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LIABILITY OF VALUERS FOR UNTRUE VALUATIONS.

THE liability of valuers for damages consequent on their making untrue valuations, may be founded either in contract or in tort. When the person who suffers damage by the false valuation is the person by whom the valuer was employed and paid, there is a privity of contract, and the valuer is bound to use reasonable skill and diligence, and if he fails in either he is guilty of a breach of his contract, and is responsible in damages to the person with whom he contracts. Cases, however, arise, when there is no privity of contract between the valuer and the person who sustains damage in consequence of trusting to his valuation. In such cases the valuer may have been paid by the person who reaps the benefit of his false valuation, or he may have acted gratuitously, but in either of these cases, as regards any third party injured by relying on his valuation, he is in the position of an unpaid valuer, and if liable at all, is liable only on the ground of tort.

It has been decided in the Courts of Ontario that in order successfully to maintain an action against an unpaid valuer for a false valuation, it is absolutely essential to establish *mala fides* on his part: *French v. Skead*, 24 Gr. 179. In this case an unpaid valuer valued property for the purpose of the plaintiff making a loan of money upon it, at \$1,200, when in fact it was not worth more than \$400 or \$500, and actually realized only \$130 at a sale under execution. But the Court of Chancery nevertheless absolved the valuer from liability, because there was no evidence of *mala fides*, and this decision was affirmed by the Court of Appeal: see 24 Gr. 413. Spragge, C., however, dissented, and considered the defendant had been guilty of such gross negligence as to render himself liable; an opinion in which we are inclined to agree, and which we think will be found to be sustained by the later cases to which we shall presently refer.

This decision was followed in *Silverthorn v. Hunter*, 26 Gr. 390; 5 App. R. 157, but whether that was the case of a paid, or an unpaid valuer, seems open to doubt. One, McLellan, at the plaintiff's request, procured the valuation and paid the defendant, Hunter, \$4 for his services, but Burton, J.A., in *Canada Landed Credit Co. v. Thompson*, says the head note of *Silverthorn v. Hunter* is misleading, and that "in that case Hunter was not acting as the paid agent of the plaintiff."

"The defendant in that case was paid for his services by the witness McLellan, but it was not pretended that he was the paid agent of the plaintiff." But, however that fact may be, the defendant, Hunter, valued the property in question at \$2,000; but through the fraud of McLellan, who procured the valuation at the plaintiff's request, he actually signed a certificate whereby he certified