

of the law by the President of the Probate Division in the same case, viz: "I take the principle to be that, if a man takes upon himself to assert a thing to be true which he does not know to be true, and has no reasonable ground to believe to be true, in order to induce another to act upon the assertion, who does so act, and is therefore damnified, the person so damnified is entitled to maintain an action for deceit." And acting upon the principles thus enunciated, Chitty, J., held the valuer to be liable to the plaintiffs, who were mortgagees, although he had been employed and paid by the mortgagors and not by the plaintiffs, between whom and the defendant no privity of contract existed. The Court of Appeal of Ontario in the case of *Canada Landed Credit Co. v. Thompson*, 8 App. R. 696, to which we have referred, have virtually receded to some extent from the position taken by that Court in *Silverthorn v. Hunter*, for although insisting in that case that proof of fraud was of the essence of the right to recover in actions of that kind, they in *Canada Landed Credit Co. v. Thompson*, ordered a new trial because Proudfoot, J., had adopted that very view. Spragge, C.J., at p. 702, says: "It thus appears that the learned judge made fraud on the part of the defendants the test of their liability. There can indeed be no doubt that such was the learned judge's view of the law, for in the earlier part of his judgment, after referring to authorities, he says, 'they lay down the general rule of the law to be, that fraud must concur with the false statement to give a ground of action.' . . . He dealt with the case viewing it from a standpoint which, in my judgment, was erroneous." And yet it will be observed the language of Proudfoot, J., which the learned Chief Justice cites, is identical with that used by Burton, J.A., when giving the unanimous judgment of the Court of Appeal in *Silverthorn v. Hunter*.

Burton, J.A., distinguishes the case from *Silverthorn v. Hunter* on the ground that in the latter case the judgment of the Court of Appeal proceeded on the assumption that it was the case of an unpaid valuer, whereas in the *Canada Landed Credit Co. v. Thompson* a fiduciary relationship of principal and agent existed between the parties, and this fact he considered rendered it unnecessary to prove that the defendants had acted fraudulently. The result of the latter case is therefore to establish, that at all events, valuations made by persons who owe a duty arising from a fiduciary relationship, or who are paid for their services, are an exception to what in *Silverthorn v. Hunter* is assumed to be the general rule, "that fraud must concur with the false statement to give a right of action."

But though the decision of the Ontario Court of Appeal in the *Canada Landed Credit Co. v. Thompson*, has only established this exception to the assumed general rule, it seems to be abundantly clear that, if the principles enunciated by the English Court of Appeal in *Peck v. Derry*, 37 Ch. D. 541; 59 L.T.N.S. 78, and applied by Chitty, J., in *Cann v. Wilson*, are sound, the assumed rule of law has no existence, even as regards unpaid valuers, but on the contrary, a valuer, whether paid or unpaid, is liable in damages if knowing that his valuation is intended to be acted upon, he certifies it without reasonable ground for believing it to be true. But in view of the decision of the Court of Appeal in *Silverthorn v. Hunter*, it is open to doubt whether in Ontario an action can be success-