

since been revised and in some particulars changed, but we cannot find any real grounds upon which the case can be distinguished. The soundness of the decision, however, is challenged, and, according to *Mercier v. Campbell* (1907), 14 O.L.R. 639, it is not conclusive authority, and we are bound to make an independent examination of the statute and earlier cases and to act upon our own opinion."

This decision certainly carries the law beyond anything laid down in the previous judgments above referred to. In these cases, the Divisional Court was the final court of appeal, and Mr. Justice Riddell, in *Mercier v. Campbell*, says with reference to s. 81 above quoted: "On principle, I am of the opinion that the section cited does not refer to a court of final appeal." However this may be, no such reasoning can be applicable in the *Farrell* case, as under s. 40 of the Mechanics' and Wage Earners' Lien Act, the decision of a Divisional Court is final only where the aggregate amount of the claims of the plaintiff and all other persons claiming liens, is not more than \$500. In this case the aggregate amount was considerably over that sum, and as a matter of fact, an application was made by the plaintiff for leave to appeal to the Court of Appeal (see 2 O.W.N. 815). The Chief Justice, in refusing leave, referred to the fact that the lien holders had not sought to appeal from the judgment, and added: "The plaintiffs have no locus standi to assert the rights of the sub-contractors against the defendant Mrs. Gallagher. Rightly or wrongly it has been held that these sub-contractors have no lien against Mrs. Gallagher's land, and consequently she is not liable to pay them." It is a fair inference from this statement, that if the lien holders had applied for leave to appeal, such leave could and might have been granted.

Without at all going into the merits of the decision of the Divisional Court, one cannot view without some concern, the extension of such a principle; and it is apparent that even the exemption from the operation of section 81 of the Judicature Act, claimed by Mr. Justice Riddell, does not represent the views of all the judges. After the enactment of this section, the