

all the creditors of Frost, themselves included. By proving their claims against his estate they invite that result. Justice does not require that Stone be admitted to divert this property from the honest creditors of Frost, whom Stone has conspired with him to swindle. At the trial term, the leave granted to Stone to appear and defend will be revoked, and judgment will be rendered on the default of the defendants for the plaintiffs.

Case discharged.

CARPENTER, J., did not sit: the others concurred.

ALDRICH v. BENNETT.

The legal marriage of a female infant terminates the father's right to her custody and services.

CASE, for unlawfully enticing away the plaintiff's minor daughter, on the 29th day of March, 1879, and depriving him of her services from that time until the 8th day of September, 1882, when she became twenty-one years of age. The defendant pleaded that on said 29th day of March he was lawfully married to the daughter, and that the plaintiff was not thereafter entitled to her services. To this plea the plaintiff demurred.

Lane & Dole, for the plaintiff.

Batchelder & Faulkner, for the defendant.

CLARK, J. The right of a parent to the earnings of his minor child, upon whatever principle it is founded (*Hammond v. Corbett*, 50 N. H. 501), is commensurate with the right of custody; and so long as the right to the services of the child remains, the right to control those services must exist. Whatever, therefore, operates as a release from parental control, necessarily terminates parental right of service; and the emancipation of the minor from legal parental authority, either by the voluntary act of the parent or by operation of law, puts an end to the legal claims of the parent to the minor's earnings.

The marriage of a female infant, if above the age of legal consent, is valid, although contracted and entered into in defiance of parental wishes and authority. G. L., c. 180, ss. 13, 14; *Parton v. Hervey*, 1 Gray 119. Being valid, the same legal consequences must follow from it, whether contracted in obedience to parental preferences, or in opposition to them. In either case the parent is no longer entitled to the services and earnings of the infant mar-

ried daughter. The new relations created by the marriage, being inconsistent with the enforcement of parental rights, operate as an emancipation from them. The plaintiff's daughter, being above the statutory age of consent, had the legal capacity to form the relation of marriage, and although in strictness of law it should not be formed without parental consent, it is nevertheless sustained on grounds of public policy, and parental rights are made to yield to it. Cooley Torts 237. The legality of the marriage is admitted by the demurrer, and the plea is a sufficient answer to the plaintiff's action. *Hervey v. Moseley*, 7 Gray 479.

Demurrer overruled.

CARPENTER, J., did not sit: the others concurred.

WHITNEY & a. v. PARKER & a.

In a petition for partition under the statute, the committee have no authority, without the consent of the parties, to set off to one more than his just share of the estate, and award that he pay a sum of money to the others to make it equal.

PETITION for partition. The committee found the value of the estate to be \$5,985, and, in accordance with the petition, set off the shares of the petitioners jointly. They also reported that the share set off to the petitionee, Mary E. Parker, "is one hundred and fifty dollars greater in value than her just share, but in our opinion the said estate is so situated that it cannot be divided so as to give to each owner his equal share without prejudice or inconvenience, and we award that the petitionee, Mary E. Parker, pay to the petitioners * * jointly the sum of one hundred and fifty dollars, they having that amount less than their just share, or give bond, with sufficient sureties, to pay the same with interest within such time as the court shall order. To this partition and award the petitioners refused to consent."

The petitioners moved that the estate be sold, and the net proceeds divided among the owners, according to their respective interests; and the petitionees moved for judgment on the report.

It appearing upon examination that it would not be for the interest of all parties to have the estate sold and the proceeds divided, the court ordered judgment on the report, to which the petitioners excepted.

Hiram Blake, for the petitioners.

Hersey & Abbott, for the petitionees.