

know." In the quaint language of Brian, C.J.: "It is trite learning that the thought of man is not triable, for the devil himself knows not the thought of man." (Year Book, 17 ed., IV. 1.) But, as Dr. Kenney says: "In ethics, of course this mental condition of intention ('a vicious will') would of itself suffice to constitute guilt. Hence on Garrick's declaring that whenever he acted Richard III. he felt like a murderer, Dr. Johnson, as a moral philosopher retorted, 'then you ought to be hanged whenever you act it.' But there is no such searching severity in the rules of law. They, whether civil or even criminal, never inflict penalties upon mere internal feeling, when it has produced no result in external conduct.

"So a merely mental condition is practically never made a crime. If a man takes an umbrella from a stand at a club, meaning to steal it, but finds that it is his own, he commits no crime." (Kenney, pp. 37-38.)

2. *What amounts to an attempt.*—There must, therefore, be something in the nature of an actual effort to carry the wrongful purpose into execution, an endeavour to commit the crime, but falling short of execution of the ultimate design; this is an attempt. It consists of some physical act which helps and helps in a sufficiently "proximate" degree towards carrying out the crime contemplated.

"The law as to what amounts to an attempt is of necessity vague. It has been said in various forms that the act must be closely connected with the actual commission of the offence, but no distinct line upon the subject has been or as I should suppose can be drawn. Some decisions have gone a long way towards treating preparation to commit a crime as an attempt. For instance, the procuring of dies for coining bad money has been treated as an attempt to coin bad money." (Stephen's Hist. Crim. Law, II., 224.)

In truth it is impossible to lay down any abstract test for determining whether an act is sufficient proximate to be considered an "attempt."

At common law every attempt to commit any crime, is itself a misdemeanour. *Reg. v. Hensler*, 11 Cox. 570.