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Criminal Law—Intoxicating Liquors—Evidence Sufficient to Sustain Verdict

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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-

WICK, DAMAGES, 9th Ed., 30. Exemplary damages cannot be accounted for under the strict definition of damages. The first case in which the term "exemplary damages" is employed was one where there had been no actual or physical injury suffered by the plaintiff. The jury assessed damages to compensate the plaintiff for injury to his feelings. The defendant appealed on the ground that the damages were excessive. The court held that where the damages awarded are to compensate for injury to the feelings, shame and disgrace, the court cannot review the finding of the jury as to the amount of the damages awarded. *Huckle v. Money*, 2 Wils. 205. The court that decided the latter case had no intention of establishing the doctrine of exemplary damages which has been attributed to it and as it is understood at the present time. See, 1 SEDGWICK, DAMAGES, 9th Ed. 689. Formerly the rule in West Virginia was that in an action for assault and battery, damages could not be recovered for the purpose of punishing the defendant, but only as compensation for the actual injury caused by him and in determining which the jury might consider both the physical injury and the mental anguish suffered by the plaintiff. *Beck v. Thompson*, 31 W. Va. 459, 7 S. E. 447. This rule is consistent with the rule expressed in *Huckle v. Money*, *supra*. Nevertheless a few years later the West Virginia court expressly overruled *Beck v. Thompson*, *supra*, and held that exemplary damages might be awarded where malice was shown in the act and the damages for the physical injury together with damages for injury to feeling were not in and of themselves sufficient in amount to serve as punishment to the defendant. *Mayer v. Probe*, 40 W. Va. 246, 22 S. E. 58. The principal case was decided with reference to the same rule of law and is supported by *Swiger v. Runnion*, 90 W. Va. 322, 111 S. E. 318; *Fisher v. Fisher*, 89 W. Va. 199, 108 S. E. 872; *Allen v. Lopinski*, 81 W. Va. 13, 94 S. E. 369. See also, 28 W. VA. L. QUAR., 317. While the present rule is inconsistent with the rule expressed in *Huckle v. Money*, *supra*, to which it is supposed to owe its origin, it is nevertheless a practical modification of the law of damages. It is a modification inasmuch as exemplary damages was unknown to the law of damages. It is practical in that it meets a need to deter the defendant and others from the commission of malicious torts. The rule allowing exemplary damages in cases of malicious assault and battery is supported by the weight of authority and is adhered to in the United States Supreme Court.

—H. C. H.