

A SHORT LEGAL HISTORY OF MAMMOTH CAVE

(an extract from the writings of Herold Meloy)

"It does not clearly appear when this cave was first discovered, probably in the latter part of the 18th Century, but it is at least certain that a natural opening to the cave was discovered or rediscovered about 1809 by a hunter named Houchins, while in pursuit of a bear. This opening 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 nitrons deposits. It was then known as Mammoth Cave, but its extent and boundaries were then and still are unknown."

This statement of origins was declared by Judge Donohue in the opinion of the Court of Appeals, 6th Circuit, delivered May 16, 1928, in the case of Wyatt, et. al. v. Mammoth Cave Development Company, et. al. His writings reflect the confusion over early dates in Mammoth Cave's history. In fact, the Mammoth Cave was well known during the last decade of the 18th Century. Warren County, within the bounds of which the cave was located at that time, was established in 1796 and the town of Bowling Green, just thirty miles distant, was founded in March 1798. During these years 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.

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 Simmons, 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."

These two caves were called Dixon's Cave and the 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 acres 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.



War with Great Britain 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 Simmons 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 acres survey, which embraced Dixon's Cave.

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 profits. 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.



Dr. John Croghan

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 second son, John, was graduated from the University of Pennsylvania in 1813, studied medicine with Dr. Rush of Philadelphia, and afterwards took a supplementary course in Edinburgh, Scotland. Dr. Croghan, although a native Kentuckian, first heard accounts of the great Mammoth Cave while in Europe, and was induced to purchase it. It was he who first extensively developed and explored the

cave and exploited it commercially as one of the great wonders of the world. 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.

The first active trustee was Senator Joseph R. Underwood of Bowling Green, Kentucky. Upon his death, members of the immediate family acted as trustees until about the year 1900 when Mr. Albert J. Janin, husband of one of the heirs, assumed for all practical purposes sole management and control. Mr. Janin was a gentleman of culture and a lawyer of some attainments, of French extraction, and a native of the state of Louisiana. For a quarter of a century, he ruled the Mammoth Cave estate like any monarch and, to add to the regal illusion, had ever about him a number of retainers and satellites and favorites. He was ordinarily known as "The Judge" and many of his sayings and habits became the common talk of the countryside.

During the reign of Judge Janin, there was a great destruction of the splendid timber reserves upon the estate. Some of the most intelligent citizens of Edmonson County, who had by this time acquired a latent sense that the public held some kind of interest in this great cave and the surrounding territory, grumbled sometimes audibly over the wasteful destruction of great trees of immeasurable value, far beyond the lumber or ties which they might produce. Nothing, however, could be done to prevent it and none of the heirs-at-law seemed disposed to intervene.

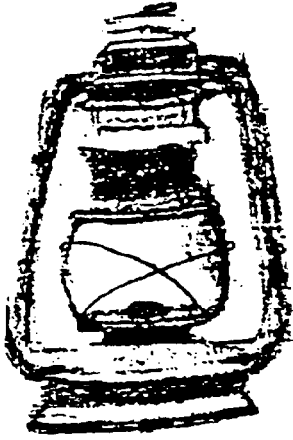
Finally, in July 1924, the then living beneficiaries under the will of Dr. Croghan filed an ex parte petition in the Edmonson Circuit Court, seeking the appointment of three named persons, members, or connections of the family to act as trustees in conjunction with the two existing trustees, A. C. Janin and W. E. Wyatt. The Judge of the Edmonson Circuit Court, possibly with a sense of a public interest in the Mammoth



ENTRANCE (WINTER)

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.



In the legal history of Mammoth Cave, there are very few cases of interest. The most noteworthy perhaps is that of *Wyatt, et. al., v. Mammoth Cave Development Company et. al.*, decided by the Circuit Court of Appeals, 6th Circuit, and reported in the 26th Federal Reporter Second Series, page 322. About the year 1915, one George B. Morrison, prospecting for oil in Edmonson County, Kentucky became impressed with the idea that the avenues of Mammoth Cave ran beyond the surface boundaries of the Mammoth Cave estate. He began to take options on a large extent of territory surrounding the Mammoth Cave estate and to obtain a survey of its subterranean passages. He is said to

have sent persons into the cave to listen for the sound of drilling machines which he was operating. He was charged also with sending others into the cave to fire heavy charges of dynamite in the hope of lifting the surface of the ground and thereby indicating its location. He actually secured an entry by this method and was discovered with a party of men in Mammoth Cave and arrested and fined for trespass. In the year 1916, he found an entrance upon the land of Perry Cox and actually again found his way into Mammoth Cave. The Colossal Cavern Company, which owned the cave rights in the Perry Cox land intervened and enjoined him. In the year 1921, he formed the Mammoth Cave Development Company and renewed his efforts to find a surface entrance through those subterranean caverns which he was convinced could be found underneath the great Mammoth Cave region and yet outside of the boundaries of the Mammoth Cave estate. He eventually succeeded in this and the same is now called the New Entrance to Mammoth Cave.

For a time, the rival claims as to which really was the better and the more wonderful part of Mammoth Cave were very loud and conflicting. Finally, the trustees of the Mammoth Cave estate sought to enjoin the Mammoth Cave Development Company in the District Court of the United States for the western district of Kentucky from the use of the name, Mammoth Cave, or New Entrance to Mammoth Cave, upon the grounds that the name had a special and secondary meaning applicable only to the caverns underneath the boundaries of the Mammoth Cave estate. The proof disclosed the remarkable fact that underneath the Mammoth Cave ridge was a great labyrinth of subterranean passages all connecting. Indeed the Colossal Cavern Company had known for a long number of years that the caverns underneath some of its land connected with the caverns underneath the lands of the Mammoth Cave estate. The court held that the word "Mammoth Cave" was fairly applicable to all this general labyrinth system of caverns and possessed no special or secondary meaning which could be appropriated by the trustees of the Mammoth Cave estate. Both the District Court and the Circuit Court of Appeals held that the defendants had been guilty of unfair practices and that for the protection of the public the defendants were compelled to advertise with all of their literature using the phrase, "We do not show any part of the cave which prior to 1907 was generally known as Mammoth Cave, that portion of the cave can be seen only through the old entrance".

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.

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; and thereafter to vest the same in fee simple in the United States of America on conditions that a National Park should be established and maintained in and on all of said property.

In 1928, 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 during opening ceremonies. This reflected the cummulation of state and local efforts to obtain, protect, and maintain this natural wonder for the benefit and enjoyment of peoples world-wide.



OUTLINE OF MAMMOTH CAVE HISTORY

- 1798 Land Certificate issued to Valentine Simmons for 200 acres south of Green River "including two peter caves" (later known as Mammoth and Dixon Caves).
- 1808 Cave used for mining and processing of saltpetre.
- 1810 First published use of name "Mammoth Cave" in Richmond, Virginia newspaper.
- 1813 "Fawn Hoof" mummy found in Short Cave and displayed in Mammoth Cave.
- 1834 Religious services held in cave at site later known as Medodist Church.
- 1838 Charles F. Harvey lost in cave for 39 hours.
- 1838 Bottomless Pit first crossed October 20, 1838, by Stephen Bishop on ladder.
- 1840 Echo River crossed.
- 1840 Mammoth Dome discovered.
- 1842 T.B. Hospital established in Mammoth Cave. Used for ten months.
- 1850 Ralph Waldo Emerson visited Mammoth Cave in June and wrote about his trip.
- 1880 Jesse James robbed the Mammoth Cave stagecoach twice in one day.
- 1881 Mushroom farm in Mammoth Cave.
- 1883 Christmas Tree placed in cave and remained until National Park Service removed it.
- 1886 Mammoth Cave railroad completed.
- 1904 First auto at Mammoth Cave, driven from Indianapolis.
- 1912 Congressional committee holds hearings to establish Mammoth Cave National Park.
- 1917 First electric lights in Mammoth Cave.
- 1925 Floyd Collins dies in Sand Cave February 1925.
- 1935 "Lost John" mummy discovered on June 7th.
- 1941 Mammoth Cave becomes a National Park. Park dedication service held in 1946.
- 1982 Mammoth Cave National Park designated as a World Heritage Site.
- 1990 Mammoth Cave National Park designated as a "International Biosphere Reserve."