

the judgment on the merits. . . . This order was in its nature final, and not interlocutory, within the meaning of R. S. O. ch. 55, sec. 52, and an appeal from it lies. *Babcock v. Standish*, 19 P.R. 195, and *O'Donnell v. Guinane*, 28 O. R. 389, considered.

Appeal allowed. Costs of motion and appeal to be taxed to defendant and set off pro tanto against the amount admitted to be due to plaintiff.

BRITTON, J.

APRIL 8TH, 1903.

TRIAL.

### ALEXANDER v. MILES.

*Master and Servant—Injury to Servant—Factory—Defective System—Negligence—Findings of Jury—Workmen's Compensation Act.*

Action by the administratrix of the estate of James Alexander to recover damages for his death, which occurred on the 2nd October, 1902, as the result of an accident in defendant's factory. It was proved and admitted that the death of James Alexander resulted from his being accidentally struck by a board pushed from below through the hole in the floor above by one William Miles, a servant and workman then in the employment of defendant; that James Alexander was, at the time and on the occasion of his being so struck, rightfully where he was, and that he was not guilty of any contributory negligence; that the hole in the floor was intended, and for a long time had been used, for the purpose of pushing through it boards from below to the floor above. It was alleged by defendant that she had a system of using this hole and of putting the boards up through it, which was a safe one and not dangerous to the workmen on the upper floor, and that this accident occurred through the negligence of William Miles in not following this system and in not obeying instructions, and that for such negligence of a fellow-workman plaintiff could not recover at common law or under the Workmen's Compensation Act. The jury, however, found that there was no system adopted which provided against the danger.

L. V. McBrady, K.C., and T. J. W. O'Connor, for plaintiff.

W. R. Riddell, K.C., and J. H. McGhie, for defendant.

BRITTON, J., held that the findings were not inconsistent, and were warranted by the evidence. The boards were constantly required for use by defendant on the upper floor of the factory. They were moved through this hole in the floor. This was a defective system of putting in place and using