

commencement of the work." The revisers of the Statutes no doubt thought that the expression "prior mortgage" was a more compendious expression of the same idea, but when it comes to be judicially construed it is possible it may be found to have an altogether different effect. It is somewhat surprising that the Courts have not before now been called on to expound this section as it now stands in the Statute book, for it is obvious that some very nice points may be raised as to its true meaning. Under the Statute of 1877, it was tolerably plain that the mortgagees who were intended to be affected were those who had an existing charge upon the land in question before the work of the lienholder was commenced. And the equity of the provision when confined to such cases was reasonably plain. The mortgagee's security, after he had lent his money, might be enhanced in value by the lienholder, and to the extent to which it should be so enhanced in its actual selling value the lienholder was to have priority. But it may be open to question whether the present wording of the Statute may not carry the right of a lienholder beyond this equitable limit, so as to do a manifold injustice to a mortgagee. It all depends on what meaning the Courts may place on the words "prior mortgage" in this section (s. 5). If they are held to include every mortgage which is prior to the lienholder, then it may be found to work injustice. For instance, a mortgagee without actual notice of any lien, may advance his money on the security of the property after all, or a large part of, the work of the lienholder has been done upon it, and upon the value of the land as so improved. By prior registration of his mortgage he may acquire priority over the lien (see cases cited in Holmsted's *Mechanics' Lien Act*, p. 9). This then becomes a "prior mortgage," but can it fairly be said to be a "prior mortgage" within the meaning of section 5, (3)? It has acquired its priority, not by virtue of its being prior at the time the work was commenced or done, but by virtue of the Registry Act, and the neglect of the lienholder to register his lien so as to retain his priority, and which if he had done possibly the mortgagee would not have advanced his money. These are facts which seem to take the case entirely out of the equitable principle on which the original Act was framed; because the security on which the mortgagee has advanced his money has not been subsequently improved or enhanced in value; but, on the contrary, if the claim of the lienholder to priority were allowed, it would be subtracting a material part of the original security from the mortgagee on the faith of which he had advanced his money, which would be obviously unjust. Such considerations as these, therefore, rather lead to the conclusion that the words "prior mortgage" must necessarily have a somewhat restricted meaning, and can only include mortgages which are actually prior at the time the work of the lienholder is done, and cannot include those which subsequently acquire priority by virtue of the Registry Act.

#### GRAND JURIES.

We observe that the Minister of Justice has recently issued a circular letter to all judges and Attorney-Generals of the various provinces of the Dominion, for the purpose of ascertaining their views on the important question whether