

absence of such a power will impose the burden of proof on the person taking the benefit to shew distinctly an intention to make the gift irrevocable.⁶ It has also been contended that a deed containing a power of revocation is in effect a will, and objectionable on that ground. But if an instrument is on its face and in legal effect a deed, and passes a present interest, the power inserted in it does not change its character, notwithstanding the possession of the property conveyed is postponed,⁷ or the enjoyment thereof was not to commence until after the grantor's death.⁸

In a Kentucky case,⁹ the Court considered the validity of such a reservation in a deed from a different point of view. Subsequently to the delivery of the conveyance the grantee conveyed a proper deed, a right-of-way through the land to a railroad, which constructed its right-of-way through it. The original grantor then executed a deed of revocation in conformity with the provisions of the deed containing the power. The validity of the revocation was assailed as being, among other things, contrary to public policy for the reason that it would enable the parties to the deed to defeat the rights of the grantee's creditors; in other words, that, after becoming indebted, the grantor by exercising the power of revocation would thereby divest the grantee of property which would otherwise be subject to the claims of his creditors. But this contention was considered untenable, inasmuch as the deed itself was notice to the grantee's creditors of the reserved power. It was also objected, in this case, that the reservation of power to revoke was an attempt to impose a condition subsequent, which was void, under the rule stated by Blackstone¹⁰ that a vested estate shall not be defeated by a condition subsequent either impossible of execution, illegal or repugnant. However, the argument did not find favour with the Court.

Under the old rule, a power to revoke a deed might have been exercised by re-entry merely, or now, perhaps, by proper notice

⁶ *Miskey's Appeal*, 107 Pa. St. 629.

⁷ *President, etc., of Bowdoin College v. Merritt*, 75 Fed. Rep. 480.

⁸ *Nichole v. Emery*, 109 Cal. 323, 41 Pac. Rep. 1089.

⁹ *Ricketts v. R. R. Co.*, 91 Ky. 221, 15 S. W. Rep. 182, 11 L.R.A. 422, 34 Am. St. Rep. 176.

¹⁰ 2 Bl. Com. 156.