MIDDLESEX SESSIONS.

Reg. v. Taylor and Smith.

Conspiracy—Evidence.

Prisoners were indicted for conspiring to commit larceny.
A second count charged an attempt to commit a larceny.
The evidence was that the two prisoners, with another boy, were seen by a policeman to sit together on some door-step near a crowd, and when a well-dressed person came up to see what was going on, one of the prisoners made a sign to the others, and two of them got up and followed the person into the crowd. One of them was seen to lift the tail of the coat of a man, as if to ascertain if there was anything in the pocket, but making no visible attempt to pick the pocket; and to place a hand against the dress of a woman, but no actual attempt to insert the hand into the pocket was observed. Then they returned to the door-step and resumed their seats. They repeated this two or three times. There was no proof of any preconcert, other than this proceeding.
Held, not to be sufficient evidence of a conspiracy.
Held, also, not to be evidence of an attempt to steal.

[25 L. T. N. S. 75.]

The prisoners were indicted for conspiring together to commit larceny from the person of Her Majesty's subjects.

Another count in the indictment charged an attempt to commit a larceny.

Moody for the prosecution.

It was proved by two detective officers that a crowd was collected in the street, that the prisoners, with another boy, were sitting on a door-step; that when a well-dressed man or woman went to look into the crowd one of the prisoners nudged the others, whereupon two of them rose and followed that person. In the case of a man, they were seen to lift his coat-tail, as if to ascertain if there was anything in his pocket; but they did not attempt to insert a hand in the pocket. In the case of a woman, they went and stood by her side; the hand of one of the prisoners were seen to go against her gown, but it was not seen as attempted to be thrust into her pocket, nor was any complaint made by these persons of any such attempt.

Mr. Serjt. Cox—There is no evidence either of a conspiracy or of an attempt to steal. To constitute an attempt, some act must be done towards the complete offence. Feeling a coat-tail to ascertain if there is anything in the pocket is not an attempt to do the act of picking a pocket, for it may be that nothing was found to be in it, and therefore they did not proceed to the commission of the act itself; and if there was nothing in the pocket, even putting the hand into it has been held not to be an attempt to steal. But here there is not any proof that the pocket either of the man or woman contained anything, or indeed that they had any pockets at all.

Moody—But the count for conspiracy meets this objection. It charges them with conspiring together to commit larceny, which is an indictable offence, and it will be for the jury to say if being together and acting together in the manner described is not evidence that they had concocted a system of robbery.

Mr. Serjt. Cox.—To sustain a charge of conspiracy there must be evidence of concert to do the illegal act. In cases of treason, where the law of conspiracy has been most frequently applied, some evidence has usually been given of something said or done by the defendants previously to the commission or attempted commission of the act for which they have conspired, from which the conspiracy may be inferred. The peculiarity of this case is that the only evidence of conspiracy is the act itself, and the manner in which it was done. But then, according to the view which I have just taken of the act itself, it was not illegal, because it did not amount to an attempt to pick pockets. It appears to me to be impossible to say that the doing of an act not illegal is evidence of a conspiracy to do an illegal act, there being no other evidence of the conspiracy than the act so done. I cannot allow the case to go to the jury. The point is a very nice one, and, I think, quite new; but I am so clearly of opinion that, whatever may be the suspicions as to the intentions of the prisoners, there is not sufficient evidence to justify their conviction, that I cannot reserve it.

Not Guilty.

CORRESPONDENCE.

Houses of Industry, and Payment for Religious Instruction.

To the Editors of the Local Courts Gazette.

Gentlemen,—The Act respecting Municipal Institutions of Upper Canada, section 413, amongst other things, enacts that the Council of every County may establish a House of Industry and a House of Refuge, and provide by by-law for the erection and repair thereof, and for the appointment, payment, and duties of inspector, keepers, matron and other servants for the superintendence, care and management of such House of Industry or Refuge, and in like manner make rules and regulations, not repugnant to law.

Under the above provisions would it be illegal or repugnant to law for a County Council to grant county funds to pay a minister of any of the Christian denominations to visit the House of Industry for the purpose of giving religious instructions to the inmates.

By giving your opinion in your next issue of the *Local Courts and Municipal Gazette*, you will oblige.

A Subscriber.

County of Norfolk, 16th Feb., 1872.

[We think it was not the intention of the Legislature that the funds of the municipality should be expended in providing religious instruction for the inmates of Houses of Industry and Refuge. The County Council may under section 413 provide by by-law for the appointment, payment and duties of inspectors, keepers, matrons and *other servants* for the *superintendence, care* and management of such House of Industry or Refuge. But these words cannot be held to include