41 The first step is for the judge to examine the writing. If he finds, from its appearance alone, that it is complete, the writing is the sole criterion of its own completeness. 42 “This approach is in decline, but still has much vitality.”

But Professor Wigmore suggests that this is an untenable task. 44 Whether the writing was meant to be “complete” cannot be determined until compared with what isn’t in the agreement, i.e., the extrinsic matter. The Restatement (Second) of Contracts § 209(3) suggests the “appearance” test only provides a rebuttable presumption of completeness, reflecting Professor Wigmore’s analysis.

NATURAL INCLUSION TEST

It must be remembered that another test, “natural inclusion,” was used to decide Mitchell v. Lath, i.e., would it be natural not to include the term in the written contract? 45

40 PERILLO, supra note 8, § 3.4(a).

41 MURRAY, supra note 5, § 84(c)(1).

42 “The writing must be the entire contract between the parties if parole evidence is to be excluded, and to determine whether it is or not the writing will be looked at, and if it appears to be a contract complete within itself...‘it is conclusively presumed that the whole engagement of the parties, and the extent and manner of their undertaking, were reduced to writing.’” Gianni v. R. Russell & Co., 126 A. 791, 792 (Pa. 1924) (citing Seitz v. Brewers Refrigerating Machine Co., 141 U.S. 510 (1891)).


44 WIGMORE, supra note 3, § 2431.

45 There, it was claimed the defendant’s were called upon to do
Williston believes, absent a merger clause, one looks at the writing with additional consistent terms being allowed if the instrument is obviously incomplete.\textsuperscript{46} If it appears to a reasonable person to be complete, it is deemed a complete integration; but the term would be admissible if it would be natural for the parties to enter a separate agreement as to the term.\textsuperscript{47} After that, it would be for a jury to decide whether the term was part of the written agreement.\textsuperscript{48}

The Restatement (Second) of Contracts § 216(2)(b) contains Professor Williston’s “natural inclusion” test formulated in Mitchell v. Lath. He was concerned with whether the parties “would ordinarily (naturally and normally) include such coverage” in the writing.\textsuperscript{49}

This is the final test the majority applied in the Mitchell case. The court said “Were such an [oral] agreement [for the removal of the ice house] made it would seem most natural that the inquirer should find it in the contract.”\textsuperscript{50} In his dissent, Judge Lehman believed the contrary, that a deed was not the place for an agreement to remove the ice house and thus would not be natural that the provision would be found in the contract.\textsuperscript{51}

**ALL RELEVANT EVIDENCE**

Professor Corbin would endeavor to determine the actual intent of the parties and would allow all relevant evidence, even prior negotiations, to show a total integration.\textsuperscript{52}


\textsuperscript{47} Id. § 32.25; PERILLO, supra note 8, § 3.4(c).

\textsuperscript{48} PERILLO, supra note 8, § 3.4(c).

\textsuperscript{49} MURRAY, supra note 5, § 84(c)(4)(b); [Author: if they would have and didn’t, the matter is omitted; if they would not have, the matter can be the subject of a collateral agreement].

\textsuperscript{50} Mitchell, 160 N.E. at 647.

\textsuperscript{51} Id. at 649.

\textsuperscript{52} PERILLO, supra note 8, § 3.4(d).
The Restatement embodies Corbin’s view: any relevant evidence may be proved to show the writing was or was not completely integrated; “but a writing cannot itself prove its own completeness, and wide latitude must be allowed for inquiry into circumstances bearing on the intention of the parties.”53

“[T]he basic notion is that a writing intended by the parties to be a final embodiment of their agreement should be protected from certain kinds of evidence. A writing that is final integrates the terms embodied in it. When it is final and complete it is a total integration. A writing that if final, but that does not completely express the parties’ contract, is a partial integration.”54

COLLATERAL AGREEMENT TEST

The Parol Evidence Rule does not prohibit evidence of an agreement separate and apart from the agreement at issue, i.e., a “collateral” agreement.55 As stated in Mitchill, “[The Parol Evidence Rule] does not affect a parol collateral contract distinct from and independent of the written agreement.”56 But as expressed in Mitchill v. Lath, there are two caveats to its admission.

The first restriction on its admission is that it cannot contradict the main agreement.57 The second, that it be one the parties would not ordinarily be expected to embody in the writing, is discussed, supra, at the Natural Inclusion Test.

53 Restatement (Second) of Contracts § 210(3) cmt. b, c.


55 Professor Murray notes that this “provides no analytical basis for a court to decide the question of admissibility. ...[The collateral agreement test] is a conclusory label attached after the critical test has already been applied and the court has already determined whether the evidence should be admitted.” Murray, supra note 4, § 84(4)(b).

56 Mitchell 160 N.E. at 646
57 Farnsworth, supra note 9, § 7.3; Perillo, supra note 8, § 3.4(b).
MERGER CLAUSES

May the parties themselves avoid the issue by stating in the agreement that it is final and complete if it is so intended, i.e., that the agreement contains the entire agreement of the parties? The purpose of the clause would be to "merge" all prior negotiations into the written agreement.

Williston believes that the presence of a merger clause presumptively establishes the integration as total.\(^58\) Restatement (Second) of Contracts § 209, comment b agrees but explains that such a declaration may not be conclusive. The intent of the parties may be manifested without such a clause.

*Smith v. Cent. Soya of Athens, Inc.*,\(^59\) states:

[A merger clause] creates a rebuttable presumption that the writing is a complete and exclusive statement of the contract terms. In order to rebut the presumption and, in effect, invalidate the merger clause, a party must offer evidence to establish the existence of fraud, bad faith, unconscionability, negligent omission or mistake of fact.\(^60\)

In *Colafrancesco v. Crown Pontiac-GMC, Inc.*,\(^61\) the plaintiff purchased a 1981 Datsun believing she had purchased a 1982 version. All paperwork recited a 1981 auto. The court excluded parol evidence of her prior oral understanding. The contract for sale included the following merger clause, "The above comprises the entire agreement pertaining to the purchase and no other agreement of any kind, verbal understanding or promise whatsoever, will be recognized."\(^62\) It held the parol evidence was not admissible. The plaintiff failed to present "even a scintilla" of evidence of fraud or the concealment of the contents of the contract.\(^63\)

\(^{58}\) *Perillo*, supra note 8, § 3.4(c).


\(^{60}\) *Id.* at 526 (citing Uniform Commercial Code § 2-212).

\(^{61}\) 485 So. 2d 1131 (Ala. 1986).

\(^{62}\) *Id.* at 1133.

\(^{63}\) *Id.*
In *Bird Lakes Dev. Corp. v. Meruelo*, the plaintiff, in purchasing a 35 acre tract, relied on oral representations of the seller’s president that the property had sewer lines to the site and its broker that the price for each parcel within the tract included a sewer line. The purchase contract for the parcel included a merger clause. On learning the property had no sewer line to the site, plaintiff sued for specific performance and damages. In discussing the applicability of the merger clause, the court described two schools of thought. One view, a minority one, declared that the merger clause conclusively establishes the integration is total. The other view declared that finality can never be determined by the words of the contract alone, thus all relevant evidence is admissible to show the intent of the parties. The oral agreement would not have been excluded under either view in light of a finding the execution of the contract was induced by fraud.

*Zinn v. Walker*, recognized another method of rebutting the presumption. A real estate developer provided front money to a real estate broker for the real estate broker to purchase real estate. Contemporaneously with executing the Contract of Sale, the parties executed a Resale Profits Agreement. It provided that net sales proceeds of lots would be shared 80% to defendant, 20% to Plaintiff. In a suit to recover her share of the profits from a sale, the Court held that the “contemporaneously signed writings may be incorporated together to devine the meaning and purpose of the contractual whole.” “Where giving effect to the merger clause would frustrate and distort the parties’ true intentions and understanding regarding

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64 626 So. 2d 234 (Fla. Dist. Ct. App. 1993).

65 “...unless the document is obviously incomplete or the merger clause was included as a result of fraud or mistake.” *Id.* at 238.

66 *Id.*

67 *Id.*


69 The parties also executed a third agreement, Design and Review Agreement, which is not in issue.

70 *Id.* at 318 (citing *Yates v. Brown*, 170 S.E.2d 477 (N.C. 1969)).
the contract, the clause will not be enforced."

**FINAL ISSUE**

Now we are faced with the final issue of whether the term is consistent or inconsistent with the agreement. This is the most difficult question because there is no consistency on how to determine whether the term is consistent or inconsistent.

Factors have included whether the term: (1) contradicts an express term of the agreement; (2) in the circumstances might naturally be omitted from the writing; (3) was agreed to for a separate consideration.

This traditional approach can be demonstrated by following the flow chart attached as Appendix 1.

The traditional approach can also be demonstrated in diagram form as illustrated in Appendix 2.

The diagram clearly shows that when the agreement is not integrated, both consistent and inconsistent terms may be admitted. Likewise it is clear that when the agreement is completely integrated neither consistent nor inconsistent terms may be admitted. The troubling area is where the agreement is partially integrated - the shaded area. It is there that it is unclear whether consistent terms may be admitted.

Therefore, the first area of inquiry should be the shaded area where “consistent” terms overlap the partially integrated agreement. The approach would be whether the proposed term is contradictory with

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71 *Id.* at 318.


73 **Restatement (Second) of Contracts** § 215; or, to put it another way, is the term within the scope of the written agreement? Or as the Mitchell case puts it, it must not be so “clearly connected” with the principal transaction as to be part and parcel of it.

74 **Restatement (Second) of Contracts** § 216(2)(b) cmt. d.

75 **Restatement (Second) of Contracts** § 216(2)(a).
the agreement.\textsuperscript{76} Only where it is not contradictory should additional analysis be necessary. Therefore if the term is contradictory, a host of other issues is avoided.

**ALTERNATIVE APPROACH**

It would appear that this alternative approach would arrive at the crucial question earlier than that suggested by the Restatement, i.e., why not begin with the question of whether the proffered term is contradictory or not with the written agreement?

This more direct approach can be illustrated in Appendix 3.

Sunset Pointe at Silver Lakes Assocs. Ltd v. Vargas\textsuperscript{77} appears to adopt this approach. Plaintiffs entered a contract to purchase a home to be constructed by defendants. The contract was subject to plaintiffs obtaining a mortgage. The agreement also provided that upon their credit being approved, the sale was to be consummated regardless of whether the home they currently owned was sold or leased.\textsuperscript{78} Plaintiffs were approved for a loan but only upon the contingency they netted $96,000 from the sale of their current home. Plaintiffs did not want to sell that home because other family members were living there. Plaintiffs sued for recovery of their deposit alleging that defendant’s salesman, who had referred them to the lender, orally promised them they would be approved for financing without having to sell their home.\textsuperscript{79} Buyers argued “parol evidence was admissible to establish a contemporaneous oral agreement which induces the execution of a written contract.”\textsuperscript{80} The court held, without discussing integration, that the parol evidence rule does not permit

\textsuperscript{76} Since Restatement (Second) of Contracts § 211 presumes a standardized agreement is at least “integrated,” there is no need to address that question first and the inquiry can be directed to consistency. Otherwise the court must make a determination as to integration before applying the parol evidence rule. Restatement (Second) of Contracts § 210(3).

\textsuperscript{77} 881 So. 2d 12 (Fla. Dist. Ct. App. 2004).

\textsuperscript{78} Id. at 13.

\textsuperscript{79} Id.

\textsuperscript{80} Id.
oral evidence which directly contradicts the written agreement.\textsuperscript{81}

The diagram of the parol evidence rule in Appendix 2 suggested another approach. When the term is determined not to contradict the written agreement, the question then should be whether the term is admissible or not. The questions asked would be whether the term should be naturally included in the written agreement, whether the term was within the scope of the written agreement, and whether there was a collateral agreement with respect to the term.

The answers to all three questions must be “Yes” for the evidence to be admitted. This simpler approach can be illustrated by the flow chart in Appendix 4.

In this construct, the issue of integration is not even approached because if the term is admitted, the agreement would be partially integrated and if not admitted, the agreement would be completely (or totally) integrated. It is a conclusion drawn after the decision is made whether to admit the evidence of the term or not. This is consistent with Professor Murray’s opinion of collateral agreements.\textsuperscript{82}

**CONCLUSION**

One can see now why the Restatement approach to the parol evidence rule is needlessly too complex. It starts with conclusions (non-integrated, partial integration, complete integration) and backs into the real issue – whether the term can be added to the written agreement.\textsuperscript{83} Why shouldn’t the first question be whether the proposed term contradicts (or not) the written agreement?

Isn’t this the approach similar to the one used by Judge Andrews in Mitchell v. Lath?\textsuperscript{84} Judge Andrews did not directly decide whether the term contradicts the agreement.\textsuperscript{85} He did so indirectly because he went

\textsuperscript{81} Id. at 14; accord Ungerleider v. Gordon, 214 F.3d 1279 (11th Cir. 2000).

\textsuperscript{82} See supra note 54.

\textsuperscript{83} It is also noted that the term “integration” does not appear anywhere in Judge Andrews opinion.

\textsuperscript{84} 160 N.E. 646 (N.Y. 1928).

\textsuperscript{85} “The respondent does not satisfy the third of these
straight to the three issues presented in Appendix 4. He also gave short discussion to the collateral agreement condition.\(^{86}\) The remainder of his opinion concerned whether the term would be one the parties would expect to find in a separate agreement, i.e., it must not be so “clearly connected” to the principal transaction as to be a part of it.\(^{87}\) The term was so closely related to the subject dealt with in the written agreement, it could not be proved.\(^{88}\)

He didn’t decide the contradictory question because it wasn’t necessary. Once past the contradictory issue, three questions arise as shown in Appendix 4. One, is the term naturally excluded; two, is the term not within the scope of the agreement; three, is the agreement a collateral one.

If the answer to question one is yes, there is a possibility that term may be admitted. If the answer to question two is yes, there is still a possibility that the term may be admitted. If the answer to question three is yes, there is still a possibility the term may be admitted. The answer to all three questions must be “yes” for the term to be admitted. In the *Mitchill* case, the answer to question two was no, thus the term was not admitted.

Therefore, the more logical method of approaching the question of whether a term may be omitted under the parol evidence rule is to begin with the question of whether the term is contradictory to the terms of the written contract. Under this construct, the convoluted issue of “integration” is avoided\(^{89}\) and the issue becomes less “attended with confusion and obscurity which make it the most discouraging subject in the whole field of evidence.”\(^{90}\)

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\(^{86}\) “Collateral in form it is found to be.” *Id.* at 647.

\(^{87}\) *Id.*

\(^{88}\) *Mitchill v. Lath*, 160 N.E. 646 (N.Y. 1928)

\(^{89}\) The lack of use of the term “integration” in *Mitchill v. Lath* reinforces the thought that the term “integration” (whether partial or complete) is merely a conclusion made after the term is determined to be admitted or not.

\(^{90}\) *Wigmore*, supra note 3, § 2400.
This traditional approach can be demonstrated by the following flow chart:

[Appendix 1]
This traditional approach may also be illustrated by the following diagram:

[Appendix 2]

EXTENT OF INTEGRATION

TERMS

NOT CONTRADICTORY

NOT INTEGRATED

PARTIAL INTEGRATION

COMPLETE INTEGRATION

CONTRADICTORY

18
This more direct approach may be illustrated by turning around the first question:

[Appendix 3]
This can be illustrated by the following flow chart:

[Appendix 4]