...a. Bethea, and that, un-
...s R. Bethea, Robert L.
...conditional, and could
...r his daughter Leana for
... the devise. Robert L.
...ired all the contingent
...ers and sisters, Hon. T.
...e master to convey to
...o land of Leana Bethea
...on his executing to her
...or land containing 180
...he devise from James R.
...bea, by her guardian ad
...to the decrees of Judges
... and appeals to the su-
...e following grounds: (1)
...cuit judges erred in hold-
...Bethea took a fee condi-
...l of James R. Bethea,
... have held that Robert
...v a life estate, with re-
...e as he might have sur-
...asers. (2) Because the
...erred in not holding that
... should not be made, be-
...en could not convey a
...Bethea for the land de-
...es R. Bethea.
... Bethea takes a fee con-
...devised. Whitworth v.
...404; Hull v. Hull, 2
...v. Hay, 3 Rich. Eq. 390—
...hitworth v. Stuckey, su-
...a repeatedly recognized
... state, seems conclusive.
...tor devised lands to his
... his natural life, and at
...wful issue of his body,
...without lawful issue liv-
... death, then" over. The
...limitation to the lawful
...ved only to enlarge the
... fee conditional at com-
...o create a remainder to
...rs. If the devise in that
...litional, it is even more
...under consideration is a
...se in that case the tes-
...ption to give a life es-
...pressly devising to him
...tural life," etc., whereas
...there is no expression
...an intention to give
...ly a life estate.
...ev. St. 1893, § 1970), re-
...estates, is applicable to
..., which was made in
...act our construction of
...That act declares that
...in any will of a testator
...estate, either in real or
...all be limited to take
...of any person without
...issue, or issue of the
...ient words, such words
... to mean an indefinite
...failure at the time of
...son." Construing this

act in Simons v. Bryce, 10 Rich. (S. C.) 365, the present chief justice, then associate justice, said: "In construing a will which took effect after the passage of that act, we are required to read a devise to one and the heirs of his body, or to one and his issue, and, in case of his death without heirs of his body or without issue, then over to some one else; as if the gift were to one and the heirs of his body, or to one and his issue, and, in case of his death without leaving heirs of his body or without leaving issue living at the time of his death, then over, in which case the limitation over would unquestionably be good." Further on in that case the court said: "These words, when applied to personalty, create an estate for life in the first taker, with remainder to his issue as purchasers." But, as the devise under consideration relates to realty, we need not consider what effect the act of 1853 would have on the construction of a will relating to personal property, in terms like the one in question. The effect of the act of 1853 on the devise in this case is to make it read "to my son Robert L. Bethea, and to the lawful issues of his body," etc.; "and, if the said Robert L. Bethea should die without leaving lawful issues living at the time of his death," then over. But for the act of 1853, importing into this will the words "living at the time of his death," the limitation would be void for remoteness, under the rule against perpetuities. This act has special reference to the question of remoteness, with a view to sustain or save limitations, but does not abolish the rule in Shelley's Case. Fields v. Watson, 23 S. C. 42.

It is clear that the words of the direct devise "to Robert L. Bethea and to the lawful issues of his body" create a fee conditional in Robert L. Bethea, but the question still remains whether the limitation over, which is not void of remoteness under the act of 1853, controls or qualifies it. It will be observed that the words imported into this will under the act were actually in the devise under consideration in Whitworth v. Stuckey, supra, so that the last-named case is an authority supporting our conclusion, after allowing the act of 1853 its full force. In Hay v. Hay, supra, Chancellor Johnson, in an opinion concurred in by the court of appeals, said, at page 390: "But, even if the limitation over were within proper time, it has not the same effect upon the preceding limitation in cases of real estate that is allowed to it in cases of personalty. In the latter case we have seen (as was decided in the cases on Bell's Will, Bailey, Eq. 537), that such limitation over converts the issue or heirs of the body mentioned in the words of direct gift into purchasers in remainder. But the same judge whose opinion was established in these cases held in Whitworth v. Stuckey, 1 Rich. Eq. 411, that, when real estate is concerned, the direct gift is unaffected by the limitation over." And in Hull v. Hull, 2 Strob. Eq. 100, the court, speaking of the case of Whitworth v. Stuckey, said: "In that case there was a limitation over in case of the son's dying without lawful issue living at the time of his death; but it was held that this did not restrict the son to a life estate, nor enable the issue to take as purchasers; and very properly, because, as we have seen, if it had been the positive and express intention of the testator that the son should have a life estate, and no more, the issue would still have taken as heirs, and the law would have annexed their estate to his. If, therefore, the limitation over in the case before us were good as to real estate, it could have no influence in excluding the rule in Shelley's Case." It will be noted that there is nothing in the will in question to indicate that the issue were to take as a new stock of descent, as, for instance, if the devise had been to the issue and to their heirs, or words of equivalent import, so as to make applicable the rule of construction laid down in McIntyre v. McIntyre, 16 S. C. 290, and in cases therein cited. Robert L. Bethea, having a fee conditional in the lands devised, may dispose of the same after the happening or fulfillment of the condition,—birth of issue, as in this case,—by alienation by deed in his lifetime. His deed of the land in question to Leana Bethea would convey a good title if made as contemplated. The judgments of the circuit court are affirmed.

DYE et al. v. BEAVER CREEK CHURCH et al.

(Supreme Court of South Carolina. March 12, 1897.)

WILL—LIFE ESTATE—UNINCORPORATED ASSOCIATION—HOLDING LANDS FOR CHARITABLE USE—VALIDITY OF DEVISE—TRUSTEE—EQUITY.

1. A testator gave to his wife the residue of his estate, "for her to dispose and live on during her lifetime; and, if there be anything at her deceast after left after her deceast and burial, I give and bequeath to the B. C. Church, for poor children, for their tuition." *Held*, that the wife took a life estate, with power of disposition during her lifetime, with remainder, if any, to the church.

2. An unincorporated association may take and hold lands for a charitable use. Bates v. Taylor, 6 S. E. 327, 28 S. C. 476, followed.

3. Where a devise is to an unincorporated association, for a charitable use, the members thereof take as natural persons, and not as an association. Attorney General v. Jolly, 1 Rich. Eq. 99, followed.

4. A devise to a trustee, "for poor children, for their tuition," is not void as being uncertain as to the objects and beneficiaries of the use.

5. Where a trustee is appointed by the testator, and the will shows that the object of the devise is for a charitable use, though expressed in general terms, the trust will be upheld, it being for the trustee to devise a scheme for carrying the trust into effect.

6. If a trustee is not appointed by the testator, and the will does not declare the manner in which the devise is to be made effectual, equity will not administer the trust.

Appeal from common pleas circuit court of Fairfield county; Ernest Gary, Judge.

Action by Thomas E. Dye and others against the Beaver Creek Church and others

It is admitted by counsel that Tabitha Dye, the widow of testator, died in possession of the land mentioned in the complaint; also, that the testator, John Dye, in his lifetime and at the time of his death, was a member of Beaver Creek Church, and that said church has now a membership of about 145 members, and that it is a church of the Baptist denomination, and that it is unincorporated; also, that the defendants are in actual possession of the land in dispute, or, rather, that the Beaver Creek Church is in possession of the same.

The following is a copy of the will of John Dye, deceased: "In the name of God. Amen. I John Dye, of the State and District aforesaid being weak in body, but of perfect mind & memory, thanks be given to Almighty God, calling to mind and knowing it is once appointed for all men to die, do make and ordain this my last will and testament—that is to say, personally, and last of all, I give and recommend my soul to God, who gave it, and my body to the earth, from which it sprang, and my body to be buried decently in Christian order by my executor or executrix hereinafter named. First of all my lawful debts to be paid out of my estate, and all the balance of my personal and real estate, I give and bequeath to my beloved wife, Tabitha Dye, for her to dispose and live on during her lifetime; and if there be anything at her deceast after left after her deceast and burial, I give and bequeath to the Beaver Creek Church, for poor children, for their tuition. I hereby appoint my beloved wife, Tabitha Dye, and Nathaniel Davis executors of this my last will and testament: Given under my hand and seal the 14th day of December, Anno Domini 1854. [Signed] John Dye." (Duly witnessed.)

The plaintiffs appealed from the decree of the circuit judge, on exceptions, which, together with said decree, will be set out in the report of the case.

The appellants' attorney, in his argument, urges the following objections against the validity of the devise:

1. That the devise is void for uncertainty in the subject-matter, and as to the amount. The words, "and all the balance of my personal and real estate, I give and bequeath to my beloved wife, Tabitha Dye, for her to dispose and live on during her lifetime, and if there be anything at her deceast after left after her deceast and burial, I give and bequeath to the Beaver Creek Church, for poor children, for their tuition," in effect, conferred upon Tabitha Dye a life estate, with power to dispose of said property during her lifetime, which she failed to do; but, if she failed to dispose of said property during her lifetime, then it was to go to Beaver Creek Church. The case of Sires v. Sires, 43 S. C. 266, 21 S. E. 115, shows that the devise to the Beaver Creek Church would be valid even if it had been made to an individual for his private benefit. For a stronger reason, then, the devise is valid, because it is for a charitable use, which is regarded as a benefit to the public. This objection cannot be sustained.

2. Another objection urged by appellants' attorney is that Beaver Creek Church, being an unincorporated association, is incapable of taking and holding the land in this devise.

Whatever doubts may have existed after the case of Attorney General v. Jolly, 1 Rich. Eq. 99, as to the power of an unincorporated association to hold land for a charitable use, was dispelled by the case of Bates v. Taylor, 28 S. C. 476, 6 S. E. 327, in which this question squarely arose and was necessarily decided. As this is an important question, we will quote somewhat at length from that case. The facts of the case are thus stated. It appears that in September, 1847, certain citizens of that part of Richland county known as "The Fork" met to devise means for the erection of an academy to educate their children, in the neighborhood of Good Hope. Subscriptions were raised to the amount of $2,525. Among the subscribers was John Bates, who subscribed $500 in cash and 37 acres of land. On December 2, 1847, an association or society was formed under the name and style of the "Palmetto Society." Officers were elected, of whom John Bates was one, and the Palmetto Academy and Teachers' Home were built on said parcel of land. On July 2, 1847, at a meeting of the society, a resolution was adopted authorizing an application for a charter, which was afterwards obtained, to continue for 14 years, under the name of the "Palmetto Society in Columbia for the Dissemination of Learning," and was accepted July 28, 1849. The parcel of land known as the "Palmetto Academy lot" (37 acres) was marked off by a blazed line, and the buildings erected thereon have been used and held as a school ever since. It seems that during the war the regular meetings of the society or incorporation were not held, but a school of some character was kept there all the while. After the war the premises were used for a time as a public school, under the general laws, and in 1883 application was made and the charter revised. John Bates, during his lifetime, never claimed the academy lot, but respected the lines. He died soon after the war (December 25, 1866), and his executors, in running his lands, left out the academy parcel, running around the old lines. His lands were sold by order of the court (1885), and purchased by the plaintiff and she brought the action, alleging that the title to the said lot had reverted to John Bates in his lifetime, and passed to her under the purchase aforesaid. The Palmetto Society, Jesse H. Taylor, and C. W. Rawlinson answered—First, denying each and all of the allegations of the complaint; and, second, alleging that neither the plaintiff nor her ancestor or grantor was seised of the

premises in question within
the commencement of the
defendants and those und
claim have been in the adverse
possession for more than 10
jury rendered a verdict in
fendants. The plaintiff appe
preme court on exceptions
and sixth of which are, as
That his honor erred in his
defendant the Palmetto Soc
the land in dispute as an
association, and that said
hold said land as an incorp
That his honor erred in char
the land in dispute was give
ant the Palmetto Society, no
contemplation, and said so
land, not as a corporation,
corporated association.' (6)
erred in charging 'that the
was given for a valuable con
unincorporated association,
ation being afterwards in
land was held in abeyance
of said corporation, and a
said corporation the land h
vert to the grantor John Ba
to the unincorporated assoc
sidering the exceptions the c
exceptions, in different form
the judge committed error i
as matter of fact, the con
land was made to an uninco
for a public purpose, with
the charter which that so
obtained, and was allowed
the confusion of the war
ceeding on this assumption
further error of law, in
subscription was for a va
tion, and that the uninco
could accept and hold the
vidually or as a body, with
as to divest the donor, Jo
title to the same." In concl
the court quoted with app
ing language of Chancellor
ney General v. Jolly, supr
the whole subject was con
Girard's Ex'rs, 2 How. 126]
of the court was plainly int
the case of Trustees v.
Wheat. 7. * * * I under
ciples to be settled by the
to. If there be a bequest
that name, the individuals
may be identified by evide
ural persons, in the same m
had been particularly name
be upon a lawful trust, th
pelled to execute it," etc.
were overruled and the ju
The second objection cann

3. Another objection urg
ject of the devise is not ge
poses for which the assoc
ized.