

THE MASTER.—Privilege cannot be successfully claimed unless the report is “fair and authentic.” It is admitted by defendants’ manager that the report was a mistake, and being so there can be no privilege under sec. 9 of ch. 68: *Ashmore v. Borthwick*, 2 Times L. R. 113, 209; *McNally v. Oldham*, 8 L. T. N. S. 604; *Gywnn v. South Eastern R. W. Co.*, 18 L. T. N. S. 738; *Shepherd v. Whittaker*, L. R. 10 C. P. 502. However, defendants’ defence that the report was published in good faith and without malice and that a correction or apology was published, is a good defence, and, under the circumstances, the grounds of action are trivial or frivolous. As to the defence of apology, see *Odgers on Libel and Slander*, 2nd ed., p. 524; *Lafone v. Smith*, 3 H. & N. 735; *Risk Allah Bey v. Johnstone*, 18 L. T. 620; *Oxley v. Wilkes*, [1898] 2 Q. B. 56.

Usual order for security for costs granted.

STREET, J.

JANUARY 27TH, 1903.

CHAMBERS.

RE WARING v. TOWN OF PICTON.

*Prohibition—Division Court—Title to Land—Trial—Certiorari.*

Motion by defendants for prohibition to a Division Court, on the ground that the title to land is in question, or for a certiorari to remove the action into the High Court.

A. H. Marsh, K.C., for defendants.

W. E. Middleton, for plaintiff.

STREET, J.—The action not having been tried, although plaintiff’s ownership of a certain house is the foundation of her action, and the damage done to the value of the property by the acts of defendants is that which she seeks to recover, the title to her land is not necessarily brought in question, for defendants may not dispute it at the trial. Should it appear at the trial that there is a bona fide dispute raised as to it, the Judge should refuse to proceed with the trial, and if he proceeds, prohibition will lie. At present it is not made to appear that the title is brought in question or that the Division Court has not jurisdiction: *Re Moberly v. Town of Collingwood*, 25 O. R. 625; *Re Emery and Barnett*, 4 C. B. N. S. 423.

There is no reason for removing the action from the Division Court and exposing plaintiff to the risk of the heavy costs of proceedings in the High Court, when she is willing to limit her claim to a sum within the jurisdiction of the Division Court, and that Court has power to try her claim.

Motion dismissed with costs.