

ledgment of the existence of the trust in documentary form be retained by the settlor.

The property, the subject of the trust, had been delivered to the trustees, and the trustees had accepted it upon the trust. The trust was thus made complete and enforceable: *Wheatley v. Purr*, 1 Keen 551; *Stapleton v. Stapleton*, 14 Sim. 186; *Vandenberg v. Palmer*, 4 K. & J. 204. Though not necessary to the completeness or efficacy of the trust, its existence was communicated to the beneficiaries, and was recognized by them, and by the settlor, in the subsequent dealings with the income cheques: *Standing v. Bowring*, 31 Ch. D. 282.

"Where the relation of trustee and cestui que trust is constituted, as where property is transferred from the author of the trust into the name of the trustee so that he has lost all power of disposition over it, and the transaction is complete as regards him, the trustee having accepted the trust, cannot say he holds it except for the purposes of the trust, and the Court will enforce the trust at the suit of a volunteer:" *Fletcher v. Fletcher*, 4 Hare at p. 74. The fact that the income was received by Mrs. Phelan during her lifetime, whether pursuant to an arrangement made contemporaneously with the creation of the trust or by the goodwill of the beneficiaries when they received their income cheques, does not affect the validity or enforceability of the trust of the corpus in their favour. An instance of retention of income by a donor is to be found in *Standing v. Bowring*, *ubi supra*.

I have carefully considered all the authorities cited by Mr. Gorman as well as those referred to by Mr. Fisher. I find nothing to raise any doubt that there was in this instance a complete and executed trust created by Mrs. Phelan, enforceable by the defendants, the cestuis que trust.

There will, therefore, be judgment for defendants upon the issue, with costs to be paid by the plaintiffs out of the estate of Joanna Phelan in their hands. The question was, however, properly raised by plaintiffs, in view of the claim made by the residuary legatee and the finding of the receipts amongst the effects of the deceased, and they should have their costs out of the estate in their hands: *Wheatley v. Purr*, 1 Keen at p. 558.