

It was also said that it would be inconvenient to get from Hagersville to Welland in time for the opening of the Court on 19th November, being a Monday. Plaintiff's solicitor says this is a mistake, and that in any case he has other actions in which he acts for the plaintiffs therein, and that he will set one or more of these down first, so that defendants can safely arrive at Welland on Monday afternoon or Tuesday morning.

There seems, therefore, to be no reasonable ground for a change of venue. There is no such substantial preponderance of convenience as is necessary to displace "the right of the plaintiff as dominus litis to control the course of litigation:" per Boyd, C., in *McDonald v. Dawson*, supra. . .

Motion dismissed; costs in the cause.

OCTOBER 13TH, 1906.

DIVISIONAL COURT.

FINCH v. NORTHERN NAVIGATION CO.

*Master and Servant—Death of Servant—Destruction of Vessel by Fire—Negligence—Warning—Watchman—Common Employment—Findings of Jury—Absence of Evidence to Sustain—Nonsuit.*

Appeal by plaintiff from judgment of ANGLIN, J., dismissing the action, which was brought by the widow of Lyman Finch, a deck hand on defendants' steamer "Collingwood," to recover damages for his death. The steamer was burned on the morning of 19th June, 1905, while moored at the wharf at Collingwood, and Lynch perished in the boat, but precisely how was not shewn.

The action was tried with a jury, who answered certain questions, as set out below, but the Judge, notwithstanding the findings, entered judgment as of nonsuit, from which plaintiff appealed.

A. G. MacKay, K.C., for plaintiff.

Wallace Nesbitt, K.C., and Britton Osler, for defendants.

The judgment of the Court (FALCONBRIDGE, C.J., MAGEE, J., CLUTE, J.), was delivered by

CLUTE, J.:—The following are the questions submitted to the jury and the answers thereto:—

1. Was plaintiff's husband burned to death on the steamer "Collingwood?" A. Yes.