Brown v Burdett

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TRANSCRIPT

I'm going to talk to you today about a case of *Brown v Burdette*, an 1882 case. The word capriciousness is used in the study of Equity and Trusts. The meaning of the word being something unpredictable or an odd notion. I like to describe it to my students as something so silly the courts look at it and realise how stupid it is that there is no way they can condone it. It usually is applied to requests made in wills and so the chances of the testator changing their mind are long gone.

The notion I have about the courts is it they are not there to block the wishes of the testator just because their wishes sound a bit peculiar. As long as the executor and/or trustee can accomplish their tasks successfully, then the requests should be complied with. As long as they are reasonable requests. The main problem with the courts is that they have to work within the bounds of the law and establish parameters to ensure fairness to all sides.

Ask yourselves, why does any civil case come to court? It is because there is a disagreement. Many petty disputes do not worry the courts because it is not worth the time, effort, or money. To be in court means someone has a problem that they feel deeply enough about that they have insisted on hearing.

Many such disputes occur over clauses in wills. Many a family member is felt left out, and they look at the clauses in the will and see something they think is unfair. A gift or a trust that has been set up to benefit someone or thing that doesn't, in their opinion, have such a good claim as they do. It's called human nature. The courts have to deal even-handedly with such disputes.

The courts will not help in situations where property is being wasted. In the UK, as in many countries, the courts want to see the property of any type but especially land is in a current use. By that, I mean that the property is not tied up forever in a never-ending trust, hence the Perpetuities and Accumulation Act 2009 which restricts trusts (except charities) to a maximum period of 125 years. Let me proceed to the named case, *Brown v Burdette*. This is a good example of someone, in my opinion, having had some sort of personal vendetta against her heirs.

The old lady declared in her will that her house would be left to various beneficiaries but only after a period of 20 years where the property was bricked up from the inside with metal coverings across most of the doors, with nothing other than her clock and some personal items inside. A guardian and his wife were to live in a couple of the rooms to maintain the trust's clause and to ensure that no one else entered the property. After the 20 years and given that the beneficiaries had overseen the 20 year period of uselessness of the property, they could inherit as advised.

Not only does a very thought of breaking up perfectly habitable property for 20 years leave me to fear for the sanity of the testatrix, a subject I've never seen mentioned when we hear this case, but it also leads me to the thought of what a waste of an asset. I dread to think about the poor trustees inside the property. As a weak example, this case might also lead one onto thinking if this was, in fact, a purpose trust. If so, then it would also find itself out of favor with the courts

because purpose trusts generally fail and in this case, it seems unlikely to fall within the exceptions.

Luckily, so the outcome of the case tells us, the courts decide that the 20 year rule be struck from provisions of the capriciousness and that the beneficiaries could benefit in the prescribed manner with immediate effect. They could see no benefit to be gained from denying the beneficiaries the right to use the property for 20 years. It made no sense. I think you might agree that this case is a good example of stupidity. Can you imagine being the lawyer that drafted the will? I do hope he was paid well to write down the whims and eccentricities of an old lady.