

necessary which he had not yet bought. Yet the buying of the dies was held to be an attempt to commit in England the offence of making counterfeit coins. Here, of course, there was no more and no less reason to suppose that the party, if not interrupted, would complete the offence intended than there was in the case of the matches. It was too soon to foretell. The question was not discussed; the discussion turned entirely on the question whether the act was or was not sufficiently connected with the object the defendant had in view.

The following case well illustrates the difficulties that arise in questions of this kind. The act of buying indecent pictures for the purpose of circulating them in violation of an Act of Parliament was held an attempt to violate the statute, but the fact of the defendant having such pictures in his possession with a similar intent was held not to amount to an attempt. *Dugdale v. The Queen*, Dearsley's C.C. I., 64. Merely to preserve such a book even with a view to publish it, is not an attempt at publication; but procuring such a book with intent to publish it, would amount to an attempt. (Kenney's Cr. Law, 81.)

How near to success the attempt must come is obviously a question of degree to be determined in each case upon the special facts of the case. Attempts have been made, as has already been seen, to find a legal test to satisfy this question. It has been suggested, for instance, that to be punishable an attempt must be the last act before success; there must remain no locus poenitentiae. But while such a formula may sometimes furnish a useful suggestion for determining the question, it cannot properly be regarded as a legal rule. As Holmes, C.J., said in *Commonwealth v. Peaslee*, 177 Mass. 267, 272: "That an overt act, though coupled with an intent to commit the crime, commonly is not punishable if further acts are contemplated as needful, is expressed in the familiar rule that preparation is not an attempt. But some preparations may amount to an attempt. It is a question of degree. If the preparation becomes very near to the accomplishment of the act the intent to complete it renders the crime so probable that the act will be a misdemeanour, although