

of *Canadian Bank of Commerce v. Perram*, 31 O.R. 116, in which a Divisional Court, sitting, as we are, in appeal from a County Court, refused to be governed by previous decisions, and held that the court was bound to exercise an independent judgment. Other cases were cited, decided under the Railway Act, more or less applicable. I think we must give an independent judgment, and adopt the decision in 31 O.R. Any other conclusion would lead to a dilemma similar to that which has amused students for twenty centuries and more. The ancient Cretan who asserted so stoutly that 'Cretans are always liars,' was proved to be lying, whether he told the truth or not. So, on the plaintiff's contention, we are reduced to the paradox that, if we are bound by a Divisional Court judgment, we are bound by that in 31 O.R. to hold that we are not bound. On principle, however, I am of the opinion that the section cited does not refer to a court of final appeal. It is necessary to consider the case without regard to the decision just referred to."

The case of *Farrell v. Gallagher*, 23 O.L.R. 130, above referred to, was a mechanic's lien action, brought by the contractor and certain lien holders who had done work and furnished materials. In consequence of the contractor's default, the owner took the work out of his hands before completion. The Referee found the plaintiff entitled to \$739.90, and gave judgment for that amount, first to the wage earners in full, and the balance to the material men, following the decision of the King's Bench Division in *Russell v. French*, 28 O.R. 215. The judgment of the court was delivered by Mr. Justice Middleton, who reversed the finding as regards the material men, and at pp. 135-6 said as follows: "The case of *Russell v. French* (1897), 28 O.R. 215, is precisely in point. It is there held that the 20 per cent. is a fund for the payment of lien-holders, not subject to be affected by the failure of the contractor to perform his contract. This view is in conflict with the reasoning of *Goddard v. Coulson* (1884), 10 A.R. 1, and the decision in *In re Sears and Woods* (1893), 23 O.R. 474, which are said to be no longer applicable by reason of changes in the statute. The statute has