

the value to be \$3,000; and it was held by Blake, V.C., that he was not liable, and this decision was affirmed by the unanimous judgment of the Court of Appeal. Without venturing to impugn the correctness of this decision in point of law, having regard to the peculiar facts of that case, we think it is nevertheless open to doubt whether all the reasons assigned by Burton, J.A., for the decision can now be regarded as law. For instance, he lays down in general terms that in no case can a valuer be made liable for damages resulting from a false valuation, unless fraud can be established. Thus he says: "I assume it can admit of no doubt that if a declaration were framed charging that the defendant falsely and negligently made a representation, knowing that it was intended to be acted upon by the plaintiff, and that it was so acted upon to his injury, without any averments that it was false to his knowledge or fraudulently made, it would be bad on demurrer." And again he says: "In fact all the cases from *Pasley v. Freeman* downward, lay down the general rule that fraud must concur with the false statement to give a ground of action," and in support of this proposition he refers to *Evans v. Collins*, 5 Q.B.D. 820; *Ormrod v. Huth*, 14 M. & W. 651, and *Thorn v. Bigland*, 8 Ex. 731; (and see per Blake, V.C., in *French v. Skead*, 24 Gr. 187); and though from the later case of the *Canada Landed Credit Co. v. Thompson*, we learn, as we shall presently see, these observations of Burton, J.A., are intended to apply only to the case of unpaid valuers, yet according to the views of Courts of Equity, which appear to us to be founded on a somewhat higher standard of morals than that on which the common law decisions proceed, it may reasonably be doubted whether the rule which Burton, J.A., invokes has now any existence at all, even as regards unpaid valuers. In *Gowan v. Paton* 27 Gr. 48, which had been previously decided by Blake, V.C., but which, strange to say, was not referred to by either the bar or the bench in *Silverthorn v. Hunter*, that learned judge had held that an unpaid valuer was liable in damages for a false valuation which he had negligently, but innocently, given under a mistake as to the identity of the lot; and this decision was approved by Spragge, C., in *Hamilton Provident & Loan Society v. Bell*, 29 Gr. 206; and in the late case of *Cann v. Wilson*, 39 Ch. D. 39; 59 L.T.N.S. 723, Chitty, J., has come to a like conclusion, basing his decision upon the principles laid down by Cotton, L. J., in *Peek v. Derry*, 37 Ch. D. 541; 59 L.T.N.S. 78, where he says: "Although in my opinion it is not necessary that there should be what I should call fraud, yet in these actions (*i.e.*, of *deceit*), according to my view of the law, there must be departure from duty; and in my opinion, where a man makes an untrue statement with an intention that it shall be acted upon, without any reasonable ground for believing that statement to be true, he makes default in a duty which was thrown upon him from the position he has taken upon himself; and he violates the right which those to whom he makes the statement have, to have true statements only made to them. And I should say that when a man makes a false statement to induce others to act upon it, without reasonable ground to suppose it to be true, and without taking care to ascertain whether it is true, he is liable civilly as much as a person who commits what is usually called fraud, and tells an untruth knowing it to be an untruth." Chitty, J., also cites the statement