

grandchildren of one Philinda Ellison, whose matrimonial experiences gave rise to the question raised by defendants as to the legitimacy of plaintiffs' father, Parley Hunt the younger. Philinda Ellison first married one Gideon Todd in 1820. By him she had issue Mary Ann Todd, the mother of defendants, and George W. Todd, the intestate. In 1824 Gideon Todd deserted his wife, and caused a story to be published that he had been drowned. Believing him dead, Philinda Todd in 1826 entered into marriage relations with Parley Hunt the elder, which continued until her death in 1833. Of this marriage Parley Hunt the younger was born in November, 1829, more than 5 years after Gideon Todd had deserted his wife, who always remained unaware that he was not in fact dead. He returned many years afterwards to his former home, in the State of New York, where all the parties were domiciled. The estate of George W. Todd consisted entirely of personalty.

E. E. A. DuVernet, and A. M. Lewis, Hamilton, for plaintiffs.

D'Arcy Tate, Hamilton, for defendant Mary D. Vincent.

A. W. Marquis, St. Catharines, for the other defendants.

ANGLIN, J.— . . . I have no doubt, from a perusal of the evidence taken on commission, that Philinda Ellison, throughout the period of her relations with Parley Hunt the elder, acted in entire good faith, and honestly believed that Gideon Todd was dead. . . .

The question of the legitimacy of Parley Hunt the younger, and the right of succession of his children to his half brother's property, depends . . . upon the law of the State of New York: *In re Goodman's Trusts*, 17 Ch. D. 266, 292; *In re Ferguson's Will*, [1902] 1 Ch. 483: and according to that law it must be determined.

Expert evidence as to the law of the State of New York was given on behalf of both plaintiffs and defendants. Upon some points the expert witnesses agree. These present no difficulty. Upon others they differ to the degree of absolute contradiction, each expert resting his opinion upon the authority of decided cases to be found in the State reports. Upon this conflict of testimony, I am driven to an examination of the authorities upon which the experts respectively rely. Reading these with the aid of the explanatory, critical, and argumentative testimony adduced, and discharging functions analogous to those of a special jury, I am obliged to determine to the best of my ability what is in fact, upon such