

Any argument which could import here a condition imposed upon the agreement of the plaintiffs, so that they would be relieved from the agreement if the defendants left the gate open, must be equally effective in *Yeates v. Grand Trunk R.W. Co.*, 14 O.L.R. 63, to import a similar condition relieving the plaintiff in that case from the effect of the agreement of his landlord if the trains of the defendants were run too fast or without proper signals. Nor is there any rule forbidding any person or company from making a contract relieving them from the consequences of negligence on the part of their employees. The practice of importing implied terms into a contract is a dangerous one: *The Queen v. Demers* [1900] A.C. 103; *Hill v. Ingersoll and Port Burwell Gravel Road Co.*, 32 O.R. 194; *Churchward v. The Queen*, L.R. 1 Q.B. 173, 195; *Ogdens Limited v. Nelson* [1903] 2 K.B. 287, 297. Appeal dismissed with costs.

FALCONBRIDGE, C.J., concurred. BRITTON, J., dissented.  
J. C. Elliott, for plaintiffs. W. E. Foster, for defendants.

#### DIVISION COURT—COUNTY OF ELGIN.

MILLER v. McKENZIE.

*Fence viewers—Right of two out of three to act—Consent.*

Three fence viewers were notified to attend, but only two came and considered the matter and joined in the award. There was not sufficient evidence that the plaintiff consented to the two proceeding in the absence of the third.

*Held*, The duties of fence viewers are analogous to those of arbitrators and there being no consent to the contrary the parties were entitled to the joint conference of the three.

[ST. THOMAS, Aug. 25.—Ermantinger, Co. J.]

This was an appeal from the award of two fence viewers. The Line Fences Act requires a reference in a case such as this to three fence viewers. Three were notified, but two only attended and viewed the premises, considered the matter, and joined in the award. By s. 7 of the Act (R.S.O. c. 284) any two of the fence viewers may sign the award, but the previous section clearly states that the fence viewers—that is to say, the three—shall examine the premises and, if required, hear evidence,