

The trial Judge accepted the evidence given that the plaintiff was not present when the assault took place and the fine was imposed; and the jury had found for the defendant in face of an admission and against evidence that the libel was untrue as to one part—a part clearly libellous in the circumstances—and the verdict could not stand: *Lumsden v. Spectator Printing Co.* (1913), 29 O.L.R. 293.

Evidence was improperly admitted of a previous fine of \$25 imposed during the same day for irregularities on the track, which fine was withdrawn. The fact was irrelevant, having regard to the explicit terms of the article complained of as libellous.

The pleadings in an action for libel must define the issue which is being tried. Upon a plea of justification, the defendant is limited to proving the truth of his assertion, and should not be allowed, to the prejudice of the plaintiff, to adduce evidence which may raise a totally different issue. If the parties are not bound by the pleadings, confusion may be caused, and a general verdict for either party may mean a mistrial. See *Brown v. Moyer* (1893), 20 A.R. 509; *Manitoba Free Press Co. v. Martin* (1892), 21 S.C.R. 518; *Jackes v. Mail Printing Co.* (1915), 7 O.W.N. 677.

The judgment for the defendant should be vacated, and a new trial ordered; the defendant should pay the costs of the appeal; and the costs of the former trial should be dealt with by the Judge presiding at the new trial.

SECOND DIVISIONAL COURT.

DECEMBER 9TH, 1915.

*BALL v. WABASH R.R. CO.

Trial—Findings of Jury—Negligence—Contributory Negligence—Injury to Servant of Railway Company—Conflicting Findings—New Trial—Rule 501(1).

Appeal by the defendants from the judgment of SUTHERLAND, J., 8 O.W.N. 544.

The action was for damages for injuries sustained by the plaintiff, a locomotive fireman employed by the defendants, by reason of their negligence in relation to the escape of steam from a valve. Questions were submitted to the jury, which, with