

which he mistook for glass. So as to the scare-crow illustration, a man does not in a legal sense attempt to commit murder, when passing through a field in the dusk, he shoots at a dummy, believing it to be his enemy. He shoots with intent to kill his enemy, but that is not the crime of an attempt to commit murder." This seems to us too fine, although it is very ingenious. Suppose that a man wrongfully shoots at another man, and hits him, but the latter is clad in underwear of impenetrable steel. Will Judge Barrett tell us that there is no attempt to commit murder? To attempt means to try, and that is all there is of the dispute. There is no distinction in law, or logic, or usage, between "attempt" and "intent." A man may "attempt" to jump over a fence ten feet high, although it is impossible, and his endeavour is not simply an "intent to attempt" to jump over the fence. The intent is involved in the attempt. The matter is reduced to absolute common sense in the Rogers case, where it is said: "The intention of the person was to pick the pocket of Earle of whatever he found in it, and although there might be nothing in the pocket, the intention to steal is the same." For "intention" read "attempt," and the law and sense are just as good. And forcibly and more elaborately the same idea is expressed in *Com. v. Jacobs*, 9 Allen, 274: "Whenever the law makes one step toward the accomplishment of an unlawful object, with the intent or purpose of accomplishing it, criminal, a person taking that step with that intent or purpose, and himself capable of doing every act on his part to accomplish that object, cannot protect himself from responsibility by showing that by reason of some fact unknown to him at the time of his criminal attempt, it could not be fully carried into effect in the particular instance." Judge Barrett is right in saying that "an attempt to commit larceny necessarily contemplates an act tending to effect the felonious *taking of specific property*." He is wrong, we think, in supposing that the specific property must be present so that it can be taken. Suppose it were a pocket-book, and the pickpocket got hold of it, but could not remove it because it was firmly fastened to the bottom of the pocket. Would there not still have been an attempt to take it? This case is not different from the case of the empty pocket. Bishop says, very exquisitely: "The means must be adapted to the end, but the adaptation need only be apparent."—*Albany Law Journal*.

DANGER DEEMED A "DEFECT" IN THE CONDITION OF MACHINERY.—Does danger constitute a defect in the condition of a machine, within the meaning of section 1, sub-section 1, of the Employers' Liability Act? No doubt to attempt to define what "defect" is in the abstract would be to attempt an impossibility, and it would be hardly less difficult to define every possible thing which might come within the meaning of the word "defect"; but *Morgan v. Hutchins*, reported in this month's number of the *Law Journal*, lays down a principle sufficiently broad to cover, at all events, the narrower question in reference to danger—a principle, too, that will be found susceptible of very extensive and general application. That important case came before Lord Coleridge, C.J., and Lord Esher, M.R., on a County Court appeal, under those circumstances: