

72 Anson

May 6, 1959

I have examined the title to the premises known as 70 and 72 Anson Street, in the City of Charleston, which Historic Charleston Foundation has contracted to purchase from Julia B. Leslie.

It was indicated to me that the Society would like to know as much history concerning this property as is available, especially with reference to the time of the construction of the present dwelling house on the premises. Accordingly, the title has been traced back to 1804 at which time it appears that the property under examination was vacant land.

The property was embraced within what was known as Laurens Square, which was owned by Henry Laurens, a planter of St. John's Parish. There is a plat of Laurens Square recorded in the R.M.C. office which shows that the Square was bounded on the North by Pitt (now Laurens Street), east by East Bay, South by Centurion (now Society) Street, and on the west by Anson Street. The property under examination is composed of the southern portions of Lots 14 and 15 and the Northern portions of Lots 16 and 17 on said plat. The history of the title is commenced with Lots 14 and 15.

By deed dated May 4, 1804, Henry Laurens conveyed unto Jacint Laval, for a consideration of \$1,817.69, Lot No. 14 of Laurens Square; and at the same time by separate deed, he conveyed unto Laval Lot No. 15 of Laurens Square for \$2,656.60.

The following year on April 8, 1805, Jacint Laval, Esq., conveyed unto John Hauck, shop keeper, the said Lots 14 and 15 for a consideration of \$4,474.29.

By deed dated August 23, 1819, John Hauck, for a consideration of \$7,100, conveyed unto William Henry Miller, a.s. Trustee of Mrs. Mary Miller, the Southern parts of Lots 14 and 15, having a frontage on Anson Street of 43' 10". This is the portion of the premises under examination upon which the house now stands. There is recorded with this deed a plat of the property conveyed showing the dwelling house, which is described in the deed as a "wooden dwelling house." A copy of this plat follows this page. The property was conveyed in trust for Mrs. Mary Miller, wife of William Henry Miller, Esq., to use, occupy and enjoy the premises, and giving unto Mrs. Mary Miller power of Appointment of the property either by deed or by will, and on her failure to make such Deed or execute such last Will and Testament, at her death, then to her children, their heirs and assigns. Mrs. Mary Miller left a Will dated May 30, 1831, and admitted to probate in the Probate Court of Charleston County February 3, 1835, under the provisions of which she made certain specific bequests, including a gift to her daughter, Jane Miller, of household furniture, etc., in "my dwelling house" 752 Anson Street and then left all of the residue of her estate to her son, Charles E. Miller and her sons-in-law, Richard Cunningham and Dr. Alexander Fraser, upon the trust that they do and shall sell and dispose of the same either by public sale, or private contract, and convert the same into money as soon as convenient after her death.

As noted, under the trust provisions contained in the Deed of John Hauck to William Henry Miller, as trustee of Mrs. Mary Miller, she was given a Power of Appointment either by Deed or Will as to the property under examination and upon her failure to do so the property was left to her children. In my opinion, the gift of her residuary estate would not constitute an execution of the power, since, under the law at that time, a power of appointment was not a part of the estate of the donee of the power, and therefore, except for another consideration, the property under examination would not pass under her Will, but would have vested in her children. Thompson v. Thrlich, 143 S.C. 330, 146 SE 149. This case was decided in 1923, and is not the law today as the General Assembly in 1930 passed an act having the effect of overruling that decision. This act is found now as Section 19-233 of the Code of 1952, but it is not applicable here,asmuch as its provisions are not retroactive, and, in my opinion, could not constitutionally be so where vested interests are involved. My conclusion is, however, that the trust set up in the John Hauck Deed was a passive trust, and that the Statute of Uses executed the use in the Cestui Que trust, and she therefore owned the fee at the time of her death. Even if this conclusion is unsound, the passage of time (128 years) has eliminated the materiality of the defect.

By deed dated October 20, 1835, for a consideration of \$5,250, Charles E. Miller, Richard Cunningham and Alexander Fraser, as Trustees under the will of Mary Miller, conveyed unto Philip A. Neyle, as trustee, the above lot, but it is here described as having a frontage on Anson Street of 48 feet. The conveyance was made in trust for the benefit of Charles E. Miller and Claudia Gervais Miller, his wife, for their joint lives, with other provisions not pertinent here. The trust provisions authorized and directed Philip A. Neyle at any time, with the consent and approbation of the said Charles E. Miller and Claudia Gervais Miller in writing, to sell and dispose of the said premises and convey the same absolutely unto such person or persons as shall be willing to purchase the same.

We now take up the title to the Southern portion of the property under examination which was the Northern parts of Lots 16 and 17 in Laurens Square.

By deed dated May 4, 1804, for consideration of \$4,381.00, Henry Laurens of St. John's Parish, Planter, conveyed unto Joseph Sanford Barker and Francis Depau Lots 16 and 17 in Laurens Square. The granting clause in this deed is to the above named grantors but the deed recites that the consideration was paid by Barker on his own account and by Depau as trustee of Mrs. Sylvia DeGrasse Depau. The Habendum clause is to Barker and Mrs. Sylvia DeGrasse Depau, but the warranty clause is to Barker and Francis Depau. There are no trust provisions in this deed. This conveyance was made 155 years ago and its defects may now be disregarded.

By deed dated September 2, 1807, Francis Depau and Sylvia DeGrasse Depau, his wife, conveyed unto Joseph Sanford Barker a one undivided moiety of Lots 16 and 17 in Laurens Square. The consideration was \$2,190.53.

By deed dated February 1820, Joseph S. Barker, Merchant, conveyed unto Planters & Mechanics Bank of South Carolina, among other property, Lots 16 and 17 of Laurens Square. The consideration for this conveyance was the satisfaction of bonds and mortgages of Barker which the bank held.

By deed dated March 11, 1820, Planters & Mechanics Bank conveyed unto Eliza Conover for a consideration of \$1,800, the Northern portions of Lots 16 and 17 in Laurens Square, having a frontage on Anson Street of 33'6". This deed has no affidavit of prorate, and therefore was not entitled to record and did not constitute constructive notice. However, in view of its age, I think this defect may be disregarded.

Eliza Conover left a Will dated May 14, 1822, and admitted to probate in the Probate Court of Charleston County on July 22, 1822, under the terms of which she provided that her house and lot in Anson Street and the residue of her personal estate be sold by her executor, which house was to be sold on such terms as her executor should think best, and her personal estate for cash, and the proceeds be divided among her three sisters, Mary Mawington Gravenstine, Hannah Matilda Cooper and Susan Lockyer Dorsey and her brother, Vincent Dorsey. She appointed her friend, James Patison, as sole executor and he qualified July 22, 1822. It is interesting to note here that she refers to her property in Anson Street as "my house and lot."

By deed dated December 18, 1822, James Patison, executor of Mrs. Eliza Conover, conveyed unto Fras. Laborde, for a consideration of \$1,785, the same lot which Eliza Conover had purchased from the bank, the property here being also described as No. 50 Anson Street. While appropriate words for a fee simple title are found in the Habendum clause, there is a blank space where the Grantee's name should appear; there are no words of inheritance in the granting clause. Even though this deed be construed as conveying only a life estate, it is my opinion that after so long a time this defect may now be disregarded.

There appears here a hiatus in the chain of title, as the next instrument of record affecting the property which we find is a trust deed dated July 4, 1827 of Casimer Patrick and William Miller, his Assignee, to Daniel Boinest, trustee of Isabella C. Locke, conveying the same 33'6" lot in Anson Street. The consideration was \$1,300 and the trust was to pay a purchase money mortgage and then to hold the same under the trust provisions set forth in Deed of Marriage Settlement from the husband of the said Isabella C. Locke, George B. Locke, to the said Daniel Boinest, as trustee.

By deed dated September 22, 1837, Daniel Boinest, trustee of Isabella C. Locke, conveyed unto George B. Locke, for a consideration of \$700, the said house and lot in Anson Street known as No. 52. Appearing after the signature of the Grantor and signed by Isabella C. Locke, is the following: "To David Boinest, I hereby demand and order the sale of the house and lot in Anson Street agreeable to my Power under the trust Deed of which you are trustee, and sanction the conveyance of the same unto G. B. Locke by the within title."

George B. Locke, Merchant, conveyed the same house and lot to Charles S. Miller, Planter, for a consideration of \$2,000 by deed dated October 2, 1837.

We continue now with the history of the title to the above parcels which make up the present premises under examination.

By Indenture dated June 1, 1846, Philip A. Heyle, Charles E. Miller and Claudia Gervais Miller, for a consideration of \$2,000, conveyed unto Eliza Kohne the two parcels of land, Philip A. Heyle conveying the Northern portion with the consent and approbation of the said Charles E. Miller and Claudia Gervais Miller, signified by their signing the deed; and Charles E. Miller conveying the Southern portion of the property under examination in his own right. The property is here described for the first time as one lot, and is described as measuring on Anson Street 77 $\frac{1}{4}$ " and in depth 111' on the north line. There appears at the bottom of this deed a plat of the premises conveyed, a copy of which follows this page.

Eliza Kohne died leaving a Will dated April 14, 1848, with two codicils, which was admitted to probate in the Probate Court of Charleston County on March 17, 1852. By her Will she gave her "house and lot on Anson Street, Charleston" to her nephew, Benjamin S. Neufville, for life and after his death to his children, Julia Yancey Neufville, Benjamin Neufville and Henry Neufville and their heirs.

It appears that the said Benjamin F. Neufville died during the year 1855, as we find of record in the Probate Court his Will dated September 18, 1854, and admitted to Probate on November 20, 1855. For purposes of identification, we note that he gave one-third of his estate to his wife, Harriet, and the remainder in equal shares to his three children, Julia, Benjamin and Henry.

By deed dated December 31, 1859. Benjamin Neufville, Merchant, conveyed to Harriet E. Neufville, widow, in consideration of natural love and affection, all of his undivided third part of the property under examination.

By deed dated April 1, 1868, Benjamin K. Neufville and Henry S. Neufville conveyed unto Harriet E. Neufville, for a consideration of \$1,000, "all our right, title and interest, being one third to each of us," in the property under examination. There are no renunciations of dower on this deed by the wives of the two Grantors; nor was there any renunciation of dower on the 1859 deed of Benjamin K. Neufville. We have no information as to the marital status at this time of these two Grantors. However, even if they were then married, ninety years has elapsed, and we think the absence of renunciations may now be disregarded. No reason appears of record why Benjamin K. Neufville was a Grantor in the second Deed with his brother, as he had already conveyed his undivided interest in the property to his mother nine years before as above noted. The valuable consideration in the second Deed may be the answer.

Harriet Ellen Neufville died leaving a Will dated January 30, 1889, which was admitted to probate in the Charleston Probate Court on October 26, 1896, under the provisions of which she gave to her

daughter, Julia Yancey Neufville, "the house and lot in the City of Charleston, S.C. now occupied by me and known as No. 72 Anson Street." This vested in Julie Yancey Neufville the entire fee, as she had already inherited an undivided one-third interest therein from her great aunt, Eliza Kohne.

Julia Yancey Neufville, Spinster, died leaving a Will dated September 20, 1900, and admitted to Probate in the Probate Court for Charleston County on November 1, 1900. Under her Will she gave to her brother, Henry Simons Neufville, for life "my house and lot known as No. 72 Anson Street," and after his death a life estate therein to her brother, Benjamin Kohne Neufville, and after the death of her said brothers, she directed her executrix to sell the property at public or private sale as she deemed best and divide the proceeds of such sale equally between her two nieces, Anna Clarkson Neufville and Isabel Yancey Van Doren, wife of Louis C. Van Doren of New York, with the proviso that should her said nieces prefer to own said house and lot as tenants in common in lieu receiving the proceeds of sale, then she gave the same, after the termination of the life estates, unto her said two nieces as tenants in common, their heirs and assigns forever. Anna Clarkson Neufville was appointed executrix, with full power of sale of her property, real or personal, for carrying out the provisions of the Will, and she qualified as such on November 1, 1900.

By deed dated May 5, 1904, Anna Clarkson Neufville, as executrix of the will of Julia Yancey Neufville and individually, and Isabel Yancey Van Doren, for a consideration of \$2,500, conveyed unto Charles C. Leslie the property under examination. The deed recites the provisions of the Will of Julia Yancey Neufville, and that both Henry Simons Neufville and Benjamin Kohne Neufville were dead, and that Anna Clarkson Neufville and Isabel Yancey Van Doren desired the property sold and the proceeds divided as provided in the said Will. The granting clause in this deed gives the second sister's name as Isabel Yancey Neufville, but the deed is signed by her as "Isabel Yancey Van Doren." The description in this deed makes reference to a plat of the property, which is made a part of the deed, and a copy is recorded with the deed. A tracing of this plat follows this page. It would appear to be the last plat of the property; and by a comparison of it with the earlier plat of 1819, it is observed that in the earlier plat the dwelling house is adjacent to Anson Street, whereas, in the 1904 plat, the dwelling is shown to be approximately 98' from Anson Street.

Charles C. Leslie died leaving his Will dated June 24, 1909, and admitted to Probate in the Probate Court of Charleston County on April 18, 1911, under the terms of which, after direction to pay debts and a pecuniary legacy to St. Marks Church, he gave all of the residue of his estate unto his daughter, Julia B. Leslie. She was appointed executrix with full power of sale, and she qualified as such April 18, 1911.

There are no mortgages, judgments or other liens open of record affecting the property.

State and County taxes have been paid through the year 1958. The property is assessed at a value of \$1,800, the millage for 1958 was 75 mills, and the tax was \$135.00. The millage for 1959 is not yet known. City taxes have been paid through the year 1958. City taxes for 1959

is the amount of \$126.90, based upon a valuation of \$1,800, and a levy of 70.5 mills. The City Treasurer's Office advises that there are no unpaid paving and abutment assessments against the property.

In my opinion, a good and marketable fee simple title is now vested in Julia B. Leslie.

As is usual, this letter of opinion is based upon the records and upon the assumption that all matters and facts stated of record are correct. For such matters as would not be revealed by a search of the records, such as possession of the lines of occupation or actual measurements as they lie on the ground, and any trespasses, easements or encroachments, when not disclosed by the records, the purchaser should satisfy itself by a personal investigation of the premises or otherwise.

COMMENT ON DATE OF HOUSE

It has not been possible to determine from the record history of the title when the present brick dwelling was built. We know that there was a wooden dwelling on the property in 1819, as it is so described in the John Hauck deed, and the plat attached to that deed shows this dwelling to be adjacent to Anson Street. The consideration for this conveyance was \$7,100. This same property (which was the Northern part of the property under examination) was conveyed in 1835 as "all that messuage or tenement and lot of land" for a consideration of \$5,250. The lot forming the Southern part of the property under examination was conveyed in 1837 for a consideration of \$2,000.

Both of these properties were conveyed to Eliza Kohne in 1846 for a consideration of \$2,000 and in the preamble to this deed it is recited that Eliza Kohne has agreed to purchase said lots of land for \$2,000. In the description the property (both lots described as one) is described as all that lot, piece or parcel of land.

The foregoing evidence would seem to indicate that there was no dwelling house on the property in 1846. However, Eliza Kohne left a will dated April 14, 1849, in which she described the property under examination as "my house and lot on Anson Street." It is a good guess that the present dwelling house was built by Eliza Kohne. We learn from her will that she was a well-to-do person. She owned extensive properties in Philadelphia and Charleston. The property is described in the deed of Benjamin K. Neufville in 1859 as "all that house and lot;" in the deed of Benjamin K. Neufville and Henry S. Neufville in 1863 as "all that lot of land, with the buildings thereon;" in the will of Harriet Ellen Neufville of 1889 as "the house and lot in the City of Charleston, S.C. now occupied by me;" and in the will of Julia Yancey Neufville in 1900 as "my house and lot known as Number 72 Anson Street."

There were no sales for value subsequent to the ownership of Eliza Kohne until Charles C. Leslie purchased the property in 1904 for \$2,505, at which time the brick dwelling house was on the property. It will be recalled that 1904 was a depression year.