

holders as against subsequent grantees of the land subject to their liens. This looks to us very like an usurpation of legislative functions.

The principle on which the Act is plainly based is that as between lienholders and subsequent grantees their rights are to be determined independently of the Registry Act, and that the rule of equity *qui prior est in tempore potior est in jure* must prevail. This may, in the opinion of some, constitute a hardship on purchasers and mortgagees, but if it really does so, it is for the Legislature and not for the Courts to remove it.

But not only have the Courts repealed the provisions of the Mechanics' Lien Act above referred to, but they have further read into the Registry Act provisions which are not to be found therein. The Registry Act purports to regulate the priority of instruments dealing with land; it does not purport to, nor does it in fact, relate to, or deal with interests which are not created by "instruments." Let us glance at the sections which deal with the subject and which are supposed to give purchasers from an owner priority over existing mechanics' liens, and it will be found that none of them properly construed afford any ground whatever for saying that the registration of a transfer from the owner without actual notice will cut out an existing mechanics' lien." S. 71. (1). After the grant from the owner of land, and letters patent issued therefor, every *instrument* affecting the land or any part thereof shall be adjudged fraudulent and void against any *subsequent purchaser* or mortgagee for valuable consideration without actual notice, unless such *instrument* is registered before the registration of the *instrument* under which subsequent purchaser or mortgagee claims."

(Sub-sec. (2) has no bearing on the question now under consideration.) "S. 72. Priority of registration shall prevail unless before the prior registration there has been actual notice of the *prior instrument* by the person claiming under the prior registration."

It must be noted that both s. 71 (1) and s. 72 refer to *prior instruments*, and that a mechanic's lien which arises by virtue