then deceased came to Canada and settled in Hamilton. His four children remained in Barnstable, England. Deceased married again, and by his second wife had one child. Deceased made his will on 15th May, 1891, and died on 8th April, 1900.

By his will, after providing for his widow and her child, he devised two dwelling-houses in Hamilton to his "children at Barnstable, England, to be divided among them in equal shares."

The four children living at the time the will was made were: Samuel, John, William, and Sarah. William died after the making of the will, and before the death of the testator, leaving ten children.

The question is, do these grandchildren take the share which their parent William would have been entitled to had he been alive at the time of the death of the testator?

It was conceded on the argument that these grandchildren would not take under the word "children" in the will, but it was contended that under sec. 36 of the Act respecting wills in Ontario, they would be entitled. . . .

[Re Williams, 5 O. L. R. 345, 2 O. W. R. 47, referred to and applied.]

The gift in this case is to a class, and the rule is "that those members of the class who are at the death of the testator capable of taking, take the whole, the gift being construed as shewing an intention on the part of the testator that the class shall take as far as the law allows:" In re Coleman and Jarrow, 4 Ch. D. 165.

The rule is clearly laid down that sec. 33 of the Wills Act, 1837, does not apply to gifts to children or grandchildren of the testator as a class, and this rule is not affected by the fact "that in the events which happened the class consisted of but one individual:" In re Harvey, [1893] 1 Ch. 567.

Following these cases, the division must be among the children of deceased who were living at the time of his death, and who were then residing or had resided at Barnstable, so as to come within the class. Sarah disappeared from Barnstable some years ago, and . . . cannot be found. There is no evidence of her death, and for the purposes of the present application she must be considered as alive and entitled to share with her brothers Samuel and John.

Costs of all parties out of estate.