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Practice and Procedure--Nature of Motion for Judgement--Sufficiency

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took this position in a recent case.[10] Is this holding consistent with previous decisions in this state? While the exact point had not been definitely passed on previously so as to leave it without doubt, yet other decisions have at least intimated that the notice to be sufficient must state a cause of action.[11] While this is a step away from liberal construction yet it is a necessary one. If no standard were set as to what constituted a sufficient statement of the plaintiff's claim as set out in a notice of motion for judgement, endless confusion and disagreement would result, and the utility of this proceeding would be sadly injured. If a standard were to be set it is only logical to require the notice to state a cause of action. To require more would be useless and of no value; to require less would be to endanger the right of the defendant to a clear statement of the claim against him in order that he may intelligently prepare to defend. Thus the West Virginia court seems to be correct in requiring a notice of motion for judgment to state a cause of action in order to be sufficient.[12] *R. J. R.*

CRIMINAL LAW—INTOXICATING LIQUORS—EVIDENCE SUFFICIENT TO SUSTAIN VERDICT.—Defendants were convicted of transportation of more than one quart of intoxicating liquors in violation of section 31 of chapter 32A of the Code. The defendants about to be arrested broke three half gallon jars which had contained an unknown amount of whiskey. One witness testified that from the appearance where it was spilled on the ground that there was about a gallon in two of the jars. The defendants did not testify. There was a motion to set aside the verdict on the ground, *inter alia,* that there was not sufficient evidence to sustain the verdict that the transportation was of more than one quart. *Held,* that there was sufficient evidence to sustain the conviction; that the facts proven in this case, unexplained, were sufficient to justify the jury's verdict. *State* v. *Hussion,* 112 S. E. 309 (W. Va. 1922).

This is the first case of this character to come before the West Virginia court for decision. It would seem that this decision is sound upon principle. The test in determining whether a verdict should be sustained or reveresd because of insufficiency of evidence is whether or not the jury could reasonably have found such a verdict. It is not enough that the members of the appellate court think that if they had been on the jury they might have found a

[10] Hastings *v.* Gump, *supra.*
[11] Anderson *v.* Prince, *supra.*
[12] Hastings *v.* Gump, *supra.*

different verdict. *Thomas* v. *Commonwealth,* 106 Va. 855, 56 S. E. 705. When some evidence has been given to sustain a verdict a new trial will not be granted merely because the case is somewhat doubtful, or the judge, if a juror, would have found a different verdict. The evidence must be plainly, manifestly insufficient, and the verdict work injustice. This applies *a fortiori* to an appellate court. *State* v. *Sullivan,* 55 W. Va. 597, 47 S. E. 267; *Grayson* v. *Commonwealth,* 6 Gratt. (Va.) 712; *Blosser* v. *Harshbarger,* 21 Gratt. (Va.) 214. This question has been passed upon in a few cases in other jurisdictions. Evidence of this character was held sufficient to sustain a conviction of possessing intoxicating liquors, although the accused had destroyed the liquor and thus made it impossible to produce the *corpus delicti* as evidence. *Knight* v. *State,* 26 Ga. App. 42, 105 S. E. 642; *Bradford* v. *State,* 5 Ga. App. 494, 63 S. E. 530; *Latta* v. *State* 200 Pac. 551 (Okla. 1921). Evidence of somewhat similar character was held not sufficient to sustain a conviction for transporting more than one quart of intoxicating liquors. *Moore* v. *Commonwealth,* 111 S. E. 128 (Va. 1922). But the Virginia case is not at odds with the principal case, it is thought. In that case the evidence was of such character that the court held the jury could not reasonably have inferred that the defendant transported more than one quart of whiskey, while in the principal case there was evidence tending to prove the offense charged. The verdict of a jury will not be set aside on a writ of error when the evidence tends to support their finding. *Dix* v. *Commonwealth,* 110 Va. 907, 67 S. E. 344; *Cook & Son Min. Co.* v. *Thompson,* 110 Va. 369, 66 S. E. 79; *Richmond* v. *Wood,* 109 Va. 75, 63 S. E. 449; *Chesapeake, etc. R. Co.* v. *Greaver,* 110 Va. 350, 66 S. E. 59. —*J. D. D.*

DAMAGES—EXEMPLARY—INJURY FROM MALICIOUS ASSAULT AND BATTERY.—In an action for assault and battery an exception was taken to an instruction that where malice has been shown the jury may allow additional or exemplary damages in any amount proper or necessary to restrain the defendant and others from the commission of like acts in the future, not to exceed the amount sued for. *Held,* the instruction was erroneous and the exception was sustained. *McCoy* v. *Price,* 112 S. E. 186, (W. Va. 1922).

The object of awarding damages is to give compensation for an injury which can be computed in terms of money, that is to put the plaintiff in the same position as far as money can do so, that he would have been in had the tort not been committed. See, 1 SEDG-