

his whole estate and at the same time cut his children adrift. The gift of his children to their grandparents was in effect an appointment of the grandparents as guardians, carrying with it the custody and control of the children. Under the equitable doctrine of election, when a legatee takes, under the same will, a beneficial legacy and an onerous legacy, and the two are intended to form an aggregate gift, he must accept or reject both: Halsbury, vol. 13, p. 117, note (m); Talbot v. Radnor (1834), 3 My. & K. 252; In re Hotchkys (1886), 32 Ch.D. 408. It was equitable and just that that principle should be applied to this case.

It should be declared, therefore, that the beneficiaries cannot accept the gift of the estate without at the same time accepting the guardianship and custody of the children with the accompanying obligation of maintaining and educating them; that Vanance and Emma are entitled to the whole estate of the testator, but subject to the obligation of maintaining and educating the two surviving infant children of the testator during infancy.

Order accordingly; costs of the application, including those of the Official Guardian, to be paid out of the estate, those of the administrators as between solicitor and client.

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ATLEY v. ATLEY—KELLY, J.—OCT. 19.

*Judgment—Motion for Judgment in Default of Defence—Statement of Defence Delivered out of Time—Regularisation on Terms—Alimony—Costs.*—Motion by the plaintiff for judgment on the statement of claim in default of defence, in an action for alimony. The motion was heard in the Weekly Court, Toronto. KELLY, J., in a written judgment, said that the defendant failed to deliver a statement of defence, and on a motion for judgment an order was made on the 23rd September, 1920, by Rose, J., extending the time for delivery of defence until the 28th September, and ordering the defendant to pay the costs of the motion forthwith after taxation. That order not having been complied with, and the defendant being thus again in default, the plaintiff, on the 29th September, launched this present motion for judgment. An affidavit filed on behalf of the defendant set forth that a statement of defence was filed and served on the 29th September—after the extended time for delivery of defence had expired. On the return of the motion the plaintiff's counsel asked that the defence be struck out. The defendant had not satisfactorily accounted for this second default; but, to enable the action to be disposed of on the merits, this belated statement of defence should be allowed to stand, provided that the defendant, not later than the day after