



A Short Legal History of Mammoth Cave

*Extracted from the writings
of Harold Meloy*



Beginnings

It does not clearly appear when this cave was first discovered by white settlers, probably in the latter part of the 18th Century. The Cave was located on a 200-acre tract of land conveyed in 1811 by Flatt to McLean. It first came into public notice during the War of 1812, when saltpetre was extracted for powder-making purposes from its nitrous deposits. It was then known as Mammoth Cave, but its extent and boundaries were then and still are unknown. The Mammoth Cave was certainly known during the last decade of the 18th Century, when the entire Green River area was overrun by hunters, adventurers, and settlers. The first pioneers to enter the cave discovered many prehistoric remains, indicating that the Mammoth Cave’s history was older than initially thought.

The First Record

In surveyor’s Book A, Page 268, in the Warren County Clerk’s office, appears the entry of a survey of 200 acres of land on Green River in the name of Valentine Simons, who was the first owner of this celebrated cavern. This survey was made on September 3, 1799, by Elijah M. Covington, then county surveyor of Warren County and one of the wealthy men of the Green River section. This survey gives the metes and bounds of the 200 acres tract and concludes with the words “to the beginning including two saltpetre caves.”

Mammoth Cave on the patent issued January 31, 1812 by Charles Scott, esquire, Governor of the Commonwealth of Kentucky. This patent gives the same metes and bounds as the 200 acre tract issued to Valentine Simmons in 1799. Both of these caves were known to contain large deposits of nitrous earth. Interestingly, January 31, 1812 was also the first time the name “Mammoth Cave” appears on record.

The Unpleasantness in 1812

These two caves were called Dixon’s Cave and the War with Great Britian was declared in June, 1812, but the two countries had been having serious misunderstandings for many months. On July 9, 1812, the deed to the Mammoth Cave was “sold” three times, probably to reflect earlier transactions and to produce a clear title. First, Valentine Simons and his wife are listed as selling their land (including the two caves) to John Flatt of Barren County, Kentucky, for \$116.67. On the same day, Flatt handed over title to the lands to George and John McLean for \$400 cash. Finally, on the same day, the McLeans sold 156 acres of this tract to Fleming Gatewood and Charles Wilkins for \$3,000 cash. The war was on and men

were eagerly seeking possession of the valuable deposits of saltpetre in the caves. On August 25, 1812, Gatewood sold his half interest in the 156 acres mentioned which embraced Mammoth Cave to Hyman Gratz for \$10,000 cash. This deed recites “including the saltpetre cave known by name of Flatt’s, now the Mammoth Cave”. On April 20, 1813, in consideration of \$400 cash, Hyman Gratz purchased the remaining 40 acres of the 200 acre survey, which embraced Dixon’s Cave.

Nitre From the Soil

We know nothing of Simmons or of Flatt. Fleming Gatewood was a brother-in-law of the founder of Bell’s Tavern, a celebrated hostelry of bygone days located in what was then called Glasgow Junction. Glasgow Junction is today known as Park City, Kentucky. Gratz was a wealthy man from Philadelphia and Wilkins was a wealthy bachelor from Lexington, Kentucky. Gratz and Wilkins exploited the saltpetre deposits of the caves during the entire period of the War of 1812 and are said to have realized large prof-

its. The earth of the floor of the caves was rich in nitrates of calcium and potash. By leaching processes this “saltpetre” was made available for commerce. The vats and wooden pipes can still be seen just inside the mouth of the Mammoth Cave. Kentucky salt, as it was called, or Peter’s dirt, as it was known to the pioneer, helped win the War of 1812, if that war can be said to have been won at all.

The Lawyer and the Doctor

Following the War of 1812, Mammoth Cave and Dixon Cave fell greatly in value and on June 28, 1828, the executors of Charles Wilkins, deceased, sold his entire one-half interest to the other joint owner, Hyman Gratz, for \$200 cash. In the spring of the year 1838 the cave was purchased by Mr. Franklin Gorin of Glasgow, Kentucky, a prominent lawyer of Barren County. He held it only a short time and, in December of 1839, conveyed it to Dr. John Croghan. Croghan was a son of Major William Croghan, a Scotsman who had distinguished himself in the United States Army. Major Croghan married a sister of General George Rogers Clark. His oldest son, John, was graduated from the University of Penn-

sylvania in 1813, studied medicine with Dr. Rush of Philadelphia, and afterwards took a supplementary course in Edinburgh, Scotland. Dr. Croghan, a bachelor, died in 1849, leaving a remarkable will probated in Jefferson County, Kentucky, by the terms of which he devised all the cave properties, (embracing over 1,600 acres of land) to trustees to be held for nine nephews and nieces until the death of the last one. The last of the heirs died in California on August 27, 1926. In this interval of 77 years the cave estate was controlled and operated by trustees under the trust created by this will.

Legal Wrangles

In July 1924, the then living beneficiaries under the will of Dr. Croghan filed an *ex parte* petition in the Edmonson Circuit Court, seeking the appointment of three named persons, members, or connections of the family to act as trustees in conjunction with the two existing trustees, A.C. Janin and W. E. Wyatt. The Judge of the Edmonson Circuit Court, possibly with a sense of a public interest in the Mammoth Cave estate, granted the prayer of the petition, but ignored the request for the appointment of the persons selected to act, and instead appointed as trustees three citizens of Edmonson County.

The heirs were astounded and indignant at this result and the two trustees, then acting and who had not been made parties in the proceeding, attempted to appeal to the Kentucky Court of Appeals, but without entering a motion in the lower court to set the judgement aside, as was required by Section 763 of the Civil Code. In the resulting case of Janin v. Logan, 209 Kentucky 811, the appeal was dismissed. But in rendering the opinion Judge Clark ruled that upon the death of the last life-tenant, all the beneficiaries of the estate (and at that time there were a total of sixteen beneficiaries, some of them owning only a one-fifty-fourth interest) should convey all their interest of every kind in the cave and the 1,610 acres of land constituting the estate to the Fidelity and Columbia Trust Company of Louisville, Kentucky, to William E. Wyatt and Violet Blair Janin as trustees. The interests of each beneficiary was

evidenced by a participation certificate which was to be regarded as personal property and any division or distribution of income from the property itself was divided or distributed on a prorata basis. A three-fourths interest of the certificate holders controlled the trustees. It is said that a newly formed Mammoth Cave National Park Association bought certificates aggregating a two-thirds interest under this deed of trust and thus acquired the power of control.

While not directly bearing upon Mammoth Cave, the case of Cox v. Colossal Cavern Company, decided by the Court of Appeals of Kentucky in October, 1925, and reported in 210 Kentucky 612, is interesting because it defined what is a cave and set out the measure and extent of cave ownership. It declared that property right included the right of exclusive possession of the cave, to maintain and travel in the ground beneath, and to preserve and protect the natural formation found in these caverns that are some of the most admired and beautiful wonders of the cave region. It declared that the cave owner may explore, improve, exhibit, and enjoy them, but in doing so he may in no way disturb the surface or any other part of the land except that it is reasonably necessary to do so in exercising rights of ingress and egress and in making reasonable exploration.

The Promise of a Park

By Act of Congress on May 25, 1926, it was provided that when title to lands within the Mammoth Cave area shall have been vested in the United States in fee simple, there should be established and dedicated as a National Park a tract of land in the Mammoth Cave region in Kentucky, containing approximately 70,618 acres. This park, it was provided, was to be administered under the National Park Service and under the supervision of the Secretary of the Interior. Thus, the Mammoth Cave National Park can be secured by the conveyance to the government of the United States of 20,000 acres, including the caves; but, to secure the general development of the area that it desires, 45,306 acres must be secured. By Act of the General Assembly of Kentucky in 1928, the Kentucky National Park Commission was established as a corporation and authorized to further the establishment of a National Park in Kentucky and was endowed with a power of eminent domain to condemn for the purpose of obtaining said National Park land, caves, and other real or personal property. The Kentucky National Park Commission filed a proceeding in the Edmonson County Court for the condemnation of the Mammoth Cave estate. The trustees and beneficiaries of the estate filed a motion for the removal of the case to the United States District Court for the Western District of Kentucky. This motion was overruled by the Judge of the

Edmonson County Court. Thereafter, the record was filed in said District Court and the motion renewed. Judge Dawson held that the case was not removable because the Commonwealth of Kentucky was in reality the plaintiff. He refused, however, to pass upon the question whether or not under constitutional provisions the Commission could exercise the power of eminent domain for the purpose of conveying the property condemned to the United States of America for use as a National Park.

In working towards National Park status, George Morrison's "New Entrance" was sold to the Kentucky National Park Commission on January 5, 1931. Shortly afterwards (1933) a Joint Operating Committee was established to manage both the old and new entrance operations. Finally, in 1935, four camps of Civilian Conservation Corpsmen arrived to begin the construction of roads and trails both on the surface and in the cave. By July 1, 1941 Senator Barkley was able to announce the creation of Mammoth Cave National Park. This reflected the cumulation of state and local efforts to obtain, protect, and maintain this natural wonder for the benefit and enjoyment of peoples worldwide.