

privilège au même rang, nonobstant les articles 2086 et 2125 C. C.—*Corporation de Québec v. Ferland*, C. S., Casault, J., 1er juin 1888.

Péage—Barrière Préventive—41 *Vict.*, ch. 46 et amendements.

Jugé:—Les plaignants ne peuvent percevoir de péages qu'au moyen de barrières placées sur leurs chemins, avec affiche d'un tableau des péages, ou de barrières préventives (*check toll-gates*) tel que voulu par la loi.—*Les Syndics des Chemins à Barrière de la Rive Nord v. Parent*, cour des sessions de la paix, Chauveau, J., 10 sept. 1888.

Receipt—Verbal Testimony—Articles 1233 and 1234 C. C.

HELD:—1. In non-commercial matters, verbal testimony is inadmissible to extend or alter the purport of a written receipt.

2. Verbal testimony is inadmissible to impugn a written document for fraud, except where such fraud is charged in the making of the document or immediately connected therewith, in such a manner that the party against whom it was practised, could not protect himself in the drawing of the document or otherwise in writing.

3. A document, to avail as a *commencement de preuve par écrit*, must be the best evidence obtainable of its kind, and will not give rise to the presumption, where the existence, in the hands of the party, of other more direct and better written evidence is made to appear, no cause being shown for its non-production.—*Gilchrist v. Lachaud*, S.C., Andrews, J., Sept. 10, 1888.

ATTEMPT TO COMMIT LARCENY.

In *Clark v. State*, Tennessee Supreme Court, April, 1888, it was held that the act of opening a cash drawer for the purpose of stealing money is an attempt to commit larceny, although there was no money in the drawer at the time. The Court said: "The direct question here presented has never been passed upon by this court, but it is by no means one without authority. It has received much discussion in the text-books, and in the adjudged cases from other courts. The English

cases are conflicting. In *Reg. v. Collins*, Leigh & C. 471, it was held there could be no attempt to pick the pocket of a person who had no money at the time in her pocket; while in *Reg. v. Goodhall*, 1 Denison Br. Cas. 187, it was held an attempt to produce a miscarriage could be committed on a woman supposed to be, but not in fact pregnant. It appears to us that these cases cannot be reconciled, although Mr. Heard, in his second edition of *Leading Criminal Cases* (vol. 2, pp. 482, 483) has attempted to do so. We are constrained to agree with Mr. Bishop that 'these differing opinions must have sprung from opposite views in the two benches of Judges.' Bish. Crim. Law (7th ed.), § 741, note 1. The American cases seem to be uniform, or at least substantially so, for here the few conflicts are more apparent than real. In *Rogers v. Commonwealth*, 5 Serg. & R. 463, the Pennsylvania court held that an indictment for assault with intent to steal from the pocket is good, though it contains no setting out of any thing in the pocket to be stolen. •Duncan, J., in delivering the opinion of the court, said: 'The intention of the person was to pick the pocket of whatever he found in it, and although there might be nothing in the pocket, the intention to steal is the same.' So in Massachusetts, under a statute differing in terms but the same in substance as our own above herein quoted, it was held that the indictment need not allege, and the prosecutor need not prove, that there was in the pocket any thing which could be the subject of larceny. *Commonwealth v. McDonald*, 5 Cush. 365. See also *Commonwealth v. Jacobs*, 9 Allen, 274. To the same effect is *State v. Wilson*, 30 Conn. 500. So in Indiana it has been held that an assault on one with intent to rob him of his money may be committed, though he has no money in possession at the time. *Hamilton v. State*, 36 Ind. 280; S. C., 10 Am. Rep. 22. If an indictment for an attempt to steal the contents of a trunk or room would not be good where it transpired that there was nothing in the trunk or room, then it would seem to follow that the indictment, in the case where there were goods in the trunk or room, would have to allege what particular goods the thief purposed to steal; and if necessary to