

The Mechanics' and Wage Earners' Lien Act, as we have already pointed out, distinctly and explicitly provides that a mechanic's lien shall arise by doing work and without any registration of the claim of lien and that the Registry Act shall not apply to such liens except as therein otherwise provided; and the only express provision it makes to the contrary is that the lien shall cease to be operative unless registered within a certain specified time. How the lien becomes an "instrument" in the meantime the learned Chief Justice does not explain. Perhaps for the very obvious reason that it is inexplicable.

The reasoning of Mr. Justice Lennox in the same case appears to be equally inconclusive. He says: "The deed to Lucas was registered weeks before the registration of the plaintiff's claim for lien. I need not quote the provisions of the Act; but a careful reading of the provisions of the Mechanics' and Wage Earners' Lien Act, and the Registry Act, satisfies me that Lucas obtained priority over the plaintiff by priority of registration. This need not have been, of course. The plaintiff's claim *arose* long before this. He could have registered before Lucas, but did not do so. It is not in my opinion a question of when the claim arises, but the relative dates of registration that determines priority. The statute puts the means of protecting himself within the reach of a lien holder or supply man but the plaintiff did not avail himself to the full measure of its provisions." All of this is based on the false assumption that the lien before registration is an "instrument" and that the Registry Act applies to such instrument.

The vital question for determining priority in such a case is the very one that the learned Judge dismisses as immaterial, viz., *when* the respective claims arose, for the maxim of law *qui prior est in tempore potior est in jure* is the really governing principle.

From the passages we have quoted from the judgments delivered in *Charters v. McCracken* it would seem as if the learned Judges were of the opinion that the registration of the claim of a mechanic's lien in some way created the lien; but