cil on appeal from Lower Canada wherein it was shown affirmatively that endorsed receipts were not usual and the following is the judgment of the Court on the point:—

"The objection stated in the opening that there was no endorsement of any receipt for the purchase money was very properly given up in the reply. The receipt is acknowledged in the body of the deed, and it is not the custom in Canada, as it is in England, to have an additional acknowledgment on the back of the deed, and its absence therefore affords no grounds of suspicion."

The above decision (*Barnhart* v. *Greenshields*, 9 Moore Pri. Cl. App. 18) would seem to be conclusive on the matter, and if indeed there be any case here wherein it has been held that the absence of the receipt was constructive notice it was probably a case wherein no evidence was given that frequently (at least until very recently) a receipt is not endorsed. We should have thought however that before it could be said that the non-observance of an alleged custom was a cause of suspicion, that positive evidence should be given that in fact the alleged custom did exist, whereby the burden of proof would be shifted.

It would not only save much trouble and expense in investigations of titles, but be consistent with the intention of the parties, if the absence of a receipt did not let in the vendor's lien. There can be no doubt that when one man sells and conveys to another a piece of land and takes his note for the purchase money and asks for no other security, that both parties look on the transaction in just the same light as if it were a horse or other chattel that was sold and delivered. The last thing that they would suppose as the result of their transaction would be that in fact the vendor had given an equitable mortgage on the property to secure the note, and nothing more astonishes a vendor (not learned in the law) than to be told that his note is in fact secured by a mortgage. Lord Eldon in the case first above cited and other eminent judges have regretted that the doctrine was ever introduced, and that a vendor should have security he did not expressly stipulate for.

We apprehend that the question cannot arise on transactions subsequent to the late Registry Act, sec. 66, under which "no equitable lien, charge or interest affecting land shall be deemed valid in any court in this Province after this act shall come into operation, as against a registered instrument executed by the same party, his heirs or assigns."

Assuming this act not to be retrospective, the question above discussed still arises in the absence of a receipt on a conveyance prior to the Act.

SELECTIONS.

AN ESSAY

On the Importance of the Preservation and Amendment of Trial by Jury.

The institution of trial by jury has been ascribed by different authors to various persons and nations. Sir William Blackstone is of opinion that it originated with the Saxon and other northern nations.

"Some authors," writes Sir William, "have endeavoured to trace the original of juries up as high as the Britons themselves, the first inhabitants of our island; but certain it is, that they were in use among the earliest Saxon Colonies, their institution being ascribed by Bishop Nicholson to Woden himself, their great legislator and captain. Hence it is that we may find traces of juries in the laws of all those nations which adopted the feudal system, as in Germany, France, and Italy; who had all of them a tribunal composed of twelve good men and true, *boni homines*, usually the vassals or tenants of the lord, being the equals or peers of the parties litigant; and, as the lord's vassals judged each other in the lord's courts, so the king's vassals, or the lords themselves, judged each other in the king's court. In England we find actual mention of them so early as the laws of King Ethelred, and that not as a new invention. Stiernhook ascribes the invention of the jury, which in the Teutonic language is denominated *nembda*, to Regner, king of Sweden and Denmark, who was contemporary with our King Egbert. Just as we are apt to impute the invention of this and some other pieces of juridical polity to the superior genius of Alfred the Great; to whom, on account of his having done much, it is usual to attribute everything; and as the tradition of ancient Greece placed to the account of their own Hercules, whatever achievement was performed superior to the ordinary prowess of mankind. Whereas the truth seems to be, that this tribunal was universally established among all the northern nations, and so interwoven in their very constitution, that the earliest accounts of the one give us also some traces of the other."

This opinion has been controverted with much learning and ingenuity by Dr. Pettingal in his inquiry into the "Use and Practice of Juries among the Greeks and Romans." Dr. Pettingal deduces the origin of juries from these ancient nations.