dents, and for this reason was included with them in the order for costs.

The appeal should be dismissed.

MACLENNAN, J.A., wrote an opinion concurring.

MEREDITH, C.J., and OSLER, J.A., also concurred.

LISTER, J.A., died while the case was sub judice.

SEPTEMBER 19TH, 1902.

C. A.

ARMSTRONG v. CANADA ATLANTIC R. W. CO.

Master and Servant—Injury to Servant—Death—Workmen's Compensation Act—Notice of Injury—Excuse for Want of—Evidence—Statement of Deceased—Negligence—Cause of Injury—Jury.

An appeal by defendants from the order of a Divisional Court (2 O. L. R. 219) setting aside nonsuit entered by MACMAHON, J., in an action by the widow and infant child of Charles Armstrong to recover damages for his death alleged to have been caused by the defendants' negligence, and directing a new trial.

F. H. Chrysler, K.C., for appellants.

A. E. Fripp, Ottawa, for plaintiffs.

The judgment of the Court (MEREDITH, C.J., OSLER, MACLENNAN, MOSS, JJ.A.—LISTER, J.A., having died after the argument) was delivered by

OSLER, J.A., who, after stating the facts, continued:—The first question raised is as to the failure of the plaintiffs to give the notice required by sec. 9 of the Workmen's Compensation for Injuries Act, R. S. O. ch. 160. It is contended by counsel for the defendants that the finding of the learned trial Judge that no notice that the injury had been sustained was given within twelve weeks from the occurrence of the accident causing the death of the deceased, as required by sec. 9, and that no reasonable excuse for the want of such notice was offered or proved, being findings of fact, should not have been interfered with by the Court. That section is in these words: "Subject to the provisions of sections 13 and 14, an action for the recovery, under this Act, of compensation for an injury shall not be maintainable against