

fully maintained against an unpaid valuer except on proof of fraud, unless the litigant is prepared to carry his case to the Supreme Court.

When the valuer is not informed and does not know that his valuation is procured for the purpose of being acted on, or inducing some other person to act on it, it would seem that according to the principles on which *Moffatt v. Bank of Upper Canada*, 5 Gr. 374, and *Cook v. Royal Canadian Bank*, 20 Gr. 1, were decided, that he would not be liable in damages, should his valuation prove untrue. These were not cases of valuation, it is true, but cases in which persons dealing with mortgagors sought to hold the mortgagees liable for representations made in respect to the amount due on the mortgage; and it was held that the representations relied on not having been made with notice of any intention to act upon them in dealing with the owner of the equity redemption, they did not estop the mortgagee from disputing their correctness.

Before concluding, we may observe that the amount of skill and judgment required to be exercised by a paid or unpaid valuer in making a valuation, to some extent depends on whether or not he holds himself out to the world as a valuer by occupation, for while in the one case he will be liable for loss if he fails to exercise the skill and judgment which a professional valuer may be reasonably expected to possess, in the other case he will not be liable unless he has been guilty of gross negligence or fraud. This distinction is pointed out by Spragge, C., in *Hamilton Provident & Loan Society v. Bell*, 29 Gr. 203. That case was determined on a hearing *pro confesso*, but the judgment is a considered judgment. The case was one of a paid valuer, but the principle on which the learned judge based his decision of the case appears equally applicable to unpaid valuers. He cites with approval the following passages from Evans, Principal and Agent, p. 238, viz.: "An agent is liable for misfeasance in performing a gratuitous undertaking, if he fails to exercise that degree of skill which is imputable to his situation or employment. Any failure on his part to fulfil the obligation imposed upon him as being possessed of the skill which he holds himself out to the world as possessing, is actionable negligence;" and again: "Lord Loughbrough agreed with Sir William Jones (Law of Bailments, p. 120) that when a bailee undertakes to perform a gratuitous act from which the bailor alone is to receive benefit, there the bailee is only liable for gross negligence; but if a man gratuitously undertakes to do a thing to the best of his skill, when his situation or profession is such as to imply skill, an omission of that skill is imputable to him as gross negligence. His Lordship acknowledged, too, that if in this case (*Shields v. Blackburn*, 1 H. Bl. 158) a ship broker or a clerk in a custom house had undertaken to enter the goods, a wrong entry would in them be gross negligence, because their situation and employment necessarily imply a competent degree of knowledge in making such entries, but when an application, under the circumstances of this case, is made to a general merchant to make an entry at the custom house, such a mistake as this is not to be imputed to him as gross negligence." These principles Spragge, C., held were applicable to the case of persons employed to act as valuers.

The mere fact that after the valuation, the property depreciates in value,