

REPORTS AND NOTES OF CASES.

Province of Ontario.

COURT OF APPEAL.

Full Court.]

ALEXANDER v. MILES.

[Jan. 25.

*Master and servant—Employer's liability—Workmen's Compensation for Injuries Act—Usual action by fellow employee.*

Action under Workmen's Compensation for Injuries Act by a widow to recover damages for the death of her husband, caused by an accident when in the defendant's employ. The deceased was working on the first floor of the defendant's door and sash factory. There was an opening in the floor through which boards were passed from the lower to the first floor when required. The usual method before and at the time of the accident was, that when a number of boards had to be put up stairs a workman was sent up to stand by the hole and receive each board as it was handed up by a man on the ground floor. When only a few boards were to be put up at a time, the man below would push a board up a little way and rattle it about until some one on the first floor came forward and took it. On the occasion of the accident an employee of the defendant's engaged on the ground floor, finding three boards standing with the upper ends in the opening above and in the way of his work, pushed one up a little way and rattled it. No attention being taken, he violently shoved a board up so that it shot through the hole and landed on the first floor. He repeated this with the second and third, and the last one struck the deceased while walking past the hole and caused his death.

*Held*, that the defendant was not responsible inasmuch as the act of the employee which caused the accident was wholly unauthorized and opposed to the usual course, and the defendant or foreman could not be blamed for not assuming that any workman would resort to such unlikely and extraordinary measures for removing boards from the lower floor.

*Riddell*, K.C., for defendant, appellant. *McBrady*, K.C., for plaintiff, respondent.